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## Small and Medium Scale Enterprises: An Appraisal of the Role of Taxation and Intellectual Property on Their Growth in Nigeria

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### **Abstract:**

*This research critically analyzes the concept of small and medium-sized enterprises (SMEs) and looks at the tax and intellectual property implications and considerations. The aim is to expose how Intellectual Property law can help sustain Small and Medium Sized Enterprises (SMEs) in the marketplace and improve the growth and development of the Nigerian economy through taxation. To achieve these, the research examined the essential roles of Intellectual Property in the growth and development of Small and Medium Sized Enterprises. The rights and remedies to which the owners of Small and Medium Sized Enterprises (SMEs) are entitled, as well as the challenges of Intellectual Property Laws and their corresponding tax liabilities under the relevant pieces of legislation in Nigeria, are considered. This research evaluates the factors contributing to the non-compliance of SMEs with tax obligations. These include complex filing procedures, multiple taxations of SMEs, and a lack of proper enlightenment. The finding reveals that SMEs have performed below expectations due to specific reasons ranging from societal constraints to issues of lack of awareness, instability, and change in the economy. Tax compliance among SMEs in Nigeria is poor. To enhance the growth of Nigerian SMEs, there is a need to explore enlightenment and awareness through the use of intellectual property and taxation.*

**Keywords:** SMEs, intellectual property and taxation

### **1. Introduction**

In most countries such as Nigeria, entrepreneurship, as well as small and medium-scale enterprises<sup>1</sup> (SMEs), has provided effective means of greater employment and improvement on the standard of living for people. SMEs are regarded as the engine of economic growth and development in most countries of the world. The contributions of the SMEs in the industrial sector of Nigeria's Gross Domestic Product (GDP) economy are of great value and cannot be overlooked because it is one of the largest contributors alongside the sector to the nation's GDP.<sup>2</sup> It has become a key factor that helps in the economic growth of the nation. These SMEs also help in the alleviation of poverty and employment generation. However, their performance in employment generation in recent years has been quite unimpressive, thereby leading to the generation of a lot of research interests to discover their challenges and prospects.<sup>3</sup>

Generally, SMEs are businesses that maintain revenues and assets of a number of employees below a certain level. The definitions of SMEs are generally based on their operations in each country, thereby making the concept of SMEs differ from place to place. The role of SMEs in the economy, policies, and programs are designed by certain agencies or institutions to which it is empowered to develop. Since there are several parameters that can be used to determine or define SMEs, they can be based on the amount of capital invested in the business, the number of employees and the output the business generates, whether based on the value being the profit or volume being the quantity, and market share amongst others.

<sup>1</sup> Hereinafter referred to SMEs

<sup>2</sup> Aganga, O. "Government's Drive Towards SMEs Development in Nigeria", A Paper presented at the UK – Nigeria SME Networking Event held in Abuja, on Thursday, March 7, 2013.

<sup>3</sup> AM Ayanda and AS Laraba, 'SMEs as a Survival Strategy for Employment Generation in Nigeria' (2011) (4) (1), Journal of Sustainable Development 201.m

## 2. Conceptual Clarifications

### 2.1. Meaning and Nature of Small and Medium-Sized Enterprises (SMEs)

Over time, SMEs have continued to gain so much recognition in the business world. The definition depends solely on the level of growth or advancement of the particular country.

In Nigeria, The Small and Medium-sized Industries Enterprises Investment Scheme (SMIEIS) defines SME as any enterprise with a maximum asset base of two hundred million nairas excluding land and working capital and with the number of staff employed not being less than one hundred or more than three hundred.<sup>4</sup> It has been defined as a firm with a total investment (excluding the cost of land but including capital) of up to seven hundred and fifty thousand nairas<sup>5</sup> and paid employment of up to fifty persons.<sup>6</sup> It has also been defined as one whose capital does not exceed seven hundred and fifty thousand nairas.<sup>7</sup>

A Small-Sized Enterprise has been defined as one having an annual turnover not exceeding five hundred thousand Nairas. In the 1999 budget, the Federal Government of Nigeria defined small-sized enterprises for the purpose of commercial bank loans as those with annual turnover not exceeding five hundred thousand, and for Merchant Bank loans, those enterprises with capital investment not exceeding N2 million (excluding the cost of land) or a maximum of five million nairas.<sup>8</sup>

Since there is no universally accepted definition of SMEs, it becomes relatively difficult to define. However, based on the structure of manufacturing in Nigeria, SMEs can now be categorized on the basis of employment as follows: in micro/cottage industries, (one to ten) workers, small scale industries, (eleven to one hundred) workers, medium scale industries, (one hundred to three hundred) workers, large scale industries (three hundred and above).<sup>9</sup> This definition, to an extent, gives an insight into what SMEs largely entail.

### 2.2. Meaning and Nature of Intellectual Property (IP)

Intellectual Property has been defined by World Intellectual Property Organization (WIPO) as: The creation of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.<sup>10</sup> Since Intellectual Property is an intangible creation of the mind, it can usually be expressed or translated into a tangible form assigned for certain property rights. It represents knowledge, creative ideas, or expressions of the human mind that have commercial value and or are protected under patents, trademarks, copyright, or trade secret laws from imitation, infringement, and dilution. Intellectual property includes brand names, discoveries, formulas, inventions, registered designs, and works of artistic, literary, or musical nature.<sup>11</sup>

In describing property rights in most of the various intangible products of the human intellect, sometimes the term is used to include copyright and the law of confidence, and others are classified as industrial property rights such as patents, trademarks, and industrial designs. Relatively, intellectual property law is that area of law that concerns legal rights associated with creative effort or commercial reputation. It includes the right to exclude others from using the ideas birthed by another individual. It is, therefore, a negative or preventive right in society. Individuals, particularly amateurs or non-experts, think of property only in its tangible form, including properties such as houses, furniture, clothes, shoes, cars, gadgets, and drawings. But they hardly think of the intangible property, such as the rights, privileges, and immunities embedded in such tangible property. Due to the recognition of the fact that IP shares many of the characteristics of real and personal property, it is treated as an asset that can be bought, sold, leased, transferred, licensed, assigned, or gifted at no cost.<sup>12</sup> Intellectual Property Law deals with the protection of inventions. It is also a means of ensuring, guaranteeing, and safeguarding the fruits of one's creativity and maintaining one's incentives to invest in innovations. WIPO sums it up in the following words:

*Intellectual property rights are like any other property rights. They allow the creator, or owner, of a patent, trademark, or copyright to benefit from their own work or investment. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which sets forth the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary, or artistic production.<sup>13</sup>*

Intellectual Property Law limits what can be protected, and for how long while Intellectual Property Rights do not protect ideas, they protect the expressions of ideas. In the case of copyrights and inventions, they fulfill certain strict and well-established criteria requiring of patents.<sup>14</sup> One purpose of the Intellectual Property Right system is to provide incentives to innovators to produce new inventions and creations, which can, in turn, provide society with a steady stream of innovations that fuel economic, cultural, and social progress and help to alleviate poverty and disease and enrich our

<sup>4</sup> AM Ayanda and ASLaraba Ibid (n 3) p.2

<sup>5</sup> The Federal Ministry of Commerce and Industry.

<sup>6</sup> Ibid

<sup>7</sup> The Nigerian bank for Commerce and industry

<sup>8</sup> The Central Bank of Nigeria in its monetary policy circular No.22 of 1988

<sup>9</sup> Ibid (n 19).

<sup>10</sup>What is Intellectual property' <<http://www.wipo.int/about-ip/en/>> accessed 2<sup>nd</sup> March 2022.

<sup>11</sup> Joseph J. Kur, Intellectual Property Law and Entrepreneurship in Nigeria: Principles and Practice (Aboki Publishers, 2015) p.16.

<sup>12</sup> WIPO: World Intellectual Property Organization

<sup>13</sup> Universal Declaration of Human Right. (1948) Article 27.

<sup>14</sup> US Jaiyi, 'IP Rights and Innovation in SMEs: A Paper submitted to the OECD as a background Document to the 2<sup>nd</sup> OECD Ministerial Conference'. <<http://www.wipo.int/sme>> assessed on 2<sup>nd</sup> March 2022.

cultural heritage. Throughout the history of human civilization, both material and intangible assets have always formed the constituent of wealth.<sup>15</sup> However, Intellectual Property Rights, being the result of the industry of innovation, have continued to play a leading role in the wealth of nations. In Nigeria, IP has a deep historical root. It can be argued that IP right existed in the local communities in Nigeria even before the coming of the colonial masters.

Music and folklore were some of the creativities of the local community. These folktales were passed over from generation to generation as a joint communal responsibility.<sup>16</sup> These would qualify as subject matters in copyright. Long before the advent of modern technology, copper, gold, and bronze were mined in Nigeria. Looms were used for weaving textiles, varying from one part of the country to another. These could have been easily patented. The secrecy of traditional medicines peculiar to a particular family could also qualify as trade secrets. Marks were used to identifying the origin of goods. For example, holes, cutlass, and even clothes. However, these marks were not confined to goods alone. They were applied to human beings to signify their ethnic origin. For example, the Yoruba people of western Nigeria bear three marks on each of their cheeks, while an Ebira man, like the Igalas, bears a single mark on his left and right cheek. The Igalas bear three marks distinct from the type made by the Yorubas.

An Intellectual Property Right owner has an inherent moral right and monopolistic economic right. The moral right of the author of a work entails that he has the paternity of intellectual creation and protects the personal and reputational value of a work. He decides whether or not he wants to disclose the work or its contents to the public.<sup>17</sup> The economic right relates to the creation of commercial value and grants the author a monopoly to exclusively exploit his creation for a certain period as a product of the Intellectual Property Law. The essence of Intellectual Property Law, through its rights given, is to prevent others from gaining unlawfully from someone else's creation.

### 3. Concept of Entrepreneurship

Entrepreneurship is the ability and readiness to develop, organize and run a business enterprise, along with any of its uncertainties, to make a profit. The most prominent example of entrepreneurship is the starting of new businesses. The search for quality leadership as an ongoing process has been in practice for the past few centuries and is one of the factors that led to the evolution of entrepreneurship. Aside from this, there are several other factors that led to the beginning and increasing importance of entrepreneurship, such as:

#### 3.1. Trading

With the advancement in communication among the countries and improvement in transportation, the process of trading also began. As nations and people became more independent, it enhanced success in trade. Such merchants and traders were the first entrepreneurs.

#### 3.2. Stable Communities and Specialization

When more people began to live in stable communities and groups, drastic changes were observed in their lifestyles. The fact that each tribe had an individual leader who specialized in one task cannot be overlooked. Each leader specializing in a particular task helped in speeding innovation and development of leadership quality in the individuals. The leadership quality makes entrepreneurs so successful in entrepreneurship today.

#### 3.3. Formation of Markets

With increasing trade and the formation and creation of markets all over the globe, the need for better ideas and leadership qualities became more important. The early entrepreneurs (traders and merchants) began to take more risks in trading to gain profit. However, with the increase in markets and the requirements of the people, innovation and trade were considered important aspects, and more people began to take risks by getting involved. This was when the first entrepreneurs started to think out of the box to cope with the increasing competition and gain more profits.

#### 3.4. Need for Independent Career Path

With the increasing population came the need to choose a career path and obtain a job to become well-settled. Due to the lack of good jobs and the increase in the number of unworthy jobs, more people wanted to opt for a career path that was independent. In the quest for having a stable job and a career, the majority of people started to take maximum risks by starting their own small businesses in order to gain maximum benefits.

The term 'entrepreneur' is often conflicted with the term 'small business' or perhaps used interchangeably with this term. While most entrepreneurial ventures start as small businesses, not all are entrepreneurial in the strict sense of the term. Many small businesses are sole proprietor operations consisting solely of the owner, or they have a small number of employees. Many of these small businesses offer an existing product, process, or service, and they do not aim at growth. In contrast, entrepreneurial ventures offer an innovative product, process, or service, and the entrepreneur typically aims to scale up the company by adding employees, seeking international sales, and so on, a process that is financed by venture capital and angel investments. In this way, the term 'entrepreneur' may be closely associated with the

<sup>15</sup> D Adewopo, 'Development in IP in Africa'. <<http://www.Adewopo-Dev-of-IP-africa.2>> accessed on 2<sup>nd</sup> March 2022

<sup>16</sup> Private Law Department. Faculty of law, A.B.U., Zaria 'Administration of Justice in the Customary Court of Nigeria: problems and prospect' (2009) p. 242.

<sup>17</sup> School of Law National Open University of Nigeria, 'Law of Intellectual Property 1', <[www.nov.edu.ng](http://www.nov.edu.ng)> accessed on 3<sup>rd</sup> March 2022

term 'startup.' Successful entrepreneurs have the ability to lead a business in a positive direction through proper planning, adapt to changing environments, and understand their own strengths and weaknesses.

#### 4. Legislation and Case Laws Regulating Intellectual Property Assets in Nigeria

In Nigeria, there are several laws that regulate intellectual property assets. These laws aim at protecting and preserving the rights, benefits, and privileges due to an individual by virtue of his creative and innovative ideas. The principal laws regulating Intellectual Property in Nigeria include:

- Copyright Act<sup>18</sup>  
Other regulations made in pursuance to the powers given in the Copyright Act include:
  - Copyright (Reciprocal extension) Order (1972)<sup>19</sup>
  - Copyright (Security device) Regulations (1999)<sup>20</sup>
  - Copyright (Video Rental) Regulation (1999)
  - Copyright (optical disc plant) Regulation (2006)
  - Copyright (Collective Management Organization) Regulation (2007)<sup>21</sup>
  - Judicial Precedent
- Patents and Designs Act<sup>22</sup>
- Trademarks Act<sup>23</sup>

After much development, the World Intellectual Property Organization (WIPO) has discovered the need to reawaken Nigeria and make it the beneficiary of international development. WIPO consists of 193 member states, including 190 United Nations member states, out of which forty-eight (48) of these member states are from Sub-Saharan Africa. It administers twenty-six (26) treaties, of which Nigeria is a signatory to six, and they include:<sup>24</sup>

- Berne Convention (1886)
- Universal Copyright Convention (1955)
- Trade Related-Aspect of Intellectual Property (TRIPS) Agreement (1996)
- WIPO – Copyright Treaty (1996)
- Rome Convention (1980)
- Convention on the Protection of Audio-Visual performances (2012)

#### 5. Classification of Intellectual Property

Intellectual Property (IP)<sup>25</sup> is the product of one's intellectual activity and consists of different areas of creativity. These areas include industrial property, copyright, and other related rights, and more often than not, these intellectual properties form the basis of some Small and Medium Sized Enterprises. Intellectual Property Rights (IPRs) are those rights that are derived from an intangible property that enable the law to protect innovation and reward innovative activities.<sup>26</sup>

Intellectual Property Laws are provisions that regulate, govern, and control an individual's intellectual property through the recognition of rights and the protection and promotion of those rights. IP is unique because it is out of an individual's personal creation and inventiveness. In virtually every instance, it stimulates progress, growth, and transformation. Every society provides legal rights over IPs to encourage the production of inventions and creative works that benefit society and so help innovators and creators make a living from their work.<sup>27</sup> The system is designed to benefit society as a whole by striking a balance between the creator and user that ensures that their needs are satisfied. Daily, new products appear in the market, and this is a result of continuous human activities. However, the innovative and creative capacity is not always fully utilized to the maximum, as many SMEs are not aware of the IP system or the protection it can provide for their inventions, brands, and designs. The resultant effect of this is that good invention or creativity is lost to larger competitors that are in a better position to commercialize the product or service at a more affordable price, leaving the true inventor without any financial benefit or reward.

Intellectual Property Rights (IPRs) enable people to benefit from their innovations or creative work and prevent others from copying or unfairly gaining from the inventor's creativity and investment. The purpose of this system is to provide incentives to innovators to produce new inventions and creations. This, in turn, provides society with a steady stream of innovations, fuels economic, cultural and social progress, helps alleviate poverty and diseases and enriches our cultural heritage.<sup>28</sup> With IP protection, it deters potential infringement and turns ideas into business assets with real market value. IP is an increasingly important asset that must be continually nurtured, protected, and stimulated to grow.

Different types of IPs exist in the area of literary and artistic creation, invention, brand names, and designs. They are protected through copyright, patents, trademarks, and design regulations. This, in turn, encourages the production of a

<sup>18</sup> Cap C28 LFN 2004.

<sup>19</sup> Ibid s.41

<sup>20</sup> Ibid s.21.

<sup>21</sup> Ibid s.39 (7).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid. WIPO, 'Treaties administered by WIPO' (26 June 2013) <<http://WIPO>> accessed 27 March 2022.

<sup>24</sup> Ibid.

<sup>25</sup> Hereinafter referred to as IP

<sup>26</sup> WIPO: 'What is Intellectual Property' <<http://www.wipo.int/about-ip/en/>> accessed 4<sup>th</sup> February 2022

<sup>27</sup> International Chamber of Commerce: 'Intellectual Property: Source of Innovation, Creativity, Growth and Progress' (August 2005) <<http://www.iccwbo.org>> accessed on 4<sup>th</sup> February 2022

<sup>28</sup> Ibid p.7.

wide range of quality goods and services which help to maintain fair competition. In today's competitive markets, it is relevant that creators prevent others from copying their products by creating a strong brand identity. This can only be possible through the strategic use of one or more types of IPRs to differentiate their products. By doing this, right holders increase their commercial value, engage in different types of business partnerships, and obtain valuable competitive intelligence, thereby saving research, development, marketing time, and resource.<sup>29</sup>

SMEs are at the forefront of business in most developed and developing countries. When a country is considered developed, its private sectors consist predominantly of entrepreneurs and SMEs that are developed and vice versa. Countries concerned with their economic growth and social and cultural heritage must pay attention to protecting and enforcing IPRs.

Foreign Direct Investment (FDI) is attracted into a country when an investor knows that there is a return on investment, and this can be achieved mostly with protection in IPRs.<sup>30</sup> Nigeria, through IPRs, can explore huge investment opportunities that could increase revenue. The Nigerian agenda to be one of the biggest twenty economies in the world within the near future cannot be realized without the contributions of SMEs. There is a need for this category of business to be properly and legally structured, well-managed, and professionalized to achieve this.<sup>31</sup>

There are various kinds of intellectual properties in operation in Nigeria in recent times. The unfair taking of the results of the application of human intellect may infringe on more than one single right. We shall examine the concept of patents, trademarks, copyrights, trade secrets, and industrial designs.

## 6. Patent

The word 'patent' may be subject to variety of definitions. It can be defined as a grant of some privilege, property, or authority made by the government or sovereign of a country to one or more individuals.<sup>32</sup> It is the strongest form of intellectual property, giving rise to a monopoly in the working of an invention or innovation, either in relation to a product or a process.<sup>33</sup> A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something or offers a new technical solution to a problem.<sup>34</sup> It is a bundle of monopoly rights granted to an inventor or his assignee for a stated duration, permitting him to prevent other persons from exploiting his invention without his consent.<sup>35</sup> Dakas<sup>36</sup> postulates that the word 'patent' has a dual meaning in that it could refer to a document called 'patent' or 'letters of patents' as well as mean the content of the protection that a patent confers.<sup>37</sup> Patents within the context of the first meaning involve a situation where a person makes what he thinks is an invention. After due application to the appropriate authority, the latter gives him a document in which is stated the nature of the invention and that he is the owner or patentee of the patent granted in respect of that invention. This document issued by a government authority is called a patent for invention.<sup>38</sup> Within the context of the second meaning of patent, it means that anyone wishing to exploit the invention must obtain the prior authorization of the patentee, failing which amounts to illegality.<sup>39</sup> It is within the second context that the term patent is employed. Notwithstanding, a patent is defined as a set of exclusive rights granted by a state to a patentee (the inventor) for a fixed period of time in exchange for the regulated, public disclosure of certain details of a device, method, process, or composition of matter (a substance known as an invention) which is new, constitute an inventive activity and is useful or industrially applicable.

An invention is patentable if it is new, results from the inventive activity, and is capable of industrial application.<sup>40</sup>

An invention is said to be new if it does not form part of the state of the Art. State of the Art here means everything concerning that art or field of knowledge which has been made available to the public anywhere at any time whatsoever before the date of the filing of the patent application relating to the invention in which the inventor wants to claim. An invention is said to result from an inventive activity if it does not flow from the state of the art as to the method of application in the use of it or combination of methods or products which it concerns or industrial result it produces. A patent is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.<sup>41</sup> A patent is granted for a maximum period of twenty years (20) from the date of filling out the relevant patent application.<sup>42</sup>

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<sup>29</sup> Making Intellectual Property work for Business. A Handbook for Chambers of Commerce and Business Association setting up intellectual property services. ICC and WIPO, 2011 p.13.

<sup>30</sup> O Aganga, Ibid (n 2).

<sup>31</sup> BC Onuoha, 'Professionalizing Family Business in the South-East Region in Nigeria' (2012) (2) (201) International Journal of Academic Research in Business and Social Sciences 199.

<sup>32</sup> D Bainbridge, Cases and Materials in Intellectual property Law (Johannesburg: pitman publishers 2006).

<sup>33</sup> 'Intellectual Property some basic Definitions' WIPO Publication No. 488 (E) <http://www.wipo.int/ebookship> Accessed on 3<sup>rd</sup> March 2022

<sup>34</sup> Henry Campbell Blacks, "Black's Law Dictionary 6th ed. (USA: west publishers 1990).

<sup>35</sup> IM Ohieze, Nigerian Copyrights Law, (Appa Megalink International Ltd 1998) p.86.

<sup>36</sup> CJ Dakas, 'A Case for the Reform of the International Patent System.' (1998) (6) (11) University of Jos Law Journal 30

<sup>37</sup> Ibid p.103.

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid (40) s.1 (2) (a) (b).

<sup>41</sup> Ibid (40) (c).

<sup>42</sup> Ibid s.7.

## 7. Trademarks

A trademark or brand name is a distinctive sign or mark that identifies certain goods or services produced or provided by a specific person or enterprise. It is a mark used by a trader in the course of trade to distinguish the goods on which it is applied from other goods of the same description.

Section 67 of the Trademark Act<sup>43</sup> defines Trademark to mean a mark used or proposed to be used in relation to goods for the purpose of indicating or so soon to indicate a connection, the course of trade between the goods and some person having the right either as proprietor or as a registered user to use the mark, whether with or without any indicator of the identity of that person and means in relation to certification of trademark, a mark registered or deemed to have been registered.

The Supreme Court had a course to make a pronouncement on the meaning of a trademark thus:<sup>44</sup>

“A trademark is a mark used or proposed to be used in relation to goods for the purpose of indicating or so soon to indicate a connection in the course between the goods and a proprietor or registered name to use the mark.”

In *Hondret & Co. v Registrar of Trademarks*<sup>45</sup>, the court identified that the primary purpose of trademarks is to distinguish goods from similar goods and identify them with a particular trader.

For the purpose of this work, Trademark would be seen as a recognizable sign, design, or expression that distinguishes the products or services of a particular trader from similar products or services of other traders.

As regards Trademarks, for purposes of registration, the register of trademarks is divided into Part A and Part B. For a mark to qualify for registration in Part A, it must be distinctive as set out in section 9 of the Act<sup>46</sup>, whilst a mark for registration in Part B must meet the test of capacity to distinguish as prescribed in section 10.<sup>47</sup>

Scandalous and Deceptive marks<sup>48</sup> are not registrable; neither are the names of chemical substances.<sup>49</sup> Identical and resembling marks are as well not registrable. By section 18, any person claiming to be the owner of a trademark used or proposed to be used by him and who is desirous of registering it must apply in writing to the Registrar<sup>50</sup> in the prescribed manner for registration in Part A or Part B, and the Registrar has the discretion to register. However, his decision in this regard is subject to appeal in the Federal High Court. While Section 15 (1) of Copyright Act<sup>51</sup> and Section 25(2) of the Patent and Designs Act<sup>52</sup> provide for remedies for infringement, there is no such express provision in the Trademarks Act.

Equity and common law have long treated trademarks as 'property' and have protected them in such terms of reliefs provided against infringement.<sup>53</sup> In other words, trademarks and names have crystallized into 'property' with the torts of passing off and injurious falsehood as weapons of protection long before the concept of registration of Trademarks emerged.<sup>54</sup>

In *Defacto Works Limited v Odumotun Trading Company*,<sup>55</sup> the plaintiffs are bakers and distributors of wrapped bread, and for some time, used wrappers laid out in the colors of yellow and brown with the name De Facto written in large scroll letters in chocolate colors. The defendants, who are also bakers and distributors of wrapped bread, changed to wrappers bearing the same colors, i.e., yellow and brown, with the name ODUNS in large scroll letters in chocolate color. The plaintiffs instituted these proceedings against the defendants for injunctions, damages accounts, and delivery up for the destruction of offending wrappers. The court held that the essence of a passing-off action is the likelihood of deception to the consumers of the commodity involved. Such likelihood may be brought about by the layout of the colors, even though the details of the designs are not identical or similar. The court held that the plaintiffs are entitled to an injunction restraining the defendants from passing off their bread as that of the plaintiffs and also damages. In *Arewa Textile Plc and Ors v Finetex Ltd*,<sup>56</sup> the respondent instituted an action at the Federal High Court, Kaduna, claiming infringement by the appellants of its registered patent No. RP12024 in respect of a 'method and apparatus' of producing textile material. The respondent at the trial court claimed that itself and one Boaty Company Ltd, its technical partners, had invented the technology upon which the patent was granted. At the conclusion of the hearing, the trial court granted the claims of the respondent and awarded damages against the appellants. Being dissatisfied, the appellants appealed to the Court of Appeal. Unanimously allowing the appeal, the court held amongst others that, by virtue of S.24 (1) and (3) of the Patents and Designs Act, there was an assignment or transfer to third parties unless it has been registered and the prescribed fees paid. It also held that the presumption raised by S.25 (3) patent and Designs Act applies only to where the product is not new but had been produced through other processes. In such a situation, the Onus lies on the plaintiff to establish that the product was made by the patented process in breach of the registered patent.

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<sup>43</sup> Cap T 13, LFN 2004

<sup>44</sup> *Ferodo Ltd v. Ibeto Industries Ltd* (2004) SNWLR (pt. 868) 317 at 347, per Musdapha, JSC.

<sup>45</sup> (1977-1989) 2 IPLR P.102

<sup>46</sup> Trademarks Act, Cap T 13 L.F.N. 2004

<sup>47</sup> Ibid.

<sup>48</sup> Ibid s.11.

<sup>49</sup> Ibid s.12.

<sup>50</sup> Registrar of Trademarks.

<sup>51</sup> 78 Ibid.

<sup>52</sup> 79 Ibid.

<sup>53</sup> 80 Oriola A. Taiwo Intellectual Property Lawcards (Routledge Publishers, 2010) p.20.

<sup>54</sup> Ibid p.517.

<sup>55</sup> (Unreported) LD/164/56

<sup>56</sup> (2003) 7 NWLR (pt. 819) at 322.

## 8. Copyrights

Copyright can be defined as a legal concept describing rights given to creators for their literary, artistic, and musical works, including books, music, fine art such as paintings and sculptures, and technology-based works such as computer programs, mobile apps, and electronic databases. A work does not need to be published or made available before it could be protected.<sup>57</sup>

Under the Copyright Act, copyright is defined as the exclusive bundle of rights of the creator of an original literary work, musical work, artistic work, cinematograph film, sound recording, and broadcast to use the works and exclude other persons from exploiting the works without permission.

Copyright is one of the intangible, incorporeal, invisible, and abstract proprietary rights granted by law to the creator or originator of a tangible, corporal, visible, and real object. It is an abstract property incorporated into a physical property. However, the ownership of the latter need not necessarily be vested in the holder of the former. For the purpose of this work, copyright would be referred to as an incorporeal right granted by statute to the author or originator of certain literary, artistic, or musical production, whereby he is invested for a limited period,<sup>58</sup> with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. The centrepiece of copyright subjects in Nigeria can be found in Section 1(1) of the Copyright Act, which includes: literary, artistic, musical, broadcast, sound recordings, and cinematograph films. For copyright to suffice in any of the works listed above, the original concept is paramount. Sufficient efforts must have been expended on the work that gives it an 'Original' character. Originality is a fundamental principle of copyright. It is, in fact, regarded as the basis of the protection given by the law of Copyright to particular forms of expression.<sup>59</sup>

In *Yusuf Ladan v. Shakallo Com Ltd & 2 Ors*<sup>60</sup>, it was held that the word 'original' does not mean that the word must be the expression of original or inventive thought. The Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work but that it should originate from the author. In *Offrey v. Chief S.O Oza and Ors*,<sup>61</sup> the court held inter alia that copyright would exist in a product if that product is the result of some substantial or real expenditure of mental or physical energy of the author and label or skill exercised were not negligible or commonplace ones and that the amount of label or skill, judgment or ingenuity required to support a copyright claim successfully was a question of fact or degree in every case. In *University of London Press Ltd v. University Tutorial Press Ltd*<sup>62</sup> per Peterson J., The word original does not in this connection mean that the work must be the expression of original or innovative thought. Copyright Acts are not concerned with the originality of ideas but with the expression of thought and, in the case of 'literary work,' with the expression of thought in print or writing. The originality, which is required, relates to the expression of the thought. In simple terms, it means that the work must not be copied but must be the true expression of the owner. The concept of fixation is also important. Any work done, whether literary, artistic, or musical, is to be fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced, or otherwise communicated either directly or with the aid of any machine or device.<sup>63</sup> Also, there must be a legal relationship that exists between the author and the work to Nigeria or a prescribed international body.<sup>64</sup>

However, certain exceptions are created in derogation from the rights afforded by the above in the 2nd and 3rd schedules to the Act.<sup>65</sup> They include fair dealing for the purpose of research, private use, criticism, and review or the reporting of current events. Hence, the right to copyright is not absolute.

Section 14 of the Act<sup>66</sup> sets out what constitutes an infringement of Copyright, whilst Section 15<sup>67</sup> provides that an infringement of copyright shall be actionable at the suit of the owner, assignee, or licensee as the case may be in the Federal High Court exercising jurisdiction in the place where the infringement occurred and in action for such an infringement, all such reliefs by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.<sup>68</sup>

Copyright Protection in Nigeria is formality free in the sense that it is automatic, provided that the work is fixed in a tangible form.

### 8.1. Copyrights Infringement

The terms piracy and theft are usually often associated with copyright infringement. Piracy may be seen as the unauthorized copying, distributing, and selling of works in copyright but has been used here as a synonym for acts of copyright infringement. Theft, on the other hand, emphasizes the potential commercial harm of infringement to copyright holders.

<sup>57</sup> Copyright Act Cap 28 LFN 2004. s. 1(1)

<sup>58</sup> Ibid s. 1(3), (4), 52(3), 1st, 2nd, 3rd and 4th Schedules, s. 5(3)

<sup>59</sup> Lahore A. James Intellectual Property in Australia: copyright, (Sidney Butterworths publishers 1979) p. 81.

<sup>60</sup> (1972) NCLR 428.

<sup>61</sup> (Unreported) Suit No Hos/23/68.

<sup>62</sup> (1912) 2 Ch. 601.

<sup>63</sup> Ibid (n 36) s.13.

<sup>64</sup> Ibid s.2, 3, 4, 5.

<sup>65</sup> Ibid.

<sup>66</sup> Copyrights Act Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid s.16, 17,18,19,22.

However, copyright is a type of intellectual property, an area of law distinct from that which covers robbery or theft, offenses related only to tangible property.

### 8.2. Trade Mark Infringement

Trademark infringement is the violation of the exclusive rights attached to a trademark owner or any licensee (provided that such authorization is within the scope of the licence).

Infringement may occur where one party, being the infringer, uses a totally similar trademark that is identical or confusing to the trademark owned by another party in relation to some kinds of products or services which are identical or similar to the products or services that the registration covers. An owner of a trademark may commence civil legal proceedings against a party that infringes on its registered trademark.

### 8.3. Patent Infringement

Trademark infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. Permission may typically be granted in the form of a licensee. The definition of patent infringement may vary from jurisdiction to jurisdiction, but it typically includes using or selling the patented invention. In many countries, use is required to be commercial (or to have a commercial purpose) to constitute patent infringement. Typically, a party other than the licensee, or the patentee of a patent, that manufactures, sells, imports, uses, or offers to sell patented technology without the permission of the patentee or licensee of the patentee, during the term of the patent and within the country that issued the patent, is considered to infringe the patent. However, this varies from jurisdiction to jurisdiction despite the fact that the concept of patent is universally recognized.

## 9. Trade Secret

Trade secrets are a type of intellectual property that includes formulas, practices, processes, designs, instruments, patterns, or compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, and the owner takes reasonable measures to keep them secret.<sup>69</sup> Intellectual property law gives the owner of a trade secret the right to restrict others from disclosing it. In some jurisdictions, more often than not, such secrets are referred to as confidential information. The pure definition of trade secret tends to vary from jurisdiction to jurisdiction. However, despite its accepted definitions in those jurisdictions, some factors all around those jurisdictions tend to be the same. Three basic factors common to all such definitions include:

- It is not generally known to the public,
- It confers economic benefits on its holder because the information is void of disclosure, and
- The holder makes reasonable efforts to maintain its secrecy

These three factors have been classified as the definition of trade secret under Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly referred to as TRIPS Agreement.<sup>70</sup> Although trade secret is an invisible component of a company's intellectual property, its importance cannot be overemphasized. More often than not, their contribution to a company's value is usually a major one.

## 10. Industrial Design

Industrial design can be defined as the creation of a shape, configuration, or composition of pattern or color or a combination of pattern and color in three-dimensional forms containing aesthetic value. This industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity, or handicraft. Generally speaking, it is what makes a product look appealing, and as such, it increases the commercial value of goods. The Patent and Design Act<sup>71</sup> provides that any combination of lines or columns or both and any three-dimensional form, whether or not associated with colors, is an industrial design if it is intended by the creator to be used as a model or pattern to be multiplied by an industrial process and is not intended solely to obtain in a tested result. It is the ornamental or aesthetic aspect of an article produced by industry or handcraft<sup>72</sup>, and it would be seen in such light for the purpose of this work. Like a patent, unlike a copyright, an Industrial Design requires registration with a state authority after the satisfaction of certain conditions by the applicant.<sup>73</sup> These conditions include novelty and compatibility with public order and morality.<sup>74</sup> An owner of a registered design has the right to preclude others from reproducing the design in the manufacture of a product, importing, selling, or utilizing it for commercial purposes, or holding such a product for the purpose of selling it or utilizing it for commercial purposes.<sup>75</sup> A registered design subsists for a period of fifteen (15) years (an initial period of five years renewable for two (2) consecutive periods of five years each). Industrial Design protects the non-functional, physical aspects of an object. These may be a combination of likes or colors, or both.

<sup>69</sup> CW Lin Thomas 'Executive Trade Secrets' (2013) (3) (911) Notre Dame Law Review 87

<sup>70</sup> "Agreement on Trade-Related Aspects of Intellectual Property Rights: Protection of undisclosed Information" World Trade Organization. s. 7.

<sup>71</sup> Cap P2, L.F.N. 2004

<sup>72</sup> WIPO: 'What is Intellectual Property' Handbook: WIPO Publication No:450(E)ISBN 978-92-805-1555-0 (2008) <[http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo\\_pub\\_450.pdf](http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf)> accessed 6March 2022.

<sup>73</sup> Ibid s.15, 16, 17.

<sup>74</sup> Ibid s.13.

<sup>75</sup> Ibid s.19

### 10.1. Industrial Design Infringement

Industrial design infringement in industrial design is the visual form of the product that is protected rather than the product itself. The visual features protected are the shape, configuration, pattern, or ornamentation. A design infringement is where a person infringes on a registered design during the period of registration. This definition differs in each jurisdiction but typically encompasses the purported use and make of the design and if the design is imported or sold during registration. The design is assessed under each jurisdiction's provision to understand if a person has infringed the monopoly of the registered design. The infringement is on the visual appearance of the manufactured product rather than the function of the product, which is covered under patents. Often, infringement decisions are more focused on the similarities between the designs rather than the differences.

## 11. Effect of Branding on Intellectual Property

So many entrepreneurs, especially SME proprietors, are usually clueless as to what a brand is and how they can develop a brand and believe that brands are reserved only for large and multinational corporations.<sup>76</sup> However, a brand is a powerful tool for marketing and a key asset for creating value for a business for any kind of legal enterprise. Any SME that would want to survive the test of time in a competitive market must be ready to develop a sufficient brand image side by side with its business plan.

A brand can be a trading name, a sign, a symbol, a slogan, or anything that is used to identify and distinguish a specific product, service, or business.<sup>77</sup> Branding gives a business a significant edge over other competitors. A strong brand communicates feelings of trust and responsiveness to its customers. A brand is not just a mark or a logo. It is the primary identity of a product, service, or business. It serves to create associations and expectations among products made by a producer. Branding is more or less a promise of service and quality image, recognition, investment, vision, mission, and pride. It can also be a 'promise of an experience' and conveys to consumers a certain assurance as to the nature of the product or service they will receive and also the standards the supplier or manufacturer seeks to maintain. What you say, how you operate and present your business reflects how you come across to others as a business and brand. So, every business has a brand, whether consciously or unconsciously, to show the identity and promise by the owner that the product has a brand.<sup>78</sup> It is due to this promise that we know and expect something entirely different if we buy an iPhone rather than a Tecno smartphone, even though they are both smartphones.

The 'Swoosh' is a well-known symbol by Nike. Originally, the logo included the shoemaker's name, but at the end of the nineties, the name disappeared. Today, the recognition of a simple swoosh automatically brings our attention to Nike. Once a brand becomes recognized by a majority in the marketplace, it can command a premium price or market price. So many people would be willing to pay a premium price, no matter how expensive it is, just to get the expected results from a brand that is well-known in the marketplace.

Developing a brand is a milestone in preparing every strategic business plan. An applicable industrial design and good knowledge of trademarks and collective marks are crucial to develop successful branding. To thrive, a brand must be clear, send a credible message and be specific. The brand must have certain distinguishing features or differences, i.e., it must be recognizable, desirable, credible, and properly communicated to its target group. As mentioned earlier, so many individuals do not understand the relationship between intellectual property and a brand name. Intellectual property is important in a business and to its brand. Having a brand name puts one (the owner of the Intellectual Property) in an advantaged position because there is a law that protects his intellectual property and gives him certain rights by virtue of having that intellectual property. A brand name or logo is also a form of intellectual property by the original creator, who is, for all intent and purposes, the original owner of the work. Thus, where the brand name and logo are the original work of the owner, he has rights embedded in him. It helps him stand over and above those who may choose to use such a name and logo or something similar to it later on, as this would turn out to be an infringement on his right provided for under the Intellectual Property Law. In *Niger Chemists Limited v Nigeria Chemists*<sup>79</sup>, the plaintiff had an established chemist business using the name 'Niger chemist.' While the defendant established the same business on the same street with the plaintiff using 'Nigeria Chemist,' the plaintiff sued the defendant claiming the name was too similar and likely to deceive the public that there was a relationship between them. The court agreed with the plaintiff and granted an injunction against the defendant on the use of the name.

Because of the law protecting intellectual property and brands, it would be difficult for another person to infringe on the property of another where such intellectual property has been made official. In a relative setting in Nigeria, the case of a brand of any form, either words or logo, which has been registered cannot be overlooked or tampered with. This is because an infringement of such would lead to compensations or damages to the copyright holder. For instance, in a recent development involving popular comedian and skit maker Chukwuemeka Ejekwu, also known as Oga Sabinus, threatened to sue Friesland Foods, makers of Peak milk brand and UAC Foods, the makers of sausage roll Gala. He claimed that the two companies used his trademark and image without his authority. His claims are simply considered Intellectual property theft. Moreover, his claims are only possible where such a trademark has been registered.

<sup>76</sup> GS Jaiya, 'IP Rights and innovation in SMEs'. A. Paper submitted to the OECD as a Background Document to the 2<sup>nd</sup> OECD Ministerial Conference. <<http://www.wipo.int/sme/>> accessed on 14<sup>th</sup> March 2022

<sup>77</sup> Lom, H. Branding: 'How to use intellectual property (IP) for economic Growth and Business Competitiveness'. <<http://www.wipo.int/sme/en>> accessed on 14 March 2022.

<sup>78</sup> Intellectual Property: 'what is branding' <<http://azrights.com/media/news-and-media/blog/2019/03/is-a-brandintellectual-property-definition-of-brand-and-intellectual-property/>> accessed on 14 March 2022

<sup>79</sup> (1961) ALL N.L.R.180

Intellectual property theft refers to robbing people or companies of their ideas, inventions, and creative expressions (i.e., their IP), resulting in serious economic damage, loss of competitive edge, goodwill, and decreased business growth and could also be likened to passing off. The skit maker demanded N1 billion from Friesland as compensation and damages for the use of the catchphrase, (something hooge), in an advert on its social media handles and N100 million from UAC for the use of his picture in one of its advertisement campaigns. By virtue of the use of his legally registered trademark, Oga Sabinus *strictu sensu* is entitled to damages for the use of his registered trademark, something hooge, and calculating posture in an image.

Trademarks protections are registered in classes. Some deal with the protection of different goods. While some deal with different services. For one to simply enjoy trademark protection, one must register their goods or services in any of the classes.

Registered marks are protected only in respect of those classes. It is only when similar infringing goods or services infringe that mark that the proprietor (owner) can claim damages or seek redress.

This case has attracted arguments and raised IP consciousness amongst Nigerians. It is typical to see a Nigerian doing business without even registering his business name/company, let alone talking about protecting his trademark(s). It is also not uncommon for registered companies/business names to assume IP Protection because of their corporate protection. Thus, although Mr. Sabinus may seem to have a valid claim, his acceptance letter showed that the trademark was registered under a different class. It covers Insurance, financial services, real estate agency services, building society services, banking, stockbroking, financial services provided via the Internet, issuing of tokens of value in relation to bonus and loyalty schemes, and provision of financial information. This means that Sabinus' claim of 'something hooge' trademark infringement can only succeed if it was used in the same line of business it was registered. This is a probable strong defence for Friesland Foods. On the other side, with available facts in circulation and relayed above, Sabinus would probably have a strong case under trademark dilution. Trademark dilution extends beyond classes and refers to the unauthorized use of and/or application for a trademark that is likely to weaken the distinctive quality of or harm a famous mark. The question of whether a famous trademark is diluted is a separate question from whether the mark is infringed or whether the unauthorized use is likely to cause consumer confusion.

The trick for a successful claim is to allege both dilution and infringement together. Though trademark dilution is not expressly provided for in our Trademarks Act, nothing prevents a persuasive argument for the same. Trademark dilution does not necessarily involve the unauthorized use of a mark in connection with goods or services that are confusingly like those offered in connection with the famous mark. It protects marks that are so well-known, highly reputable, or famous that jurisdictions have decided they deserve the protection of their unauthorized use, which is likely to cause consumer confusion. To be considered well-known, highly reputable, or famous, a trademark must be recognizable to the public, a household name. For example, the following would likely be considered famous trademarks in many countries worldwide: Google, Coca-Cola, Sony, Nike, Adidas, etc. The question now would be whether something hooge was famous for succeeding under trademark dilution. Sabinus must show that the mark is famous. There was an unauthorized use of his trademark on products (in this case, milk and gala) that they do not compete with, have little or no connection with those of the trademark owner, and creates no likelihood of confusion as to the source of the product or service being identified by the allegedly infringing use. Image rights are the expressions of a personality in the public domain. Image rights concern the various rights an individual holds in their own persona (including name, photo, likeness, signature, personal brand, slogans, or logos). Other rights that an individual can possess in their own persona include appearance, silhouette, features, facial expressions (verbal or facial), mannerisms, and the like. Sabinus image in question must not be registered before he can validly lay such claims. It is important to note that image rights, unlike other IPs, need no further protection as the use of one's image without their consent amounts to an infringement. However, the quantum of damages may be determined by other factors. Once one is not associated with or contracted to promote a particular brand, using their image without their consent makes the infringer liable. Thus, Sabinus here has a strong claim against UAC Foods Ltd, makers of gala, as against Friesland Foods, makers of Peak milk brand. To this end, using a brand, whether or not such a business is big or small, is of crucial importance. One of the best ways to protect your intellectual property is to register a trademark for your brand name, logo, designs, slogans, and any words associated with your brand. Obtaining a registered trademark for your brand's IP will allow you to use the registered trademark symbol '®' in conjunction with these assets.

## 12. Role of Small and Medium-Sized Enterprises

The SMEs in both developed and developing countries are, without a doubt, of great relevance. They play a vital role in major employment and income distribution challenges. In the increasingly knowledge-driven economy, Intellectual Property is a key consideration in day-to-day business decisions and can serve as a strong strategic plan. New products, brands, and creative designs appear almost daily on the market and result from continuous human innovation and creativity. SMEs are often the driving force behind such innovations.<sup>80</sup> SMEs employ a greater percentage of the working population in any country.<sup>81</sup> Therefore, their earnings cannot be overlooked for tax purposes.

With the generation of employment, social vices such as armed robbery, begging, illegal businesses, and prostitution are reduced. All levels of government benefit from the existence of small businesses.

<sup>80</sup> Jaiya G.S, Ibid (n 88).

<sup>81</sup> UNESCO- Nigeria project for revitalization of TVE in Nigeria. <<http://unesco-nigeriatve.org>> accessed on 3<sup>rd</sup> April 2022.

This is one of the reasons governments of all countries encourage establishing small businesses through various means and go the extra length to have empowerment programs. Essential benefits of small businesses to any government include:

- Revenue generation,
- Economic growth and development through the creation of employment,
- Payment of taxes to the government, and
- Production of goods and services

Nigeria is a country blessed with abundant natural resources. Most SMEs use natural resources as raw materials to produce their goods and services. This has helped in the preservation of these resources. SMEs contribute to improving living standards, bring about substantial local capital formation, and achieve a high level of productivity and capability. According to the United Nations Industrial Development Organization (UNIDO), SMEs have a significant role to play in economic development. They form the backbone of the private sector, and they make up over ninety percent (90%) of enterprises in the world and account for fifty to sixty percent (50-60%) of employment.<sup>82</sup> The National Bureau of Statistics (NBS) put the total number of SMEs in Nigeria at over seventeen (17) million.<sup>83</sup> However, in Nigeria, because of some economic challenges, many SME operators in the country find it difficult to effectively play their expected roles. These constraints include unfair competition, taxes, and accounting management, amongst others.

The growth of IP cannot be side-lined due to the importance derived from this aspect of law. The importance of IP in Nigeria is growing fast, especially in terms of local inventions which have become recognized internationally.<sup>84</sup> IP protection has been at the forefront of developments in most developed and developing countries. Foreign Direct Investment (FDI) is attracted into a country when an investor knows there is a return on investment, and this can be achieved mostly with the protection of IP rights and effective enforcement.<sup>85</sup>

Nigeria can derive huge investment opportunities in developing and protecting IP rights. This will bring about an increase in revenue. Therefore, there is a dire need to create the necessary enabling environment for the nurturing, development, and protection of SMEs alongside IP rights to play the desired role in the continuous growth, development, and transformation of Nigeria.

### 13. Government Policies on Development of Small and Medium-Sized Enterprises (SMEs) in Nigeria

Before Nigerian Independence, the business climate was almost totally dominated by the colonial and other European multinational companies like United African Company (UAC), GB Olivant, Lever Brothers Company (now Unilever), Chellarams, Leventis, and many others.<sup>86</sup> These companies were engaged in bringing into Nigeria finished goods from their parent companies abroad. These companies dominated the Nigerian economy, and the government of those days encouraged them by giving favorable tariffs and tax concession incentives.<sup>87</sup> Towards the end of the 1960s, the Nigerian Industrial Development Bank (NIDB) was established to assist potential entrepreneurs in getting involved in agriculture, the exploitation of natural resources, commerce, and industrial production.<sup>88</sup> In recognition of the roles played by SMEs in terms of economic growth and development, succeeding Nigerian governments had various initiatives aimed at promoting the welfare of the SMEs in the country. They include:

- Small and Medium Enterprises Developing Agency (SMEDAN) (2004)
- Small and Medium Enterprise Credit guarantee scheme (SMECGs) (2010)
- The Small and Medium Industries Equity Investment Scheme (SMIEIS) 2001
- Microfinance Banks (2005)
- Nigeria Agricultural, Corporative and Rural Development Bank (NACRDB) 2000
- Nigeria Agricultural, Corporative and Rural Development Bank (NACRDB) 2000
- Nigerian Bank for Commerce and Industry (NBCI) 1973
- World Bank Assistant SME loan project (1987)
- The National Economic Reconstruction Fund (NERFUND) 1990
- Nigeria Agricultural, Corporative and Rural Development Bank (NACRDB) 2000
- Nigerian Industrial Development Bank Ltd (NIDB) 1962

For the purpose of this research, we will be discussing SMEDAN, SMECGs, the Bank of Industry and Microfinance Banks, and a few others.

#### 13.1. Small and Medium Enterprises Development Agency of Nigeria (SMEDAN)

SMEDAN was established by the SMEDAN Act 2003 to promote the development of micro, small and medium enterprises (MSMEs) in the Nigerian economy. Micro enterprises are included in the clientele of the agency since they

<sup>82</sup> O Chima, Small and medium Enterprises in Nigeria. <[www.hisdaylive.com/articles](http://www.hisdaylive.com/articles)> 11 December, 2013. Accessed on 7<sup>th</sup> April 2022.

<sup>83</sup> Ibid.

<sup>84</sup> Intellectual Property: 'A Tool for Economic Growth' <[www.mandaq.com](http://www.mandaq.com)> accessed on 11<sup>th</sup> April 2022.

<sup>85</sup> U Nwokocha, Nigeria-Intellectual Property: An overview of development and practices, (2012) (1) NIALS Journals of Intellectual Property (NJIP) 101.

<sup>86</sup> AD Ogechukwu, JS Obereh and others, Small and Medium Enterprises in Nigeria (2013) (13) (9) The Marketing Interface, Global Journal of Management and Business Research Marketing 2.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

form the bedrock of SMEs.<sup>89</sup> The need arose from the realization that poverty is a social malaise that threatens global prosperity in general and national economic growth and development in particular. The functions of SMEDAN<sup>90</sup> include: stimulating, monitoring, and coordinating the development of the MSMEs sector, initiating and articulating ideas for micro, small, and medium enterprises' growth, promoting and facilitating development programs instruments and support services to accelerate the development and modernization of MSME operation, linking SMEs to internal and external sources of finance, promoting information and providing access to industrial infrastructure, working in concert with other institutions in the public and private sectors to create a good enabling environment of businesses in general and MSME activities in particular.<sup>91</sup>

The establishment of SMEDAN is to trigger the development of Nigeria's SMEs in a structured and efficient way. Other schemes established to boost their growth include:

### 13.2. *Small and Medium Enterprise Credit Guarantee Scheme (SMECGS)*

The scheme was established in May 2010 to provide guarantee cover for loans advanced to SMEs by the bank. The guarantee cover (provided by the CBN) shall be eighty percent (80%) of principal and interest and shall be valid up to the maturity date of the loan with a maximum tenure of seven (7) years inclusive of a two (2) year moratorium.<sup>92</sup>

The scheme aims to fast-track the development of the manufacturing SME sector of the Nigerian economy by providing guarantees for credits from banks to SMEs and manufacturers, setting the pace for the industrialization of the Nigerian economy, and increasing access to credit by promoters of SMEs and manufacturers. The Central Bank of Nigeria (CBN) has recently approved the establishment of a Two Hundred Billion (₦200 billion) Small and Medium Enterprise Credit Guarantee Scheme (SMECGS) to promote access to credit by manufacturers and SMEs in Nigeria.<sup>93</sup>

### 13.3. *The Bank of Industry*

The defunct Nigerian Industrial Development Bank (NIDB), the Nigerian Bank for Commerce and Industry (NBCI), and the National Economic Reconstruction Fund (NERFUND) were merged together to form the Bank of Industry in 2001. Its mission is to transform Nigeria's industrial sector and integrate it into the global economy by providing financial and business support services to attain modern capabilities for producing goods that are competitive in both domestic and external markets. Its primary objective is to provide financial assistance for establishing large, medium, and small projects and expand, diversify, and modernize existing enterprises.

### 13.4. *Microfinance Banks*

A Microfinance bank is a company licensed by the Central Bank of Nigeria (CBN) to carry on the business of providing microfinance services such as savings, loans, domestic funds transfers, and other financial services that are needed by the economically active poor, micro, small and medium enterprises to conduct or expand their businesses as defined in the guideline for microfinance banks in Nigeria.<sup>94</sup> Microfinance Banks perform financial intermediation, that is servicing or financing the deficit economic unit through the resources derived from the surplus economic unit and at a reduced interest rate. Unlike commercial banks, they are expected to provide financial services such as credits and financial advisory to small businesses that ordinarily would not have access to such services.

### 13.5. *The Small and Medium Industries Equity Investment Scheme (SMIEIS)*

The role of Small and Medium Enterprises (SMEs) as a catalyst for economic growth and development has been well documented in the economic literature and recognized in most countries. Successive governments in Nigeria have shown much interest in ensuring adequate financing for Small and Medium Enterprises (SMEs) by establishing various schemes and specialized financial institutions to provide the appropriate financing to the sub-sector.<sup>95</sup> The failure of most of these schemes revealed that the problem of SMEs in Nigeria is not limited to a lack of long-term financing but also inadequate management skills and entrepreneurial capacity. The need to address these problems comprehensively for a sustainable source of long-term financing necessitated the introduction of the Small and Medium Industries Equity Investment Scheme (SMIEIS) by the Banker's Committee, an initiative of the Central Bank of Nigeria. The Small and Medium Enterprises Equity Investment scheme is a voluntary initiative of the Bankers' Committee approved at its Annual Meeting held on 21st December, 1999. The initiative was in response to the Federal Government's concerns and policy measures for promoting Small and Medium Enterprises (SMEs) as vehicles for rapid industrialization, sustainable economic development, poverty alleviation, and employment generation. The Scheme requires all banks in Nigeria to set aside ten percent of their Profit After Tax (PAT) for equity investment and promotion of small and medium enterprises. Eligible enterprises are free to approach any bank, including those they presently have a relationship with, to seek funding under the scheme. Banks may operate the scheme directly, through their wholly owned subsidiary venture capital companies, through venture capital companies floated by consortia of banks, or through independent venture capital

<sup>89</sup> SMEDAN (AMENDMENT) ACT, No.3 (2004).

<sup>90</sup> Ekwem. I., A Small and Medium Enterprises Development in Nigeria: Constraint and Policy Options, M. Sc. Thesis (Unpublished), University of Stellenbosch (2011) p.14

<sup>91</sup> Ibid s. 8.

<sup>92</sup> Ekwem Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid

<sup>95</sup> Ubong Udoeyo. Nigeria's Government Assistance Programs for small Businesses: A Gateway for Corruption-The Global Anticorruption Blog, Law, Social Science and Policy < <https://www.anticorruptionblog.com/government-assistance-progra...>

companies. In Nigeria, Micro, Small, and Medium Enterprises (MSMGs) are generally referred to as enterprises with up to 250 employees. Micro Enterprises are between 1 and 9<sup>96</sup> employees, while small enterprises have between 10 and 49 employees.<sup>97</sup>

#### 14. Taxation

It is in recognition and by virtue of the immense and magnanimous contribution of the SMEs to the nation's development that Intellectual Property Law (IPL)<sup>98</sup> and taxation have been ushered in to provide for the protection, promotion, growth, and support for the SMEs.

Oxford English Dictionary<sup>99</sup> defines Taxation as a compulsory contribution to support the government levied on person, property, income, commodities, transactions, etc.

In *United States v. Butler*,<sup>100</sup> tax is defined as a compulsory contribution to the government without reference to service rendered or benefits returned. In *Matthew v. Chicory Marketing Board*,<sup>101</sup> tax is defined as a compulsory execution of money by the public authority for public purposes, while taxation is the raising of money for the purpose of government by means of contributions from individual or corporate persons. Some of the case law definitions of tax are as follows:

- That tax is the compulsory extraction of money by a public authority for public purpose.<sup>102</sup>
- That tax is an exaction for the support of the government.<sup>103</sup>
- That tax is not a voluntary donation but an enforced/compulsory contribution exacted pursuant to legislative authority.<sup>104</sup>
- That tax is a debt to the government.<sup>105</sup>
- That tax is a compulsory contribution imposed by sovereign authority on the citizens.<sup>106</sup>

According to Section 69 of Federal Inland Revenue Service (Established) Act 2007, Tax includes any duties, levies, or revenues accruable to the government in full or part. The laws listed in the first schedule to this Act or any other enactment or law. The National Tax Policy in Chapter 1(2) viewed Tax as any compulsory payment to the government imposed by law without the direct benefit of value or service, whether it is called a tax or not. The FIR Act 2007, in Section 1, established the Federal Inland Revenue Service and charged it with the duty of administering and coordinating the collection of taxes in consonance with other laws in the first schedule to the Act. It includes:

- Personal Income Tax Act (PITA),
- Value Added Tax Act (VATA),
- Company Income Tax Act (CITA),
- Petroleum Profit Tax Act (PPTA),
- Capital Gain Tax Act (CGTA),
- Tertiary Education Trust Fund Act (TETFUND),
- Stamp Duties,
- Levies, etc.

At the state level, the various States Board of Internal Revenue (SBIR) arising from the power of the Federal Legislature to delegate duties under Section 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) acts as an agent for the Federal government. The Federal government, State government, and Local government have the duty to collect tax as listed in FIRS Act, Taxes and Levies approved List for collection Act (1998) part I, II, and III, respectively.<sup>107</sup>

Taxation is fundamental to the economic growth of any state in the world. It has been further defined as a pecuniary burden imposed on the properties, incomes, and activities of individuals, companies, and communities, to generate revenue and channel the same to support important projects which are beneficial to the public.<sup>108</sup> Tax administration includes tax assessments, audits, investigation, collection, computerization, and litigation. It also deals with

<sup>96</sup> Adediran Samson Adewale, *The Policy and Survival of Small and Medium Scale Enterprises*, in *Topical Issues on Nigerian Tax Laws and other Related Areas* eds JAM Agbonika and SM Olokooba Vol.2, 2018, College of Law, Salem University, Lokoja pp.308-316.

<sup>97</sup> Micro, small and Medium Enterprises (MSMEs) in Nigeria-An Overview <https://invoice.ng/blog/msmes-in-nige...>

<sup>98</sup> Hereinafter referred to as IPL

<sup>99</sup> Oxford English Dictionary

<sup>100</sup> 2279 US 1936 at 961

<sup>101</sup> (1938) 6 CLR 263 a 276

<sup>102</sup> *Mathew Chicory Marketing Board (Vict.)* (1938) CLR 263 at 276

<sup>103</sup> *United State v. Butter* 297 US 1(1936) at 61 per Justice Robert. See further *R v. Barger* (1908)6 CLR 41

<sup>104</sup> *Michigan Employment Sec Commission v. patt* 4Mich-App 244 14 N.W 2nd 663. You can also see, *Moore v. The Commonwealth* (1951)82 C.L.R, 547

<sup>105</sup> *Shell v. FBIR* (2004) FNLr 859 at 46

<sup>106</sup> *Leake v. Commissioner of Taxation (State)* 36 WALR 66.

<sup>107</sup> The Taxes and Levies (Approved List for Collection) Act 1998 No 21 Provides in parts 1,11,111 of the schedule to the Act made Pursuant to section 1,a list of Taxes to be collected by each tier of Government.

<sup>108</sup> J.A.A Agbonika *An Appraisal Tropical Issues on Nigerian Tax Law and Related Areas*.eds (2000) JAM Agbonika, JAA Agbonika & SM Olokooba Odoma Uwodi & Itodo Simon John. *An Appraisal of the National Tax Policy and Federal Inland Revenue Service in Topical Issues of the National Tax Policy and the Federal Inland Revenue Service (Vol. 2)*. College of Law, Salem University, Lokoja, Kogi State, Nigeria. p 317-332

or includes tax management, planning, and research, which extends to supervision, control, and monitoring of the collection process, which is a vital aspect of tax administration.<sup>109</sup>

Although the revenue generated from the taxation of individuals and businesses is a key income for the government, Bird posits, "No one likes taxes; people do not like to pay them, and governments do not like to impose them."<sup>110</sup>

The pivotal role of tax collection as a lifeblood of public financing and expenditure makes compliance with tax laws a fundamental principle in meeting revenue expectations by governments. Tax compliance has to do with the willingness to abide by tax laws, file appropriate returns, state the actual income earned, claim appropriate reliefs and rebates, and pay all taxes due on time. The government has made several provisions on the relevant legal framework to ensure tax compliance in Nigeria.

Mukasa<sup>111</sup> explained that continuous tax education and resourcing the tax agencies are measures governments put in place to ensure the maximization of tax revenues through compliance. Organization for Economic Co-operation and Development<sup>112</sup> also states that imposing interests and penalties, tax-deductible benefits, and cash flow benefits are the measures governments have put in place to induce compliance with tax laws and regulations towards generating more tax revenue. Palil<sup>113</sup> argues that the self-assessment system promotes voluntary tax compliance.

Taxpayers' perception regarding the fairness of the entire tax system, the social setting and societal norms, and the effectiveness of tax authorities in detecting and punishing non-compliance with the tax laws determine taxpayers' decision to comply or not to comply. The knowledge and attitude of the people toward compliance with the tax laws and government regulations determine whether the government would be able to achieve the estimated tax revenue.

The sources of tax revenue in Nigeria are direct taxes and indirect taxes. Direct taxes are imposed on the incomes and wealth of taxpayers, such as income tax, corporate tax, capital gain tax, petroleum profit tax, education tax, and gift tax. The indirect taxes are imposed on consumption expenditures, such as value-added tax, import and export duty, and communication service tax.

Small and medium-sized enterprises play an integral part in developing a country's economy in terms of employment and revenue generation.<sup>114</sup> In Nigeria, small and medium-sized enterprises constitute the largest business units in most states and form a major chunk of revenue if harnessed properly with good compliance. Most of the SMEs do not have professional accountants for proper bookkeeping and are mostly in the form of sole proprietorship.<sup>115</sup> Tax compliance of small and medium-sized enterprises will depend on knowledge and attitude toward tax laws. This would necessitate the input of tax consultants to shape the behavior of SMEs in the State to inform policy direction to improve tax compliance.

#### 14.1. Tax Administration

Tax administration involves the registration, assessment, returns, collection, compliance monitoring, enforcement, sanctions, taxpayers' education, and other activities to improve the efficiency and effectiveness of tax implication.<sup>116</sup>

Taxpayer registration is carried out by submitting relevant information as required by relevant tax authorities before embarking on tax assessment and collection. Federal Inland Revenue Service (FIRS), State Board of Internal Revenue, and Local Government Committees register taxpayers for taxes within their jurisdiction.

Tax authorities assess and administer returns rendered by taxpayers. The basis of assessing such tax rates is to confirm that the basis period and tax deductions are all stipulated in the tax statutes. Tax authorities usually require a taxpayer to file information as required by relevant tax statutes and periodically on an annual or monthly basis.

Tax collection follows tax assessment where the taxpayer who self-assesses himself relies on the authority to assess the mode of tax remittance is usually determined by the relevant tax authority.

Tax compliance is monitored by adhering to the provisions of the relevant tax statute. This is usually done by tax authorities at their respective offices by checking taxpayers' files and visiting them to obtain further relevant information to complement information at their disposal to ensure compliance with the provision of the relevant tax statute.

Non-compliance can result in enforcement on taxpayers through sanctions which may lead to penalties or convictions. Tax contravention may be due to failure to furnish required information, failure to keep a required record, or any other non-compliance with the relevant provision of the required tax statute.

<sup>109</sup> Ibid

<sup>110</sup> R.M. Bird. *Administrative Constraint on Tax Policy*. (Bath; Fiscal Publication, 2003). p.147.

<sup>111</sup> J. Mukasa. *Tax Knowledge, Perceived Tax Fairness and ax compliance in agenda. The case of small and medium income taxpayers in Kampala center Division*. Master's thesis. (Makerere University, 2011).

<sup>112</sup> Organization for Economic Co-operation and Development (OECD) (2000). *The OECD reference management services multi-country regulatory and administrative business environments in small and medium Enterprises*. Retrieved November 2014, from [Unctad.org/en/Docs/idc\\_2000-en.pdf](http://Unctad.org/en/Docs/idc_2000-en.pdf).

<sup>113</sup> M.R. Palil. *Determinants of tax compliance in self-assessment system in Malaysia*. PhD. Thesis. (University of Birmingham, 2010).

<sup>114</sup> S. Young. *Tax compliance and small & medium enterprises operators: An Intra-Cultural Study in New Zealand*. (Ph.D) Thesis. (Auckland University of Technology, 2011).

<sup>115</sup> Uche Mekwunye. *Small and Medium Scale Enterprises in Nigeria: An Overview of initial Set up-Mondaq*, <http://www.modaq.com/nigeria>

<sup>116</sup> I.A. Ayua, *The Nigeria Tax Law*. (Spectrum Publishers 1996)

Tax education and awareness are carried out by issuance of tax circulars and other publications or through workshops and training to aid taxpayers' understanding of tax laws.

#### 14.2. Tax Compliance

Tax compliance has been defined as taxpayers' ability and willingness to comply with tax laws which are determined by ethics, legal environment, and other situational factors.<sup>117</sup> It has been posited that people will ordinarily not pay taxes unless there is a motivation to do so.<sup>118</sup>

There are those who subscribe to an increase in incentives and those who believe that penalties will serve as deterrence to non-compliance, hence, the classification of tax compliance theories into the economy and psychology-based theories.

The principle of economy-based theory was first discovered in 1968 when illegal behavior was analyzed using an economic framework. The argument showed that deterrents, such as the probability of detection and penalties and sanctions, were within the control of society.<sup>119</sup>

Economic deterrence theory emphasizes incentives, suggesting that taxpayers are moral utility maximizers since they are influenced by economic motives like profit maximization. This led to the derivation of a model based on a number of assumptions, including taxpayers as utility maximizers who possess actual knowledge of penalty and detection rates, assuming that people behaved in an economically rational way. That compliant or non-compliant behavior is the result of a cost-benefit analysis. They postulated that compliance is guaranteed when the costs of evasion exceed the benefits of evasion, and non-compliance is evident when the balance tips with the benefits.<sup>120</sup>

Sociological and Psychological Theory remains an earlier principle on tax evasion, which explored a 'tax mentality' concept. The concept is based on the assumption that taxpayers have separate views with respect to looking after their self-interest as opposed to contributing to community interests. In this regard, the more positive a taxpayers' attitude toward paying taxes and working with the tax authorities is, the higher the level of compliance.<sup>121</sup> Some scholars postulate that noneconomic variables like equity and morals are found to be significantly related to compliance behavior.<sup>122</sup>

The psychological theory was further developed into the Theory of Reasoned Action (TRA), which showed that taxpayers' behavior is directly determined by their intentions which remain the functions of their attitude towards behavior and perception of subjective norms.<sup>123</sup>

The Theory of Planned Behaviour (TPB) is a social-psychology theory that is an extended theory from the Theory of Reasoned Action (TRA) based on the assumption that human beings are usually quite rational and make systematic use of information available to them. They always consider the implication of their actions before deciding to engage or not in a given behavior or business.

This theory states that behavioral intentions and businesses are shaped by three factors, namely:

- Attitude toward behavior,
- Social norms, and
- Perceived behavior control

This suggests that the intention to perform behavior and the perceived control that a person has to perform the behavior would lead to conducting the expected behavior. This is at variance with economy theories which emphasize audits and penalties as a solution to compliance issues. Social psychological theories lay more premiums on changing individual attitudes toward the tax system.<sup>124</sup>

McBarnet<sup>125</sup> suggests that tax compliance should be perceived in three ways, namely:

- Committed compliance – taxpayers' willingness to pay taxes without complaint;
- Capitulative compliance – reluctantly giving in and paying taxes and
- Creative compliance – engagement to reduce taxes by taking advantage of possibilities to redefine income and deduct expenditures within the bracket of tax laws.

Tax compliance involves reporting all incomes and paying all taxes in accordance with applicable laws, regulations, and court decisions<sup>126</sup>. This requires taxpayers' willingness to obey tax laws to obtain the economic equilibrium of a country.<sup>127</sup>

Some SME owners/managers' perception of the intricacies of tax compliance and tax evasion; is that of adopting the sociological and psychological theory. This is because attitudes, norms, perceptions, and tax knowledge influence tax compliance. The theory posits that perceived factors like perception of equity and government spending, as well as the ethical values of the taxpayers, influence voluntary compliance.<sup>128</sup>

<sup>117</sup> Y.D. Song, & T.E. Yarbrough. Tax ethics and taxpayer attitudes. A survey. (1978) (38) (5) Public Administration Review, 442-452.

<sup>118</sup> O.W. Atawodi, & S.A. Ojeka. Factors that affect tax compliance among small and medium enterprise in North Central Nigeria. (2012) (7) (12) International Journal of Business Management, 55-76.

<sup>119</sup> G.S. Becker. Crime and Punishment: An economic Approach. (1968) (78) (2) Journal of Political Economy, 169-217.

<sup>120</sup> G.S. Becker. Crime and Punishment: An economic Approach. (1968) (78) (2) Journal of Political Economy, 169-217.

<sup>121</sup> G.S. Becker. Crime and Punishment: An economic Approach. (1968) (78) (2) Journal of Political Economy, 169-217.

<sup>122</sup> Y. D. Song, & T. E. Yarbrough. Tax ethics and taxpayer attitudes. A survey. (1978) (38) (5) Public Administration Review, 442-452.

<sup>123</sup> I. Ajzen, & M. Fishbein. Understanding attitudes and predicting social behavior. (Engle Wood Cliffs, New Jersey: Prentice Hall, 1980).

<sup>124</sup> I. Ajzen. Theory of planned behavior. (1991) (50) Organizational Behavior and Human decision Processes, 179 – 211.

<sup>125</sup> Canberra: Australian National University, Centre for Tax System Integrity

<sup>126</sup> J. Alm. A perspective on the experimental analysis of taxpayers reporting. (1991) (66) (3) The Accounting Review, 577 – 93.

<sup>127</sup> J. Andreoni, B. Erard, & J. Feinstein. Tax compliance. (1998) (36) (3) Journal of economic Literature, 818 – 60.

<sup>128</sup> M.W. Spicer. A Behavioral model of income tax evasion. Unpublished Ph.D. dissertation, (Ohio State University, 1974).

Taxpayers' knowledge of these sociological factors may have an impact on tax compliance thus, there is a need to measure taxpayers' knowledge<sup>129</sup>. Tax compliance is a major concern for governments and tax authorities. Non-compliance affects not only the amount of tax collected but also the implementation of government policies.<sup>130</sup> Theoretically, compliance can be viewed distinctly as payment compliance, filing compliance, and reporting compliance.<sup>131</sup>

The Central Bank of Nigeria defined SMEs as enterprises that have an annual turnover not exceeding Five Hundred Thousand Naira (₦500, 000).<sup>132</sup>

Nigeria remains densely populated and has been described as the largest economy in Sub-Saharan Africa.<sup>133</sup> Nigerian economy is heavily supported by small and medium-scale enterprises (SMEs). Our area of focus in this study is the Small and Medium scale Enterprises (SMEs), which are non-subsidary, independent firms/organizations that employ fewer employees.<sup>134</sup>

The number of employees varies from one country to another. They are required to be registered under Part B of the Companies and Allied Matters Act 2020 (CAMA) in order to do business in Nigeria. Nigeria follows the European Union (EU) classification of SMEs as micro, small and medium-sized enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million Euros.

## 15. Link between Small and Medium Enterprises (SMEs) on Intellectual Property (IP) and Taxation in Nigeria

The concept of SMEs varies from jurisdiction to jurisdiction and has largely been accepted based on its classification from lower to higher levels in both developed and developing countries. Despite this acceptance, the variation still stands as it applies peculiarly to each jurisdiction. They are mostly privately owned enterprises whose workforce, assets, and capital fall below a certain level. These SMEs can be seen in the form of sole proprietorships and partnerships, among others. They are forms of business organizations that are readily available to entrepreneurs who are just starting in the business world. These two forms of businesses or SMEs are cognate in nature, with the major distinguishing feature being that the former is solely a one-man business while the latter is in collaboration with two or more persons with the sole aim of making profits. Small and Medium Sized Enterprises, as the name implies, are enterprises or businesses which are small in nature due to the fact that an entrepreneur just started up the business or that the business has been ideally suited to function that way. This is to the effect that a business enterprise may have all the income they need from the products they sell or services they render but still retain its size of being a small or medium-sized enterprise. Also, it could simply be because not all small businesses would eventually grow to the size of large corporations. Small businesses are usually small in market size as they service mostly the needs of local communities, as their general scope of operation is not wide, and they use only a few employees. A common feature of Nigeria's SMEs is that the majority of them are family-owned or sole proprietorship, as stated above. However, in recent times, this orientation has been changing, partly as a result of the indigenization decree of the seventies (70s)<sup>135</sup> and partly as a consequence of better exposure and enlightenment.<sup>136</sup> As a result, many SMEs are now in the form of partnerships and have several features or characteristics that, when identified, easily distinguish them from other larger enterprises or corporations. For examples;

- The amount of capital that is required to start an SME is smaller when compared to that of bigger enterprises or corporations. Most of the large corporations started as small enterprises and grew to become large enterprises. The availability of funds seen as capital in this context while starting an enterprise is a determining factor of the kind of enterprise, whether small or large. The choice of starting small is usually associated with insufficient funds. Operating mostly from their local communities and away from amenities.
- The managerial function is usually carried out solely by one person, who is usually the owner of the enterprise. Every decision usually emanates from his sole discretion in a bid to do that which he deems fit for the enterprise in certain situations. In Carrying out this responsibility solely, whatever decision is taken, whether good or bad, affects such an owner and his enterprise.
- When it comes to the area of legal liabilities, the SMEs are not seen as separate entities from their owners in the eyes of the law extension of the owner and when a legal issue arises between the enterprise. The enterprise owners can be sued under the law because the enterprise is not recognized as a distinct personality from the

<sup>129</sup> J. Vogel. Taxation and public opinion in Sweden: An interpretation of recent survey data. (1974) (28) (4) National Tax Journal, 499-513.

<sup>130</sup> I. Alley, & S. James. Research into economic and behavior approaches in tax compliance. In A. Sawyer (Ed.), Taxation issues in twenty-First Century. (Christchurch: The center for Commercial and Corporate Law, School of Law, 2006). 3-14.

<sup>131</sup> R.E. Brown, & M. J. Mazur. IRS comprehensive approach to compliance measurement. (New York: National Tax Association, 2003).

<sup>132</sup> CBN Monetary Policies Circular 1988. 22.

<sup>133</sup> Central Intelligence Agency – The World Fact book.

<sup>134</sup> OECD, 2005, OECD SME and Entrepreneurship Outlook.

<sup>135</sup> The indigenization policy was championed by bureaucrats and Nigerian business men. It was pursued within the Federal Government's National Development Plan for 1970-1974. The Nigerian Enterprise Promotion Decree was promulgated in 1972 to be effective in April 1974. It was amended in 1977 and was meant to effect changes in the ownership structure of businesses in Nigeria and to provide opportunities for indigenous capital to have control of the economy. It restricted economic activities of foreign firms to certain areas. This decree was repealed in 1995 with the promulgation of the Nigerian Investment Promotion Act.

<sup>136</sup> Odeyemi, J.A. An Overview of the current state of SMEs in Nigeria and the need for Intervention, A paper presented at the National Summit on SMIEIS organized by the Banker's committee and Lagos Chamber of Commerce and Industry (LCCI) Lagos, 10th June 2003.

owner. This is unlike large registered companies where the doctrine of lifting the corporate veil would have to be sought to get the individuals involved in a misdoing because the company is recognized as a distinct legal person.

- The lifespan of the enterprise is dependent on the survival of the owner. Thus, when the owner passes away, that brings the enterprise to an end unless where the owner has a plan for succession on who would take over from him in the event of his death. Most often than not, small businesses thrive and survive on the personal relationships of the real owner whose name may be used as that of the business. In such an instance, where the owner dies, the possibility of the small business surviving is not feasible.

Other features of SMEs in Nigeria include poor managerial skills by the owner (most SMEs are usually managed by owners who may not have the necessary managerial training; hence, there will be no separation between ownership and control). It will be easy to form, have limited or no access to resources, lack expertise, lack access to the international market, poor management of finance that is, the inability to distinguish between personal and business finance, and have a high mortality rate, which could be attributed to disagreement amongst partners or death of the owner. In most SMEs, proprietors usually know their employees and customers because of the small teams of employees. The relationship between the owners and employees can help improve their productivity with the customers. Owners will be able to adequately satisfy their needs, know how to get relevant information, and improve the standard of work, skill, and output.

## 16. Problems and Challenges of Small and Medium-Sized Enterprises (SMEs)

Generally, SMEs face unique challenges that affect their growth and profitability and, as a result, diminish their ability to contribute effectively to sustainable development. SMEs are weak in Africa because of small local markets, undeveloped regional integration, and very difficult business conditions, which include cumbersome official procedures, poor infrastructure, ineffective legal systems, inadequate financial systems, and unattractive tax regimes.<sup>137</sup> Some of the challenges are as follows:

### 16.1. Inadequate Working Capital

The incidence of inadequate working capital that constrains the productive capacities of the SMEs and the absence of a succession plan in the event of the death of the proprietor, leads, in many cases, to frequent early damage of SMEs. The persistence of an unstable macroeconomic environment, arising mainly from fiscal policy excuses, has often deprived the growth of many SMEs.<sup>138</sup> Findings have shown that most SMEs, particularly in Nigeria, die within their first five (5) years of existence.<sup>139</sup> Another smaller percentage goes into extinction between the sixth (6<sup>th</sup>) and tenth (10<sup>th</sup>) year. Thus only about five to ten percent (5-10%) of young companies survive and grow to maturity. So many factors contribute to their premature deaths resulting from; inexperience, lack of business strategy, inability to employ professionals, over-concentration on one or two markets for finished products, an unstable and unconducive macroeconomic environment heavily beclouded by uncertainties in the politics and policies of the government, lack of appreciation of the role of IP asset management in the competitiveness of SMEs by SMEs themselves, etc.

### 16.2. Lack of Power

Poor or absence of regular power supply has been the bane of SMEs in Nigeria.

Consequently, production is done by improvising with power sources which may be very expensive. This, in turn, raises the cost of production, which makes the SMEs sell at a very exorbitant price. The result is that the price at which they sell makes it difficult for them to compete with sellers of other goods in the same category.

### 16.3. Lack of Finance

Efforts by the CBN at making low-interest rate financing available to SMEs have not yielded any results because SMEs find it difficult to access loans and finance facilities. This is because of the stringent regulations that have to be met, thereby defeating the purpose. Despite their characteristics and the attendant challenges, it is the consensus that SMEs, which globally are regarded as the strategic and essential fulcrum for any nation's economic development and growth, have performed rather poorly in Nigeria.<sup>140</sup>

### 16.4. Neglect of Government

While many attribute the relatively poor performance of SMEs in Nigeria when compared with the significant roles which SMEs have played in developed economies such as the UK, Germany, and the USA and even developing countries like India to the above-outlined challenges, some others hinge the reasons on the fair share of neglect on the

<sup>137</sup> C Kauffman, 'Financing SMEs in Africa: policy Insights. African Economic outlook', (2004/2005) No 7, <www.oecd.org/dev> accessed on 9 May 2022.

<sup>138</sup> C Chibundu, 'Strategies for Nigerian SME to Grow Economy'. Thompson Dialog New Edge (2006) <www.tdnew.org> accessed on 9<sup>th</sup> May 2022.

<sup>139</sup> AM Ayanda and AS Laraba, SMEs as survival strategy for Employment Generation in Nigeria (2011) (4) (1) Journal of Sustainable Development 201.

<sup>140</sup> AB Onugu Small and Medium Enterprises in Nigeria: Problems and Prospects, Ph.D Thesis (unpublished), St/Clements University. Ontario (2005) p.22.

sector by the government.<sup>141</sup> The latter group argues that government's appreciation of the SMEs in capacity building has always been restricted to the pages of the budget presentations and submissions at various fora.

#### 16.5. Piracy & Counterfeiting Caused by Incompetent Administration & Research

As Nigeria advances industrially, there is indeed a great need for the protection of IP rights. In this country, we now see so many fake products with marks imitating or closely resembling the trademarks and names of genuine manufacturers. The Administration of IP right in Nigeria is incapacitated by inadequate skills and competence. Persons involved in its administration are usually not experts. Infrastructure for the operation of IP right in Nigeria is still largely undeveloped.<sup>142</sup> Information has not been fully developed and applied to encourage proper research by IP experts, students, and scholars. Piracy and counterfeiting are the major problems in Africa in general and Nigeria in particular.

They have become an important factor frustrating business development in Nigeria. Counterfeit products and fake goods are constantly being offered alongside genuine goods to unsuspecting and undiscerning consumers.

#### 16.6. Inadequate Penalties

The IP laws in Nigeria do not provide adequate enforcement of the rights of an owner of IP.<sup>143</sup> The penalty for infringement is insufficient to deter would-be offenders. The only remedy for an owner is a civil action in court; there is no provision in the law for criminal prosecution except in the area of copyright, where the owner can institute criminal activities through the Nigeria Copyright Commission. Most applications for IP rights protection in the country are not filed by the nationals or residents of Nigeria. Statistics show that about ninety-nine percent (99%) of patent applications lodged with the Patents and Designs Registry are made on behalf of foreign brand owners in Europe, the USA, and Asia.

Although IP law is developing in Nigeria, it is not where it ought to be. Nigeria's IP law should be aligned with international best practices. The government must also seriously address the numerous factors that undermine the effective enforcement of existing IP laws. Thus, having evaluated the SMEs sector and how it affects IP in Nigeria with their attendant role and challenges, it is worthy of note to mention that indeed, if necessary, steps are taken to preserve our SMEs and protect IP rights, Nigeria would be a safe haven for SME proprietors and investors alike.

#### 16.7. Tax Apathy

There is a lot of tax apathy among small and medium-sized enterprises. Mukasa<sup>144</sup> explained that continuous tax education and resourcing the tax agencies are measures governments put in place to maximize tax revenues through compliance. Organization for Economic Co-operation and Development<sup>145</sup> also states that imposing interests and penalties, tax-deductible benefits, and cash flow benefits are measures governments have put in place to induce compliance with tax laws and regulations towards generating more tax revenue.<sup>146</sup> However, it has been argued that the self-assessment system promotes voluntary tax compliance.

Mukasa<sup>147</sup> states, "Taxpayers' perception regarding the fairness of the entire tax system, the social setting, and societal norms, and the effectiveness of tax authorities in detecting and punishing non-compliance with the tax laws determine taxpayers' decision to comply or not to comply." The knowledge and attitude of the people toward compliance with the tax laws and government regulations determine whether the government would be able to achieve the estimated tax revenue.

Small and medium-sized enterprises play an integral part in developing a country's economy in terms of employment and revenue generation.<sup>148</sup> Small and medium-sized enterprises constitute the largest business units in most states and can form a major chunk of revenue if harnessed properly with good compliance. Most of the SMEs do not have professional accountants for proper bookkeeping and are mostly in the form of a sole proprietorship. Tax compliance of small and medium-sized enterprises will depend on knowledge and attitude toward tax laws, necessitating the input of tax consultants to shape the behavior of SMEs in the State to inform policy direction to improve tax compliance.

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<sup>141</sup> Ibid p.23

<sup>142</sup> Nwokocha U. Ibid (n 118) P.102.

<sup>143</sup> I Laurretta, 'A Brief Analysis of Intellectual Law in Nigeria'. <<http://thelawyerschronicle.com/abrief-analysisofintellectual-property>> accessed on 17<sup>th</sup> May 2022.

<sup>144</sup> J. Mukasa. Tax Knowledge, Perceived Tax Fairness and ax compliance in agenda. The case of small and medium income taxpayers in Kampala center Division. Master's thesis. (Makerere University, 2011).

<sup>145</sup> Organization for Economic Co-operation and Development (OECD) (2000). "The OECD reference management services multi-country regulatory and administrative business environments in small and medium Enterprises. Retrieved November 2014, from [Unctad.org/en/Docs/idc\\_2000-en.pdf](http://unctad.org/en/Docs/idc_2000-en.pdf).

<sup>146</sup> M.R. Palil. Determinants of tax compliance in self-assessment system in Malaysia .PhD. Thesis. (University of Birmingham, 2010).

<sup>147</sup> J. Mukasa. Tax knowledge, perceived tax fairness and tax compliance in agenda. The case of small and medium income taxpayers in Kampala Central Division. Master's thesis. (Makerere University, 2011).

<sup>148</sup> S. Young. Tax compliance and small & medium enterprises operators: An Intra-Cultural Study in New Zealand. (Ph.D) Thesis. (Auckland University of Technology, 2011).

### 16.8. Inconsistent Government Policies

The epileptic nature of implementing government programs in Nigeria is due largely to the poor generation of the required tax revenue for the country. Trivedi *et al.*<sup>149</sup> posited that Tax compliance has been influenced by economic motives such as profit maximization and the probability of detection and fines. Non-economic variables like the perception of equity and morals contribute to tax non-compliance.<sup>150</sup>

SMEs in Nigeria are largely in the informal sector and thus do not keep accounting records or, at best, keep improper accounting records. In light of this, SMEs have a serious challenge in filing their tax returns since there are little or no records. Therefore, the need to examine tax compliance by SMEs is essential.

Taxpayers' compliance level was found to be directly related to taxpayers' knowledge and perceived tax fairness in Uganda in a study of small and medium-sized enterprises in Kampala<sup>151</sup>. However, Wang<sup>152</sup> indicates that taxpayers' decision to comply or not to comply is determined by the complexity of the tax system and taxpayers' confidence in the government, its policies, and programs.

Ethnicity or cultural values may also contribute to tax non-compliance. Perceived economic and non-economic factors contributing to tax compliance also contribute to tax compliance.

When owners/managers of SMEs are fully aware of the sanctions for non-compliance, it is most likely to encourage voluntary tax compliance. Furthermore, the perceived factors of tax compliance, perception of government spending, the complexity of the tax system, and tax rates influence the compliance behavior of taxpayers. In view of this, tax revenues should be efficiently utilized on visible infrastructural developmental projects by the government to influence people to willingly comply with the tax laws. Also, the tax system should be simplified to the understanding of all taxpayers, and consideration should be given to the downward revision of the various tax rates charged to SMEs. Also, tax agencies should help businesses to keep proper accounting records by organizing workshops and training for managers/owners of SMEs on maintaining proper records. Managers/Owners of SMEs should be encouraged to embrace the concept of self-assessment introduced. Engaging the services of qualified accountants is required to avoid committing tax offences that could affect their businesses greatly. Finally, owners/managers of SMEs should declare all incomes from all sources, file tax returns promptly, and pay tax liabilities on due dates to avoid sanctions and penalties.

SMEs have been identified as the driving force in job creation, a base for industrial development, and poverty alleviation. However, the use of IPL remains a myth to many SMEs.<sup>153</sup> The fact that SMEs have not made the desired impact on the Nigerian economy despite the efforts and support of past and present government administrations is worrisome. Some of the underlining issues faced by IPL in Nigeria are:

- The uncertainty of intellectual property to create or help generate wealth for the country.
- The poor legal structure, managerial ability, and lack of expertise and professionalism.
- The non-use of intellectual property is due to the rare thinking of intangible property compared to tangible property.

### 17. Importance of Intellectual Property (IP) to Small and Medium Enterprises (SMEs)

The relevance of Intellectual Property (IP) cannot be overemphasized in the growth and development of the economy of both developed and developing countries. Because of the recognition of the impact of intellectual property globally, it has gained a high level of influence in several countries. In our contemporary global economy, wealth is generated through creating and harnessing the value of knowledge in the light of Intellectual Property.<sup>154</sup> Small and Medium Sized Enterprises have started to gain global recognition, and embedded in them are challenges regarding how their growth can be achieved and sustained. Intellectual property and IT laws come into play to stand as a vital yardstick to achieve that economic growth and development. Numerous structures (organizations, institutions, agencies, as well as individuals) were not aware of the beneficial rights couched and attached to Intellectual property and did not recognize that they could commercially exploit their Intellectual Property Rights (IPRs) or appreciate that those rights are of great value to them or could be termed valuable assets.

The importance of Intellectual property is:

- It helps in protecting innovative products and services;
- It increases the visibility, attractiveness, and value of one's products on the market;
- It distinguishes one's business and its product from the competition;
- It helps one access technical and business information and knowledge and

It helps avoid the risk of unknowingly using third-party propriety content or inadvertently losing one's valuable information, innovations, or creative output.<sup>155</sup> The worth of Intellectual Property Law is unappreciated, and its capacity to

<sup>149</sup> V. U. Trivedi, M. Shehata, & S. Mestlmen. Impact on personal and situation factors on taxpayer compliance: An experimental-analysis, (2004) (47) (3). *Journal of Business Ethics*, 175-197

<sup>150</sup> J. Vogel, Taxation and public opinion in Sweden: An interpretation of recent survey data. (1974) (28) (4) *National Tax Journal*, 499-513.

<sup>151</sup> J. Mukasa. Tax knowledge, perceived tax fairness and tax akerere University, (2011).

<sup>152</sup> L. Wang. A review of the determinants of voluntary compliance with Tax laws by South African taxpayers with particular reference to business in South Africa. Unpubcompliance in agenda. The case of small and medium income taxpayers in Kampala Central Division. Master's thesis. (Mlihed MPhil: Taxation mini-dissertation. (University of Pretoria, 2010).

<sup>153</sup> J Rutaihwa, 'Does Small and Medium Enterprises (SMEs) understand the concept of Intellectual Property Rights on their Business?' (2012) <<http://work.bepress.com/phanseinruachwa/i/>>, accessed on 29 February 2022.

<sup>154</sup> A Adewopo, 'Development in IP in Africa' <<http://www.Adewpop-dev-of-ip-in-Africa-1.>> accessed 8<sup>th</sup> March 2022

<sup>155</sup> WIPO, What is Intellectual Property (2008) <<http://www.wipo.int/sme/en/#basics>> accessed on 11<sup>th</sup> March 2022.

provide opportunities for future profit is widely underestimated by Small and Medium Sized Entrepreneurs. The legal protection of Intellectual Property may generate income for SMEs through the sale or commercialization of the intellectual property, thus, acting as a catalyst for economic development. An enterprise market may be boosted due to the protected products or services of intellectual property. In the case of lack of protection of intellectual property, it may lead to massive loss of customers, goodwill, and finance and cause an infringement on the Intellectual Property. A right-holder has been bestowed with the absolute right to prevent others from commercially using design, trademark, invention, literary or artistic work.

Depending on the Intellectual Property strategy of each company or SME, it can sufficiently license, trade, or sell its intellectual property in a bid to create more revenue. Every product or service that we use in our daily lives is a result of a long chain of small innovations. The different types of Intellectual Property Rights allow Small and Medium-sized Enterprises to own their creativity and innovation in the same way they can own physical property. Legal protection of new creations promotes further investments and leads to more innovations. The encouragement and protection of Intellectual Property stimulate growth leading to the creation of new jobs, new industries, and improvement in the quality of life. SME proprietors who have IPRs have an absolute set of rights in the market over their creations. For example, a patented invention allows a monopoly of twenty (20) years and means that a patent provides its owner with a right to prevent or exclude all others from commercially using it. SMEs, in almost every aspect of their improvement and strategies, are being assisted by IP. From product development to product design, from service delivery to marketing, and from raising financial resources to exporting or expanding business abroad through licensing or franchising.<sup>156</sup> Taxes raised through the sale of a product from SMEs or employees making in it provide a veritable tool for enhancing our nation's economy.

### 18. Raising Capital and Competitiveness through Intellectual Property (IP)

Intellectual Property-rich companies need to be very well-prepared when raising capital.<sup>157</sup>

The process of fundraising is overwhelming enough for an entrepreneur. However, it can even be more demanding for an entrepreneur to build highly innovative and often untested technologies for the market financing practices are gaining more and more attention as they provide alternative means to companies, mainly SMEs and start-ups, to fully exploit the value of their Intellectual Property assets.<sup>158</sup>

An IP owner may choose to license, assign or sell the rights to other enterprises in exchange for a lump sum, payments or royalties to generate additional income for the enterprise.

SMEs can raise their capital by licensing out their IP rights to a third party. The revenue resulting from licensing has the potential to increase the market value of an SME. An IP right can also be used as collateral to raise capital for an SME. Here, lenders will use an SME's IP asset to determine the creditworthiness of an SME. Another way for SME proprietors to acquire a better position to capitalize on the potential benefits of their IP assets and extract their full value is by conducting an IP.<sup>159</sup>

This entails identifying, monitoring, and valuing its SMEs' IP assets to ensure the company benefits from its IP asset. By so doing, SMEs will be able to make informed decisions regarding acquiring IP assets. Knowledge of its enterprise IP will assist an SME in deciding the type of IP rights to acquire and how best to manage the same. Auditing will also help SMEs when it comes to mergers and acquisition.<sup>160</sup> An IP audit can identify the company's IP portfolio and help to find the strength and weaknesses of IP assets. It allows the company to obtain potential areas and targets to acquire specific technology.

In recent years, there has been growing awareness that IP can be monetized.<sup>161</sup> IP can be sold, licensed, or used as collateral or security for debt finance. As an SME proprietor, it is essential to look after the IP of your SME not only as a legal asset but also as a financial instrument. An IP asset helps to strengthen an SME's case when obtaining business finance from investors.<sup>162</sup> The investor will access the innovative product service offered by the SME if it is protected by a patent, a utility model, a trademark, an industrial design or copyright, such protection is a good indication of the potential of an SME doing well in the market place.<sup>163</sup>

Different investors may value an SME's IP asset differently and may attach a different degree of importance to IP rights. However, as SME owners, proprietors must take steps to understand the commercial value of the IP assets of their SMEs, ensure their proper valuation and understand the requirements, if any, for their proper accounting.

In the new knowledge economy, competitiveness is increasingly based on a firm's ability to provide high-value-added products and services at a competitive price.<sup>164</sup> Globalization has made it crucial for SMEs to become internationally competitive even while competing in the domestic market.

In order to survive in a highly competitive market such as Nigeria, SMEs need to constantly improve their efficiency, reduce production costs and enhance their reputation by acquiring new technology, developing appealing designs, improving their marketing strategies, and investing in research and development.

<sup>156</sup> The right or license granted to an individual or group to market a company's goods or services in a particular territory.

<sup>157</sup> Ibid (n 87) accessed 21<sup>st</sup> March, 2022

<sup>158</sup> 'IP Assets for Financial Advantages, European IPR help desk'. <<http://ec.europa.eu/enterprise/initiatives>

<sup>159</sup> JM Garcia, Using IP to Raise Finance for Innovation. World Bank Publication No. 4(2014) p.3 accessed on 21<sup>st</sup> March, 2022

<sup>160</sup> Ibid (n 91) p.2

<sup>161</sup> Jaiya G.S (n 88) p.6

<sup>162</sup> Intellectual Property: A Tool for Economic Growth. <<http://www.mondaq.com>> access 21<sup>st</sup> March, 2022.

<sup>163</sup> 'Intellectual Property: Source of Innovation, Creativity, Growth and Progress'. <[www.ICCWbo.org](http://www.ICCWbo.org)> accessed on 23<sup>rd</sup> March 2022.

<sup>164</sup> FGC Salviati, Ibid (n 91).

It is of paramount importance that SMEs make a significant investment in IP in order to sustain their business. Without IP protection, there is a strong risk that investment will be wasteful. IP enables SMEs to have exclusive use over the exploitation of their innovative product, their creative designs, and their brands, thus creating an appropriate incentive for investing in improving their international competitiveness.<sup>165</sup>

Companies that dedicate time and resources to protecting their IP can increase their competitiveness in a variety of areas. IP protection through IPL will help prevent competitors from copying or closely imitating a company's product or services, avoid wasteful investment in research, development, and marketing, and create a corporate identity through Trademark and branding, strategy negotiating, licensing, franchising or other IP-based contractual agreement, increase the market value of the company, acquiring venture capital, enhancing access to finance and obtaining access to new markets. Technology and knowledge have played an essential role in the economic growth of major world economies like the UK and the USA and emerging economies like the BRICS countries made up of Brazil, Russia, India, and China.<sup>166</sup> Any nation concerned with its economic growth must pay attention to protection and enforcement of Intellectual Property Rights (IPRs). Conversely, non-protection of IPRs will force investors to take their businesses to other jurisdictions resulting in the loss of jobs and government revenue through non-payment of taxes.<sup>167</sup> IP has helped the living conditions of people with a major emphasis on a patent that deals mainly with inventions. It has helped in technological advancement and promoted trade. This, in turn, leads to wealth generation. In 2007, the federal government of Nigeria approved the registration of service marks by the then Minister of Commerce acting under powers in section 42(1) of the Trade Marks Act<sup>168</sup> to extend classifications of goods to include services. The legality of this has been challenged to question, i.e., whether regulations made by the Minister can amend the Act.<sup>169</sup> Considering recent developments, particularly in the entertainment industry, the Nigerian Movie Industry (Nollywood) is third only to Hollywood and Bollywood with the production of over 200 movies per month.<sup>170</sup> Sadly, Nollywood has continued to suffer some technical and quality issues relating to the protection of its work even some of the following organizations were created to preserve the standard, and intellectual property of their creators though attracts multi-million-dollar investment locally and internationally,<sup>171</sup> still some of these works are not protected. The National Agency for Food and Drugs Administration and Control (NAFDAC) was established to regulate and control foods, drugs, and related products imported or manufactured locally and distributed in Nigeria. The Standard Organization of Nigeria (SON) collaborates with NAFDAC to ensure substandard products are not brought into the country.

The National Office for Technology Acquisition and Promotion (NOTAP) is charged with registering agreements involving the transfer of technology. The NOTAP Act<sup>172</sup> makes it mandatory for parties to subject the agreement to Nigerian Law. Parties use skills available in Nigeria and only offer jobs to foreigners in specialized skills not found in Nigeria. The Nigerian Copyright Commission,<sup>173</sup> a creation of the Federal Legislature, is empowered to regulate the music, artistic and literary creations. The Nigerian Broadcasting Commission<sup>174</sup> regulates the broadcasting sector. The Registry of Trademarks, Patents, and Design regulates the filings of trademarks, industrial designs, and grants of patents in Nigeria.

The awareness and importance of taxation and intellectual property and its laws tend to create and position enlightened individuals or corporations with the much-needed knowledge of the rights embedded in these laws to take an advantaged position for their benefit. Competitiveness has been identified as one of the yardsticks for countries to be involved or participate in the global economy, and this is because it serves as a tool for ensuring best practices in commerce. Thus, where there is competitiveness, the best of the tax applications, IP works, or dealings of various corporations in that country are achieved against another country. Competition flows from the protection of tax and IP laws which can be derived or applied to a majority of employed populations that are engaged in SMEs in Nigeria.

Therefore, there has to be sustainable funding for SMEs outside the low payment of government employees if meaningful development is to be attained.

The management of an SME's asset goes beyond just acquiring the formal IP rights to the proper tax administration to bring about effective assessment and collection of relevant tax from taxpayers. Obtaining IP protection is crucial to the growth and development of an SME. An SME's ability to commercialize its inventions, market its brands, license its technological know-how and effectively monitor and enforce its IP rights will bring about a fast and booming business from which tax liabilities can arise in favor of the nation's growth.

The Level of awareness in relation to our recognition, acceptance, level of thinking, and approach to handling issues of SMEs in Nigeria are not properly structured. Therefore, labor intensive, dependence on one key stream of income or none, low capacity in management, technological know-how, and marketing strategy exist in large form. When SME's proprietor's rights are infringed, they do nothing about it because they are not aware of their intellectual property, its laws, or the rights embedded in such intellectual property, which could be to their advantage also. They are also not aware

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<sup>165</sup> Ibid.

<sup>166</sup> Salviati, F.G.C., Ibid (n 91).

<sup>167</sup> Ibid

<sup>168</sup> Cap T 13, L.F.N. 2004.

<sup>169</sup> Ibid

<sup>170</sup> <<http://en.wikipedia.org/wiki/cinema-of-Nigeria>> accessed on 23<sup>rd</sup> May 2022

<sup>171</sup> Ibid.

<sup>172</sup> NOTAP Act, Cap N. 62, L.F.N. 2004.

<sup>173</sup> Established by the Nigerian Copyright Act Cap N. 97 L.F.N. 2004.

<sup>174</sup> Established by Nigeria Broadcasting Commission Act, Cap N. 11 L.F.N. 2004.

of the many reliefs or deductions, or incentives available to them for pioneering invent on certain products. This low level of awareness has resulted in the dearth of case laws on the subject matter.

SMEs in Nigeria are also burdened with a multitude of problems, such as a lack of an enabling environment in terms of poor or non-existent infrastructure and low technological advancements like accessible road networks, internet networks, lack of water supply, epileptic power supply, and access to finance. It also relates to the government's reluctant approach to policy enunciation, poor implementation of the policies, and enforcement of IP laws.

### 19. Growing Support for Nigeria SMEs

The secret behind the success of a self-reliant strategy is mainly in people's positive attitudes to enterprise and in the extent to which the right incentive is adequate enough to make risks worth taking than in any particular political philosophy. In the early stages of Japan's industrialization, her economy was dominated by a large number of small-scale enterprises, which drew their strength not from an abundance of capital but from her vast supply of labor, and the abundant advantages of small-scale industries.

Nigerians need to learn from Japan's experience. Nigeria should try and develop its IP-based industries in the production and distribution of goods and services, which are at the commanding heights of the global economy.

China has shown support for economic cooperation with Nigeria. One area that has benefitted from this collaboration is the small and medium enterprises sector.<sup>175</sup> The Chinese Government has also shown interest in increasing its economic relations with Nigeria in the last 10 years.<sup>176</sup> In 2018, China Development Bank (CDB) and United Bank for Africa (UBA) Plc signed a \$ 100 million seven-year loan agreement to finance the development of small and medium enterprises (SMEs) in Africa. The loan enhanced UBA's capacity to provide access to finance to small and medium enterprises (SMEs) across the 19 African countries where UBA operates.

While signing the agreement, Chairman UBA Plc, Tony Elumelu, said the fund would boost small and medium-scale enterprises across Africa, noting that CDB'S Interest in supporting SMEs aligned with UBA'S vision in growing businesses across Africa. According to Elumelu, in UBA, CDB would have an enduring partner in reaching out to Africans as UBA provides banking services to over 14 million people across 20 African countries, and like CDB, UBD funds critical infrastructural projects on the continent.

He said he looked forward to an even stronger relationship growing between China and Nigeria.

The President of CDB, Zheng Zhijie, said the beginning of cooperation between UBA and CDB would translate into an enduring business relationship between China and Africa and Nigeria in particular.

This year, CDB has provided financial support for specialized and sophisticated small and medium enterprises (9 SMEs) in the country.

A total of 13.1 billion yuan (\$1.84 billion dollars) in loans was granted in the first three quarters of 2022. The loan was to support the high-quality development of 115 specialized and sophisticated SMEs that produce novel and unique products. CDB has a work plan for special loans and supportive policies to comprehensively improve the level and capacity of refined financial services. The bank has also rolled out preferential policies for specialized and sophisticated SMEs that produce novel and unique products to further lower their financial costs.

At the year 2022 Stanbic IBTC African-China Expo, the Chinese Consulate General Lagos Guo Pengwen emphasized the Chinese Government's readiness to work with all the countries to build an open world economy.<sup>177</sup>

China and Nigeria, as the important economies in Asia and Africa, need to share trade cooperation to benefit the people of the two countries.

China is a huge market with a population of over 1.3 billion. In the coming 15 years, China's imports of goods and services are expected to exceed \$ 30 trillion and \$ 10 trillion, respectively. Analysts believe this presents enormous opportunities for countries worldwide, including Nigeria, to explore.

With the setting up of the Nigerian export trade house and warehouse in China, Nigerian exporters are better guided on logistics and marketing.

The import-export lag, issues of reforms, and the inability to utilize the key potentials as China has done are challenges for Nigeria. There is a need for reforms to drive export growth which will ultimately enhance disposable incomes.

Abimbola<sup>178</sup> noted that Nigeria was in a situation whereby imports from China were three times the exports to China, and productivity will be growing slower than output. Also, while the population is growing at the rate of three to four percent, the output is growing less than 1 percent.

To access the China market, Samuel Oyeyipo<sup>179</sup> urged SMEs to ensure they meet all necessary certification requirements of counterpart countries.

Most exporters, or MSMEs, in Nigeria have products that can compete in the international market. However, one of the issues noticed by the NEPC was that most of them do not have the necessary certification to attest to the quality of the products because MSMEs being weak in the capital, cannot afford these certification.<sup>180</sup>

<sup>175</sup> Growing China Support for Nigeria SMEs, others. P. 11 Also available at <https://thenationonlineng.net/growing...> Daniel Essiet report The Nation, Tuesday, November 15, 2022s

<sup>176</sup> Ibid

<sup>177</sup> Ibid

<sup>178</sup> Fola Abimbola, Senior Consumer Analyst, Stanbic IBTC

<sup>179</sup> The Regional Coordinator (South West) Nigerian Export Promotion Council (NEPC),

<sup>180</sup> Ibid

In confirmation of this, the Ambassador of China to Nigeria, Mr. Cul Jianchun, was quoted as saying <sup>181</sup>, “We are committed to mutual benefits and win-win results, and work together to promote economic and social development for the greater benefit of our people.”

One vehicle that China has used to promote business relationships with both countries is the China International Import Expo (CIIE) which has been held regularly in November in Shanghai, where more than 40, 000 Chinese and foreign buyers meet there to explore business deals. The value of potential deals resulting from the nearly weeklong event is believed to be in excess of \$ 50 billion.<sup>182</sup>

China holds CIIE to widen its market access to the rest of the world and to support economic globalization. Since the inception of the event in 2018, the world’s largest import fair has provided a big opportunity for companies from developing countries to export their products to the Chinese market. Because of its central role in promoting China’s continued integration into the global economy, CIIE has received much attention from Africa, with participation from the continent increasing over the years.<sup>183</sup> Nigerian firms have attended the exhibition and featured products, such as Adire. This year, the International Trade Center (ITC) brought almost 70 micro, small and medium-sized enterprises from 31 developing countries in Africa, Asia, Latin America, and the Caribbean to participate in CIIE.<sup>184</sup> The 67 small businesses promoted food and agricultural products, consumer goods, and service offerings at the Enterprise and Business Exhibition. ITC Executive Director Pamela Coke Hamilton said: <sup>185</sup>

*“The China International Import and Expo provide an unparallel platform for small businesses to connect with the Chinese market. We are supporting 67 small companies to participate in the China International Import Expo. It carefully selected these companies and worked with them to ensure their quality and capacities meet the requirements of the Chinese market.”*

ITC’s contribution to CIIE is part of a long-term partnership with China to support South-South cooperation and trade competitiveness, focusing on least developed countries in Africa, Latin America, the Caribbean, and Asia.

## 20. Recommendations

To effectively curb the menace of IP theft and premature death of SMEs as well as help intellectual property in the growth of SMEs, it is recommended in respect of IPS that:

- There should be a proper review and amendments of IP laws in Nigeria by the enabling body. Where the legislature and enabling bodies review the intellectual property law, the possibility of an amendment is inevitable. This is because there are present trends and issues which arise daily, and it would be in the interest of justice and every intellectual property owner that the aim of the intellectual property law is wholly achieved.
- The government should introduce regular training of IP personnel to be abreast with international best practices.
- Domestication of important WIPO treaties on IP rights- There are international conventions and treaties regarding intellectual property that have been ratified but not domesticated because of the provisions of Section 12 of the constitution, which is to the effect that the National Assembly has to endorse those international treaties else they would not be applicable and their usage would not be feasible. Where their changes and where the National Assembly domesticates these international treaties, it opens up the country to a new level of exposure, advantage, and opportunities as the intellectual property of the country would no longer be limited to just its affairs but a global affair.
- Appointment of IP experts and professionals to key offices to implement IP policies- It is of great importance that personnel who are sound in the field of intellectual property take center stage and handles key positions to help implement policies, as they are in the position to do so more than anyone due to their level of understanding and awareness of the said concept.
- Enforcement of IP laws and effective prosecution of counterfeiters- Appropriate and effective enforcement of these laws is one key factor that would help in the reduction of counterfeiting as well as infringement of the intellectual property rights of owners.
- When individuals see how strong the enforcement bodies are and how seriously they take the matters of counterfeiting and infringement of individual rights, the willingness to commit an offense as it relates to intellectual property will not come into question.
- Government should ensure that IPRs are available and enforceable at a reasonable cost. It is discouraging enough that individual owners are not aware of the rights embedded in their intellectual property. However, it is more discouraging when they know about their rights but cannot have the rights enforced because of the high cost of litigation to those who can barely afford it. This would be of no use where there are intellectual property rights, and those rights cannot be enjoyed because of the inability to sue for such rights.
- Through the trademark and patent offices, the government should institute outreach programs for SME proprietors to raise awareness about the importance of acquiring IP rights, improve SMEs’ IP asset management and increase opportunities for them to engage with IP officials. This is because so many intellectual property

<sup>181</sup> The 5<sup>th</sup> China International Import Expo Enterprise and Business Exhibition. [http://in.china\\_embassy.gov.cn/sggg](http://in.china_embassy.gov.cn/sggg)

<sup>182</sup> Ibid

<sup>183</sup> Daniel Essiet op.cit.note

<sup>184</sup> Ibid

<sup>185</sup> Pamela Coke Hamilton e-attendance at the China International Import Expo ITC @ China International Import expo(CIIE) <https://intracen.org/taxonomy/term>  
<https://www.Facebook.com/videos>

rights owners are not even aware of the fact that they have rights or that intellectual property is protected. This has led to the unavailability of outstanding cases.

- The government should assist SMEs by providing infrastructural facilities and social amenities like; accessible road networks, constant water supply, regular electricity, and efficient communication. This is for small and medium-sized enterprises.
- Government should create awareness programs to enable SMEs to make informed decisions on how to exploit their innovative and creative potential using the IP system.
- Government should improve the policy framework and business environment to make it conducive and easier for SMEs to use the IP system. An acceptance and total recognition of intellectual property and its laws by the government through specific provisions would help present a conducive business atmosphere, and this would lead to the individual rights owners feeling safe and confident that they have their rights fully prepared just in case they may be an infringement of those rights.
- SMEs should also integrate IP into the company's business strategy.
- SME proprietors should ensure trade secrets are kept within the enterprise and prepare, where necessary, a confidentiality agreement.
- SMEs that have acquired IP assets should make sure they pay a maintenance fee on time.

Government should create empowerment programs for SMEs to access not just financial support but entrepreneurial education that gives an effective and enduring strategy for solving the capital problems of SMEs. A very solid issue of small and medium-sized enterprises is the inability to raise capital or means of sustaining their business. In as much as there are bodies designed to give financial support after the due process has been followed, it is essential that there is entrepreneurial education for each individual on how to go about their skill or intellectual property to raise capital and sustain their business.

Government should consider enacting policies that support the provision of insurance for SMEs to offset the cost of litigation associated with defending their IP right.

Since the other aspect of this research is to assess tax compliance of small and medium-sized enterprises in Nigeria, the study identifies factors of tax compliance of SMEs in Nigeria and seeks to establish the relationship between tax knowledge and tax compliance.

## 21. Conclusions

The following conclusions are drawn based on the findings of the study. It is concluded that despite the evidence that the level of tax knowledge of owners/managers is low, some owners/managers have moderate knowledge of taxation. The owners'/managers' knowledge of employment income, business income, and tax reliefs are moderate and can be improved upon with further education and training. It is paramount that owners/managers do moderately know their rights and responsibilities regarding the declaration of all sources of income.

It is concluded that the complexity of the tax system is a major factor contributing to the non-compliance of SMEs in relation to the nature of the tax returns and the cumbersome nature of the tax laws and regulations. Furthermore, the perception of government spending and the level of business profit (declining profit) also contribute to non-compliance. However, the level of tax rates has little impact on non-compliance. The introduction of self-assessment on businesses has not improved the compliance level of SMEs since the tax system has not been made simple to encourage businesses to voluntarily comply with the tax laws. The level of education and training is inadequate to improve their compliance levels, and the tax authority has been guiding and examining businesses on bookkeeping. There was a relationship between tax compliance and tax knowledge. It was further concluded that policy decisions should be focused on increasing taxpayers' knowledge about awareness of offences, penalties, and fines since an improvement on that would increase tax compliance of SMEs.

IP has become the most powerful tool SMEs can use to survive and grow in today's highly competitive business environment. SMEs are beginning to realize that intangible assets are becoming more valuable for the competitiveness of a business. Therefore, SMEs should take reasonable steps to legally protect their intangible assets by acquiring and maintaining IP rights.

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