



Intellectual Property, SMEs, and Economic Recovery in Nigeria

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1.1 Introduction

Think of Abike, a 23-year-old graduate of banking and finance that lost her job in the banking sector, one month after the first COVID-19 case was reported in Nigeria. Imagine that, after being unable to find a job as 'no one was hiring' in that period, Abike picked up a skill in fashion designing and branding. Consider that despite the odds being against her, she finally set up her fashion brand – 'ABK, *The She Brand*' at the end of the year. Abike, being an embodiment of creativity develops her unique fashion model – '*The Go Corporate, Slayñ 8*', one dress that can be worn in 8 different styles. Her unique designs are gaining popularity as she receives an average of 45 unique orders daily on Instagram. Abike knows that she needs funds to scale up her brand, but she has no idea how to generate capital. Her main focus is on getting the best retail space and

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attracting the right talents to help scale up production. She however does not realize she holds Intellectual Property (IP), which if applied rightly can help her upscale and maximize profit.

To you, this may be just Abike's story, but realistically, it is the representation of many average Nigerian entrepreneurs and startups. Many of these startups continue to weave innovation and ingenuity together, and yet are unable to maximize profit and contribute substantially to the Nigerian economy. According to a survey conducted by PwC Nigeria,¹ Small and Medium-sized Enterprises (SMEs) contribute 48% of national GDP, account for 96% of businesses and 84% of employment. Regardless of the seemingly significant contribution of SMEs to the Nigerian economy, there are yet still challenges that hinder their growth and deter maximum contribution to the economy.² These challenges largely border around lack of capital, revenue generation, and lack of awareness of important business areas like IP.

In addressing the challenges of SMEs, it is pertinent to state that SMEs can leverage IP to scale through some of their most unique challenges. Aptly defined by WIPO, IP refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce. Under the extant Nigerian legal regime, IP is protected by way of trademarks, patents, copyrights, and industrial designs.³ Referring to Abike's story above, the aesthetic and ornamental aspect of her '*Go Corporate, Slayñ 8*' fashion model will be protected by registration of the industrial designs.⁴ Her distinctive brand name and logo, '*ABK's The She Brand*' will be registered as a trademark.⁵ She can also register copyright over unique artistic aspects of her

¹ PwC. Nigeria SME Survey. Accessing Current Market Conditions and Business Growth Prospects. Retrieved from: <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html>

² Retrieved from: <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html>

³ See generally, Copy Right Act (as amended), Cap. C28, Laws of the Federation of Nigeria 2004, Patent and Design Act Cap. P2, LFN 2004, Trademarks Act, Cap. P13, LFN 2004

⁴ Section 12, Patent and Design Act, Cap. P2, LFN 2004

⁵ Section 9 and 10, Trademarks Act, Cap. P2, LFN 2004

model.⁶ Imaginatively, yet subject to examination, the unique ability to wear her dresses in 8 different senses, could mean that she also obtains a utility patent which is a patent that covers the creation of new or improved products.⁷

This essay seeks to establish that SMEs can boost business profitability and sustainability through the use of IP and ultimately contribute more to the economic recovery, during this post-COVID era.

1.2 The Role of Intellectual Property in Supporting SMEs and Ultimately Enhancing Nigeria's Economic Recovery

It is an incontrovertible truth that the Nigerian economy has sustained severe setbacks, following the pandemic and several months of lockdown. According to the Nigerian Bureau of Statistics, the economy had contracted by 6.1% in the second quarter of 2020; making it Nigeria's steepest in the last 10 years.⁸ Many Nigerians lost their jobs and are still losing their jobs since the pandemic hit, unemployment rate rose from 27.1% in the second quarter to 33% in the fourth quarter of 2020.⁹ In a bid to avoid living below the poverty line, Nigerians have found alternative means of generating income through creativity and innovation, hence living out Plato's allusion, '*Necessity is the mother of invention*'. SMEs have continued to emerge from even the remotest parts of the nation with some of the most unique ideas. In light of this, IP plays a significant role in supporting SMEs to fast track economic growth.

⁶ Section 1, Copy Rights Act, Cap. 28, LFN 2004

⁷ Sections 1 and 2, Patent and design Act, Cap. P2, LFN 2004

⁸ Kazeem, Y. (2020). Here's How COVID-19 ha battered Africa's largest economy. World Economic Forum. Retrieved from: <https://www.weforum.org/agenda/2020/08/africa-largest-economy-worst-contraction-in-a-decade/>

⁹ National Bureau of Statistics (2020). Labour Force Statistics: Unemployment and Underemployment Report (Q4 2020). Retrieved from: <https://nigerianstat.gov.ng/elibrary>

1.2.1 IP, Capital and Revenue Generation and Economic Recovery

The National Bureau of Statistics reports that less than 5% of SMEs have been able to access adequate finance for their working capital and business expansion.¹⁰ This is sad because, without finance, businesses are less productive and incapable of aiding economic recovery. It is thus important for SMEs to leverage their IP rights in a bid to access capital. To put things in perspective, SMEs with registered and identifiable IP are very attractive to potential investors. This is because, the value of an IP asset, though intangible, increases over time as the business grows. In fact, as remarked by Startups magazine, IP is often the most valuable asset of a business.¹¹ This explains why investors like the Tony Elumelu Foundation and Verod Capital have invested funds into startups with registered and identifiable IP rights.

Also, SMEs can secure debt finance from financial institutions in the form of loans, using IP assets as collateral. This **securitization of IP assets** is an unconventional yet recommended option for SMEs, especially in Nigeria, where there has been proven reluctance to implement this idea. Realistically, when valuable IP assets are collateralized, they provide an incentive for borrowers to honor repayment commitments. Such collateralized IP assets also provide an additional source of security that is directly related to a company, thereby making it easier to recover funds if necessary.¹² Either way, SMEs can leverage this to secure finance for their operation and role in the economy.

It is not just enough to generate capital, IP rights also aid SMEs to generate revenue from their creative products, which can be applied towards expansion or more innovation. Primarily,

¹⁰ Agbeyi, E., Nevin A. S., Adenuga O. (2020). PwC's MSMEs Survey 2020: Building to Last, Nigeria Report. Retrieved from: <https://www.pwc.com>

¹¹ Stevens, F. (2020). Pivoting your startups can impact your IP: here's how. Startup Magazine: United Kingdom. Retrieved from: <https://startupsmagazine.co.uk/article-pivoting-your-startup-can-impact-your-ip-heres-how>

¹² Looking Good: An Introduction to Industrial Designs for Small and Medium sized Enterprises. WIPO publication No. 498. Retrieved from: <http://www.wipo.int/ebookshoop>

businesses with registered IP can thrive favorably in a competitive market, where there is regard for their creativity, and pecuniary incentives operate. Overall, with acquired capital and revenue, there will be expansion, more employment, availability, and general economic growth.

1.2.2 Intellectual Property, Licensing, Brand Proliferation and Economic Recovery

IP licensing is an agreement where the owner of IP retains ownership of patents, copyrights, trademarks and designs while giving another party permission to use some or all of these rights for a specific period of time for a fee.¹³ IP licensing includes franchising and merchandising. Licensing makes room for entrepreneurs who cannot afford the cost and hurdle of a new business to leverage existing goodwill. Additionally, it provides an avenue for licensors to generate revenue significantly from their viable IP. In this case, there is a proliferation of businesses in a competitive environment, more employment, more value delivery, and ultimately a route towards economic recovery. For instance, Chicken Republic offers its Nigerian franchisees a strong brand image, assistance with selection and property development, and strong marketing support.

Cross licensing of IP is a unique means of creating synergy amongst two enterprises with valuable products, thereby boosting economic recovery. For instance, if Abike's Brand gives license over some aspects of its IP rights, in exchange for the license over that of another business brand, the brand may be able to increase its product line, extend customer base, create more jobs and contribute more to economic growth.

¹³ Priori. Intellectual Property Assignment Agreement and Licenses. Retrieved from: <https://www.priorilegal.com/intellectual-property/intellectual-property-assignment-agreements-and-licenses>

1.2.3 Intellectual Property, Mergers and Economic Recovery

Many businesses either failed or are at the brink of failure due to the pandemic. In a study of 737 brick and mortar businesses, 64 of them had shut down following the pandemic.¹⁴ This downturn leaves businesses with the desire to sustain themselves through mergers and acquisitions (M&A). Businesses with viable IP are attractive for potential M&A. For instance, when Zinox acquired Konga in 2018, they retained 'Konga' as the brand name because of the value and goodwill associated with the trademarked name. Businesses must also have a good IP portfolio to attract acquisition by International firms, Just like Stripes' acquisition of Paystack.

There is a roadmap towards economic growth when businesses leverage their IP to secure a merger or acquisition. In this instance, a struggling business can be revitalized, employees ideally will not be laid off, running cost is perhaps reduced, and businesses can combine resources to grow organically and increase revenue.

1.3 Conclusion

Prof. Yemi Osinbanjo (GCON) puts in perspective the position of SMEs in the Nigerian economy in his assertion that, 'MSMEs are the bedrock of Nigeria's industrialization and inclusive economic development; and the most important component of industrialization set out in the Economic recovery and growth plan'. SMEs are thus, the automobiles that convey nations toward sustainable development and possible alleviation. The growth of SMEs in Nigeria translates to increased employment, poverty alleviation, infrastructural growth, and local production. IP in turn plays a very significant role in supporting SMEs, and ultimately revitalizing the crippling Nigerian

¹⁴ Noggle E. (2020). MSMEs in Lagos Struggle Due to COVID, But Remain Positive. Center for Financial Inclusion Survey. Retrieved from: <https://www.centerforfinancialinclusion.org/msmes-in-lagos-struggle-due-to-covid-19-but-remain-positive>

economy. This role can be achieved when SMEs become aware of their IP rights. This will translate to revenue generation and access to capital, proliferation of businesses, and revitalization of failing businesses. Nigerian financial institutions must also embrace the international best practices of securitization of IP Asset. It is in doing so that SMEs will be able to facilitate economic recovery.