

TRADEMARK PROTECTION AND THE DOCTRINE OF PASSING OFF IN NIGERIA'S INFORMAL MARKETS: EVALUATING ENFORCEMENT CHALLENGES IN ALABA, ONITSHA, AND ABA TRADE ECOSYSTEMS

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Abstract

Trademark protection and the doctrine of passing off play a critical role in safeguarding commercial identity, consumer trust, and market integrity in modern economies. In Nigeria, however, the enforcement of these legal protections remains particularly challenging within informal market structures that account for a significant proportion of commercial activity. This article critically examines the effectiveness of trademark law and the doctrine of passing off within three major informal trade ecosystems: Alaba International Market in Lagos, Onitsha Main Market in Anambra State, and Ariaria Market in Aba, Abia State. The article argues that, although the Trade Marks Act provides a statutory framework for the protection of registered marks, enforcement within informal markets is significantly weakened by institutional limitations, socio-economic realities, and inadequate regulatory penetration. It further evaluates the continuing relevance of the common law doctrine of passing off as a supplementary mechanism for protecting commercial goodwill in circumstances where formal registration is absent or impractical. Through doctrinal, socio-legal and comparative analysis, the article demonstrates that enforcement failure is not merely a matter of legal deficiency but is also structural in nature, arising from economic informality and institutional fragmentation. It concludes that a hybrid enforcement model, combining legal reform, administrative cooperation, market-level

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engagement and public intellectual property awareness, is necessary to bridge the gap between formal intellectual property law and informal commercial practice.

1.0 INTRODUCTION

Trademark law constitutes a fundamental component of modern commercial regulation. It is designed to protect brand identity, reduce consumer confusion and preserve the goodwill of traders operating within competitive markets.¹ In principle, trademark protection enables consumers to distinguish reliably between genuine and imitation goods, thereby promoting fair competition and contributing to economic efficiency.² In Nigeria, however, the effectiveness of trademark protection is significantly affected by the structure of the country's commercial economy. A substantial proportion of commercial activity takes place within informal markets that operate with limited formal regulatory supervision.³ These markets include Alaba International Market, Onitsha Main Market and Ariaria Market in Aba, all of which function as important centers for the distribution and sale of goods within Nigeria and across West Africa.⁴ Despite their considerable economic importance, these markets are frequently associated with counterfeit goods, imitation branding and alleged trademark infringement.⁵ The resulting gap between formal intellectual property protection and informal commercial practice raises important questions concerning the practical effectiveness of

¹ Trade Marks Act, Cap T13, Laws of the Federation of Nigeria 2004.

² Andrew Bethlen and Others, 'Synergy of Trademark Protection and Consumer Rights: A Legal Analysis on the Prevention of Product Counterfeiting' (2025) 2(1) *Jurnal Hukum dan Keadilan* 1 -17.

³ A Nwotite, et al, 'Challenges of Trademark Protection Laws to the Nigerian Economy' (2025) 1 *Nnamdi Azikiwe U. J. Int'l L. & Juris.* 16

⁴ Ibid.

⁵ Ibid.

Nigeria's existing legal framework.⁶ This article examines the principal enforcement challenges confronting trademark protection within Nigeria's informal market ecosystems. It also considers whether the common law doctrine of passing off can provide a viable supplementary mechanism for protecting commercial goodwill, particularly where formal trademark registration is unavailable, impractical or insufficient.

2.0 LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The academic literature on trademark law consistently emphasizes its dual function: protecting commercial goodwill and facilitating consumer confidence in market transactions. Classical legal theory positions trademarks as important instruments for reducing information asymmetry in commercial exchange.⁷ Contemporary intellectual property scholarship has developed this understanding further by recognizing trademarks as valuable economic assets capable of contributing to business valuation, brand equity and investment attractiveness.⁸ A strong trademark may therefore have significance extending beyond the mere identification of the source of goods or services.⁹ The World Intellectual Property Organization (WIPO) has documented the challenges associated with intellectual property enforcement in informal and semi-regulated markets, particularly within developing economies.¹⁰ Such literature indicates that

⁶ Ibid.

⁷ Morrison Onyeka Ossai, 'A Legal Overview of the Role and Functions of Trademark in the Global Commercial Spectrum' (2024) 9(1) *Chukwuemeka Odumegwu Ojukwu University Law Journal*

⁸ Ibid.

⁹ Ibid.

¹⁰ Christopher May, 'The world intellectual property organization' (2006) 11 (3) *New Political Economy* 435-445.

enforcement difficulties are frequently attributable not only to deficiencies in legal rules but also to broader structural conditions associated with economic informality.¹¹

African legal scholarship similarly suggests that intellectual property enforcement within informal economies must be understood against a socio-economic background in which millions of individuals depend upon informal commercial activity for their livelihoods.¹² Consequently, strict enforcement measures may produce wider social and economic consequences that policymakers must take into account. Within Nigeria, doctrinal scholarship has traditionally focused upon statutory trademark protection under the Trade Marks Act, whilst comparatively less attention has been directed towards the practical operation of the doctrine of passing off within informal markets.⁷ This gap is significant because passing off may provide a potentially flexible remedy in circumstances where registration is absent. This article builds upon the existing literature by combining doctrinal analysis with a socio-legal perspective in order to examine the practical realities of trademark enforcement within three major Nigerian informal markets.

3.0 LEGAL FRAMEWORK FOR TRADEMARK PROTECTION IN NIGERIA

Trademark protection in Nigeria is governed principally by the Trade Marks Act, which establishes a statutory framework for the registration, protection and enforcement of trademarks.¹³ Registered proprietors are granted exclusive rights in relation to their marks for

¹¹ Ibid.

¹² Trade Marks Act, Cap T13 LFN 2004.

¹³ Lilian George, 'The Role of Trademark Law in the Protection of Brand Identity in Nigeria' (2026) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7348258 Accessed 11th September 2026.

the goods and services for which protection has been obtained.¹⁴ In addition to statutory protection, Nigerian law recognizes the common law doctrine of passing off, which may protect unregistered marks where the requisite goodwill and other elements of the action can be established.¹⁵ The coexistence of statutory trademark protection and common law passing off reflects the broader character of intellectual property protection within common law jurisdictions.¹⁶ Nevertheless, the existence of legal rights does not necessarily guarantee their effective enforcement.¹⁷ The practical effectiveness of the framework depends substantially upon the capacity of enforcement institutions, the accessibility of legal remedies and the willingness and ability of rights holders to pursue available forms of redress.¹⁸

4.0 THE DOCTRINE OF PASSING OFF: EVOLUTION AND RELEVANCE

The doctrine of passing off represents one of the oldest forms of commercial protection recognized within the common law. Its fundamental purpose is to prevent misrepresentation that causes, or is likely to cause, damage to the goodwill or reputation associated with a trader's business.

In *Reckitt & Colman Products Ltd v Borden Inc*¹⁹, the House of Lords reaffirmed the central role of passing off in protecting the goodwill of a trader against deceptive conduct by another.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Iliya Felix Akuandna and Others, 'Assessing the Legal and Institutional Challenges of Trademark Protection in Nigeria' (2025) 2(4) *Faculty of Natural and Applied Sciences Journal of Basic and Environmental Research* 105 -110

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ [1990] 1 WLR 491 (HL).

The modern formulation of the action generally requires proof of three principal elements:

- i. goodwill or reputation;
- ii. misrepresentation; and
- iii. damage.

Despite its established doctrinal foundation, passing off remains comparatively underutilized in Nigeria. Procedural complexity, evidentiary burdens and limited awareness among traders and legal practitioners may restrict its practical application.²⁰ These difficulties become particularly pronounced within informal markets, where branding practices may be fluid and commercial transactions may occur without extensive documentation.²¹ Establishing the existence and extent of goodwill can therefore present a significant evidentiary challenge. The flexibility of passing off consequently represents both its principal strength and one of the reasons why its application requires careful consideration within informal commercial environments.²²

5.0 STRUCTURAL CHARACTERISTICS OF INFORMAL MARKETS IN NIGERIA

Informal markets constitute an important component of Nigeria's economy. They provide employment, facilitate the distribution of goods and services, and serve as significant points of access to

²⁰IO Ebbih, ME Idahosa and N Aidomokhai 'The Use of Similar Names by Church Denominations in Nigeria: Extending the Tort of Passing off' (2025) 12 (4) *International Journal of Judicial Law*

²¹ Ibid.

²² Ibid.

consumer products.²³ At the same time, these markets are frequently characterized by:

- a) decentralized regulation;
- b) limited formal oversight;
- c) high transaction volumes; and
- d) inadequate enforcement infrastructure.

Furthermore, the imitation and replication of branded products may, in certain commercial environments, become normalized as part of competitive trading practices rather than being understood by market participants as conduct capable of infringing intellectual property rights.²⁴ This socio-economic environment has important implications for the practical enforcement of intellectual property rights. Formal legal rules may exist, but their effectiveness can be substantially reduced where regulatory institutions have limited access to commercial networks and where traders have limited knowledge of their legal obligations and rights.

The resulting enforcement gap demonstrates the importance of considering intellectual property protection within its wider socio-economic context rather than treating infringement exclusively as a matter of legal doctrine.²⁵

²³ Nnabuiife Ezimma K., Okoli Ifeanyi.E. Nuel and Anugwu Clara Chika, 'Informal Sector and Nigerian Economic Prospects: The Covid-19 Experience' (2020) 5 (4) *EJBMR, European Journal of Business and Management Research* 1 -5

²⁴ Ibid.

²⁵ Ali Hossain Arman and Shagufta Kahkeshan, 'Comparative Study of IP Law Enforcement in Developing vs. Developed Countries: Identifying Primary Challenges and their Implications' (2024) *SSRN* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5014341 Accessed 12th September 2026.

6.0 CASE STUDY ANALYSIS: ALABA, ONITSHA AND ABA MARKETS

a) Alaba International Market

Alaba International Market in Lagos is a major commercial center for electronics and information and communications technology-related goods. The market is associated with extensive commercial activity involving both domestic and international brands.²⁶ The scale and diversity of commercial transactions within the market can create significant challenges for the identification and enforcement of intellectual property infringements. Enforcement activity may consequently be more reactive than preventive, particularly where rights holders and regulatory agencies face practical difficulties in monitoring the market continuously.²⁷

b) Onitsha Main Market

Onitsha Main Market is one of the major commercial centers in West Africa. It accommodates high-volume trade involving textiles, consumer goods and manufactured products. The extensive scale of commercial activity presents considerable monitoring difficulties.²⁸ Large numbers of traders, distributors and transactions create an environment in which identifying individual instances of trademark infringement may require significant investigative and enforcement resources.²⁹

²⁶ Chiara Frazzoli and Others, 'Rare Earth and Platinum Group Elements in Sub-Saharan Africa and Global Health: The Dark Side of the Burgeoning of Technology' (2024) *Environmental Health Insights*

²⁷ Ibid.

²⁸ Vincent Chukwuemeka and Others, 'Embodying Local Identity as Heritage in Transition' in

Heritage and Sustainable Urban Transformations (1st edn, Routledge 2019) 1 – 12

²⁹ Ibid.

c) Ariaria Market, Aba

Ariaria Market in Aba is particularly associated with manufacturing, tailoring and the production of consumer goods.³⁰ The market has developed a reputation for the production of products that may replicate the designs and branding associated with established commercial brands. This environment presents a distinctive challenge for trademark enforcement because commercial production and informal manufacturing may occur alongside legitimate entrepreneurial activity.³¹ Effective enforcement must therefore distinguish between lawful local production and conduct that unlawfully appropriates protected commercial identity or goodwill. Collectively, Alaba, Onitsha and Ariaria illustrate the extent to which trademark enforcement challenges in Nigeria extend beyond legal doctrine into broader questions of institutional capacity, market governance and economic informality.³²

7.0 ENFORCEMENT CHALLENGES IN INFORMAL MARKETS

The enforcement of trademark rights within Nigeria's informal markets is constrained by several interconnected factors.

a) Institutional Weakness

Enforcement agencies may face limitations relating to financial resources, manpower, logistics and investigative capacity. These limitations can make it difficult to monitor large and highly decentralized commercial markets effectively.

³⁰ Eke Nta Effiong and Others, 'An Appraisal of the Contributions of Ariaria Market in Aba, Abia State, to the Economic Development of Nigeria, 1999-2023' (2025) 3

(3) *Advances in Law, Pedagogy, and Multidisciplinary Humanities*

³¹ *Ibid.*

³² *Ibid.*

b) Limited Awareness of Intellectual Property Rights

Many traders may have limited formal knowledge of intellectual property law. This may contribute to unintentional infringement or to the normalization of imitation as an accepted commercial practice. Public awareness is therefore an important component of effective enforcement. Legal protection is unlikely to achieve its full potential where market participants do not understand the rights protected by law or the consequences of infringing those rights.

c) Economic Dependency

Informal markets provide livelihoods for significant numbers of individuals. Consequently, enforcement measures may have wider social and economic implications, particularly where large-scale enforcement operations affect traders whose economic survival depends upon informal commerce. This does not remove the legal rights of trademark proprietors, but it highlights the importance of developing enforcement mechanisms capable of protecting intellectual property while recognizing the socio-economic environment in which those rights are exercised.

d) Evidentiary Barriers in Litigation

Proving trademark infringement or passing off may be particularly difficult within informal commercial settings. The absence of detailed documentation, the fluid nature of branding practices and the informal character of many transactions can make the collection and presentation of evidence more challenging. In passing off actions, the need to establish goodwill, misrepresentation and damage may create additional evidentiary burdens for claimants.

8. COMPARATIVE PERSPECTIVES

Comparative experience indicates that jurisdictions such as India and South Africa have pursued approaches that combine legal enforcement

with administrative coordination and public awareness initiatives.³³ These experiences suggest that effective intellectual property enforcement within informal economies may require more than reliance upon litigation.³⁴ Institutional cooperation, regulatory coordination and engagement with market communities can also play important roles. For Nigeria, one potential area of development lies in greater engagement with market associations and unions. Such organizations may provide practical channels through which intellectual property information, compliance measures and enforcement initiatives can be communicated to traders. A hybrid approach may therefore provide a means of reconciling formal legal protection with the operational realities of informal commerce.³⁵

9. POLICY IMPLICATIONS AND REFORM PROPOSALS

Improving the effectiveness of trademark enforcement within Nigeria's informal markets requires a coordinated approach addressing both legal and institutional weaknesses. Several reforms may be considered. First, intellectual property enforcement agencies should be strengthened through improved resources, personnel and logistical capacity. Effective enforcement requires institutions capable of monitoring large and complex commercial environments. Secondly, public awareness of intellectual property rights should be expanded. Educational initiatives directed towards traders, manufacturers and consumers could improve understanding of trademark protection and reduce the normalization of unlawful imitation.

³³ Chaman Lal Bansal and Shalini Aggarwal, 'Public Policy Paradox in Enforcement of Foreign Arbitral Awards in BRICS Countries: A Comparative Analysis of Legislative and Judicial Approach' (2026) 59 (6) *International Journal of Law and Management*

³⁴ Ibid.

³⁵ Ibid.

Thirdly, market associations and unions could be more closely integrated into regulatory frameworks. Their proximity to traders may enable them to serve as useful intermediaries between enforcement institutions and market communities. Fourthly, alternative dispute resolution mechanisms should be explored and promoted where appropriate. Accessible mechanisms for resolving intellectual property disputes may reduce the cost and procedural burden associated with conventional litigation. Finally, greater practical use should be made of passing off actions where the relevant legal requirements can be established. The doctrine's protection of goodwill provides an important complement to statutory trademark registration, particularly in commercial environments where registration does not adequately address the relevant form of misrepresentation. These measures, considered collectively, could assist in narrowing the gap between formal intellectual property structures and the realities of informal commercial activity.

10. CONCLUSION

Trademark protection in Nigeria is fundamentally shaped, and in many respects constrained, by the structural realities of the country's informal market economy. Although a dual framework of statutory protection under the Trade Marks Act and common law remedies through passing off exists, the effectiveness of these legal mechanisms is significantly weakened by persistent enforcement gaps, institutional limitations and the socio-economic dependencies embedded within informal trade ecosystems. This article has demonstrated that the challenges confronting trademark enforcement are not merely doctrinal. They reflect deeper systemic issues, including regulatory fragmentation, limited intellectual property awareness among traders and the scale and complexity of markets such as Alaba, Onitsha and Aba. Within these environments, formal legal rights may struggle to translate into meaningful and consistent commercial protection.

Against this background, the doctrine of passing off retains considerable doctrinal and practical relevance. Its reliance upon goodwill rather than formal registration makes it potentially significant within informal economies in which branding may be fluid and legal formalization limited. Nevertheless, its potential remains constrained by procedural requirements, evidentiary difficulties and limited integration into everyday enforcement practice. Accordingly, sustainable improvement in trademark protection cannot be achieved through doctrinal mechanisms alone. A coordinated and multi-layered reform strategy is required, combining legal enforcement with administrative cooperation, market-level governance and targeted public education concerning intellectual property rights. Such a hybrid enforcement architecture would provide a more realistic means of addressing the gap between formal intellectual property law and informal commercial practice in Nigeria.