

**THE LAW AND PRACTICE OF PROTECTION OF INDUSTRIAL DESIGNS IN NIGERIA**  
**BY**  
**EKPA, FRIDAY OKPANACHI\***

**1.0 INTRODUCTION**

To state that design is crucial for the success of a product is generally, stating the obvious. Hence, companies are using intellectual property laws in an effort to protect their industrial designs.

Industrial designs are what make a product attractive and appealing; hence, they add to the commercial value of a product and increase its marketability. When an industrial design is protected, this helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices.

A look at the Apple/Samsung iPad design war in the United State of America (US) is apposite at this juncture to underscore the importance of designs to products. In *Apple, Inc. v Samsung Electronics Co., Ltd.*, Apple failed to get a preliminary injunction because the court doubted the validity of Apple's design patent due to possible lack of novelty.<sup>1</sup> On the other hand Apple was successful in her Community design law suit in Düsseldorf, Germany, where the company has been granted a preliminary injunction against Samsung's Galaxy, barring all distribution of its allegedly infringing tablet in the entire EU except for the Netherlands.<sup>2</sup>

To appreciate the whole brouhaha about the above design war, some pertinent questions come to the fore: Why do you think that people pay a lot of money for these kinds of products? Is it because of the reputation of the company(ies) producing them? Or because people want to belong to the customer group that use them? Or because of the quality and functionality of the products? Could it be because of their appealing designs? The answer will depend on the circumstances of each case. But it is very likely that many or even all of these reasons affect the customer's purchase decision.

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\* LL.B (Hons), LL.M, BL, Lecturer in the Department of Jurisprudence & International Law, Faculty of Law, Kogi State University, Anyigba, Nigeria. E-mail: ekpalaw@gmail.com

<sup>1</sup> *Apple, Inc. v Samsung Electronics Co.*, [2011] No. 11-cv-1846 (N.D. Cal. Dec. 2, 2011); The US Court of Appeals for the Federal Circuit, however, recently declared that the District Court erred in its analysis of the validity issue. The court remanded for findings on the balance of hardships and the public interest; *Apple, Inc. v Samsung Electronics Co., Ltd.*, F.3d, 2012 WL 1662048 (Fed. Cir.).

<sup>2</sup> *Apple, Inc. v Samsung Electronics Co., Ltd.*, [2011] 14c O 194/11 (District Court of Düsseldorf 2011). The injunction did not include the Netherlands since at the time there were separate proceedings under way.

Customers today have a broad range of products to choose from and most customers base their buying decision not only on the functionality or quality of the product but also on its design. The iPad example perfectly illustrates what a modern customer finds appealing: simple and elegant design adorned with little or no ornamentation. These products enjoy a high reputation, which primarily derives from the fact that customers perceive them as embodying the perfect combination of functionality and appearance.<sup>3</sup> At the same time, industrial design is increasingly important for a company's success. Not only does it define the visual appeal of the product itself, but also has an essential impact on its competitiveness and commercial success within a certain market.<sup>4</sup> From a company's point of view, design is often considered as a strong marketing tool, and from a consumer's perspective, it allows product differentiation as well as "socio economic differentiation among the consuming public".<sup>5</sup>

Going by our earlier example, Apple probably made sure to protect their designs with as many layers of intellectual property rights as possible. The crucial question, however, is: what form of protection are simplistic designs like those by Apple eligible for? Further, what kind of protection is most effective?<sup>6</sup>

The answers to these questions are different in each case and jurisdiction. Industrial design protection is debated all around the world, and different jurisdictions offer different approaches. Their common denominator is that legislators and courts see the need to offer protection for industrial design. But especially when it comes to simplistic design having little or no ornamentation, there is a lot of controversy as to whether and under which intellectual property laws protection can be granted. Modern designs are often created in such a way that the "form (i.e. design) follows the function".<sup>7</sup> From a designer's perspective this may bring disadvantages in effectively protecting their work, since legislators and courts are traditionally rather reluctant to offer protection to designs under trademark or copyright law. This reluctance is based on the assumption that the purpose of these laws does not really include design protection.

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<sup>3</sup> Di Rienzo, J. 1993. Design Innovation and Technology Act of 1991: Effective Protection for the Aesthetic Aspects of Useful Articles, *Journal of Legislation*, pp. 79-95. at p.79.

<sup>4</sup> Suthersanen, U. 2010. *Design Law: European Union and United States of America*, 2<sup>nd</sup> edition. Sweet and Maxwell, London. pp.4-5.

<sup>5</sup> Ibid. at p. 4.

<sup>6</sup> Schickl, L. Protection of Industrial Design in the US and in the EU - Different Concepts or Different Labels? Available at <http://www.atrip.org/Content/Essays/Edited%20version%20paper%20Lena%20Schickl.pdf> accessed on 28/3/2014.

<sup>7</sup> Afori, O. 2007-2008. "Reconceptualizing Property in Designs", *Cardozo Arts & Entertainment*, Volume 25, Issue 3, pp. 1105-1178. At p. 1105, p. 1122.

Hence, jurisdictions have proffered protection in diverse ways, for instance, the Community Design Laws in the EU, Design Patent Act in the US and the Patents and Designs Act in Nigeria, etc.

This paper will attempt to bring to the fore the system of protection for Industrial Designs in Nigeria, and to bring to light International Instruments for the protection of Industrial Designs. The paper shall further make recommendations arising from findings the application of which is believed will enhance our system of protecting Industrial Designs.

## **2.0 MEANING AND NATURE OF INDUSTRIAL DESIGN**

Industrial design is easy to describe but hard to specifically define. It can be described as merely ornamental and suggest a component that is separable from the product itself, but it can also be a functionally irremovable element of the product. In any case it is usually neither purely artistic, since it is always aligned with the function and technology of the product, nor is it purely functional.<sup>8</sup>

Due to this natural ambiguity<sup>9</sup> or hybrid nature of industrial design, it is difficult to classify industrial design within existing intellectual property laws.<sup>10</sup> It seems plausible to consider it as artistic creation, but it can also imply a functional solution, and/or it can stand for a particular company. Depending on the industrial design, it can, therefore, have much in common with classical intellectual property rights, namely copyright, utility patents, and trademarks.<sup>11</sup> Legislators have to decide whether industrial design can be sufficiently protected under copyright, trademark, unfair competition, and patent law, or whether *sui generis* protection is needed.

The definition of industrial design is crucial for that decision. Unfortunately, legislators have not agreed on a generally applicable definition of “industrial design”. In traditional legal terms it is described as the external appearance of articles.<sup>12</sup> The US Patent and Trademark Office (USPTO) uses a much stricter definition. As a result, in the US, industrial design “consists of the visual

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<sup>8</sup> Heskett defines industrial design as: “a process of creation, invention and definition separated from the means of production, involving an eventual synthesis of contributory and often conflicting factors into a concept of three-dimensional form, and its material reality, capable of multiple reproduction by mechanical means” Heskett, J. 1980. *Industrial Design*, (1st Edition). London: Thames & Hudson, p. 10.

<sup>9</sup> Suthersanen, 2010 op. cit p.18.

<sup>10</sup> Reichman, J. 1992. Design Protection and the Legislative Agenda, *Law and Contemporary Problems*, Volume 55, Issue 2, pp. 281-296. p. 281, p. 287.

<sup>11</sup> Afori, 2007-2008, op. cit. pp. 1107-1108.

<sup>12</sup> Ibid. p. 1107.

ornamental characteristics embodied in, or applied to, an article of manufacture”.<sup>13</sup> Within the EU, however, industrial design is defined as “outward appearance of a product or part of it, resulting from the lines, contours, colors, shape, texture, materials and/or its ornamentation”.<sup>14</sup> Furthermore, in Nigeria, Industrial Design is defined as:

Any combination of lines or colours or both, and any three – dimensional form, whether or not associated with colours, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended to obtain technical result.<sup>15</sup>

As a result of this differences, an appearance that is legally defined as design in the EU does not necessarily constitute a design in US or Nigerian legal terminology. The Nigerian definition to our mind however, seem to capture both the US and the EU definitions.

This difference in defining design is also reflected in the different forms of protection in each jurisdiction. While the US design patent is based on Utility Patent Law, the EU and Nigeria have introduced a freestanding sui generis form of protection, the Community Design and Patents and Design protection respectively. The difficulty in defining Industrial Design came to light in the Nigerian case of *SERG aims Aluminum Products Ltd. v. Stanley Akagba & Ors*<sup>16</sup> wherein the Defendant contended that ranges and dimensions were not protected under the Patents and Designs Act and that they were free materials to which the Plaintiff could not lay claim as the creator. Egbo-Egbo, J. held as follows:

Unfortunately, I do not subscribe to such general view. It is obvious ranges and dimensions make up what we call designs. If these designs have been registered in Exhibits B-B1, it is legally wrong for the Defendant to copy them. It is the invention of the author, in this case the Plaintiff, which the law seeks to protect when such inventions are registered. To copy them into its almanac and advertise it is a violation of the Plaintiff’s rights.

### **3.0 OVERVIEW OF INTERNATIONAL INSTRUMENTS ON INDUSTRIAL DESIGNS**

Intellectual property rights are subject to a number of international treaties such as TRIPS, the Berne Convention, and the Paris Convention. With respect to industrial design, however, there has

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<sup>13</sup> See USPTO, Design Patent Application Guide.

<sup>14</sup> See Art. 3 CDR.

<sup>15</sup> See section 12 of the Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria (LFN), 2004 (hereinafter called the Nigerian Act).

<sup>16</sup> (1994) FHCS 188.

always been a lack of international agreement that clearly determines its legal protection.<sup>17</sup> One possible reason for this might be the ongoing debate about the nature of design. As mentioned above, different jurisdictions classify industrial design differently. The classification, however, is essential for determining which international treaty covers the subject matter of industrial design protection.<sup>18</sup>

### **3.1 The Berne Convention**

The Berne Convention became effective in 1886 and was the first major international copyright treaty. Art. 2 (1) of the Berne Convention provides a non-exclusive list of works protectable under copyright law. Industrial design is not specifically regulated in the Berne Convention but might fall under the concept of “applied art” that is not further defined in the convention. According to Art. 2 (7) of the Berne Convention it is in the discretion of the signatory states whether they want to protect industrial design as applied art, and if so, to set the conditions of protection.

Interestingly, however, the Berne Convention concludes that industrial design should be protected as artistic work, and therefore under copyright law, in the event that the signatory state’s laws are silent as to the form of protection offered for industrial design. As a result, in case of doubt, industrial design should be protected under copyright law.<sup>19</sup> This, in the view of this writer, is to rather err on the side of abundance.

### **3.2 The Paris Convention for the Protection of Industrial Property**

The Paris Convention was the first international treaty that regulated patents. It was signed in 1883 and was last revised in 1967. Unlike the Berne Convention, the Paris Convention directly addresses the protectability of industrial designs. Art. 5 of the Convention sets forth that “industrial designs shall be protected in all the countries of the Union”. Contrary to the rule of doubt in favor of copyright protection set forth in the Berne Convention, industrial design is categorized as *industrial property* in Art. 1 (2) of the Paris Convention. This suggests a more patent-like protection. However, the Paris Convention does not provide any regulations about the subject matter, the requirements, or the scope of protection, which has left so much to be desired.

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<sup>17</sup> Suthersanen, 2010, op. cit p. 28.

<sup>18</sup> Ibid.

<sup>19</sup> See Schickl, L. Protection of Industrial Design in the US and in the EU - Different Concepts or Different Labels? Op. cit.

### **3.3 The TRIPS Agreement**

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) became effective in 1994 and is administered by the World Trade Organization (WTO). It imposes minimum standards for the protection of intellectual property in general. However, only two provisions of TRIPS directly refer to industrial design protection. Art. 25 TRIPS sets forth the requirements for protection, whereas Art. 26 TRIPS defines the scope of protection. According to Art. 25 (1) of TRIPS member states are required to protect certain types of industrial design:

Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

Although TRIPS gives some guidance as to the requirements of protection (independently created, new or original), it does not provide a definition of industrial design or the subject matter constituting industrial design. TRIPS adopted both the Berne and the Paris Conventions but did not take a position as to their different classifications regarding the nature of design protection. It remains unclear, therefore, what type of protection should be applied to industrial design by the member states. The “independent creation” as well as the “originality” requirement seems to point to copyright protection; whereas the novelty requirement might refer to patent-like protection or a *sui generis* design regime.<sup>20</sup>

Since TRIPS did not settle the dispute about the nature of protection and only guarantees a minimum standard, member states are still relatively free in drafting their national laws in such a way as to match their local objectives.<sup>21</sup>

### **3.4 The Hague Agreement**

The Hague Agreement was first concluded in 1925 and consists of several individual treaties. It was last revised in 1999 with the adoption of the Geneva Act. The Hague Agreement’s purpose is to simplify registration of industrial designs for several countries. Therefore, it provides an international deposit system that allows national design proprietors to obtain protection in all member states by filing one application and depositing one sample. The eligibility for and scope of

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<sup>20</sup> Suthersanen, 2010, op. cit. at p. 42

<sup>21</sup> Reichman, 1995, op. cit. p. 375.

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protection, however, are subject to the national laws of the member states in which protection is sought. As a result, it can be concluded that the international legal framework does not give sufficient guidance as to the definition of design and the nature of protection.<sup>22</sup>

### **4.0 PROTECTION OF INDUSTRIAL DESIGNS IN NIGERIA:**

The primary objective of the law governing Industrial Designs is to protect a design that is new or essentially better in some ways than what was created before. This protection is of immense importance to artists, lace designers and designers of other types of products like ceramic and marble products, earthenware products, rug products, leather products, plastic products, etc.<sup>23</sup>

For a design to qualify for protection in Nigeria, it must fall within the definition of Industrial Design under Section 12 of the Nigerian Act and must be registered as well. The Act therefore laid down the requirements to be met before a design qualifies for registration.

#### **4.1 Registrable Designs in Nigeria**

By Section 13(1)(a) – (b) of the Nigerian Act, an Industrial Design is registrable in the following circumstances:

##### **i. If it is new:**

This requirement is usually treated as similar to that of originality in copyright hence, ‘newness or originality as it is commonly called is a *sine qua non* of registrability.’<sup>24</sup>

The word ‘original’ contemplates that the person has originated something that by exercise of intellectual activity he has started an idea which has not occurred to anyone before that a particular pattern or shape or ornament, may be rendered applicable to the particular articles to which he suggests that it shall be applied. If that state of things be satisfied, then the design will be original although the actual pattern or shape or whatever it is which is being considered is old in the sense that it has existed with reference to another article before. The word ‘new or original’ involves the idea of novelty either in

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<sup>22</sup> See Schickl, L. Protection of Industrial Design in the US and in the EU - Different Concepts or Different Labels? Op. cit.

<sup>23</sup> See Babafemi, F.O. 2007. *Intellectual Property: The Law and Practice of Copyright, Trademarks, Patents and Industrial Designs in Nigeria*. (1<sup>st</sup> ed.) Ibadan: Justinian Books Ltd. P.412.

<sup>24</sup> Babafemi, F.O. 2007, op. cit. p.416.

the pattern, shape or in the way in which an old pattern, shape or ornament is to be applied to some special subject matter.<sup>25</sup>

From the above dictum, an improvement on an existing design may also qualify for protection and that ‘newness’ may not necessarily mean ‘non-existence’ *ab initio*. The test for ‘newness’ of a design is to be established, according to Niki Tobi (JCA as he then was), as follows:

A party who alleges the earlier existence of a design must certainly prove such existence and the most fundamental way of proof is the tendering of the design in court. It is only when the court physically sees and examines the earlier design along with the other one that a judicious conclusion will be drawn. It is not enough to tender the product and present same as a legal substitute for the design in question. The physical inspection of the design is crucial...<sup>26</sup>

Where an application is made for the registration of an industrial design, the design shall be presumed to be new at the time of the application except in so far as the provisions of the Act provide otherwise.<sup>27</sup>

Deriving from the *Sunday Uzokwe* authority above however, to establish that a design is new or not under section 13(1)(a) of the Nigerian Act, the old design that is alleged to exist and the new one must be put side by side to enable the court to determine whether there is a fundamental difference between the two designs.<sup>28</sup>

However, section 13(3) of the Nigerian Act provides for further requirement for the registrability of a design thus:

An industrial design is not new if, before the date of application for registration, it has been made available to the public anywhere and at any time by means of description, use or in any other way, unless it is shown to the satisfaction of the Registrar that the creator of the design could not have known that it had been made so available.<sup>29</sup>

Curiously though, the Act failed to provide a parameter for ascertaining that the creator of the design could not have known that it had been made available before the date of application for registration.

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<sup>25</sup> *Dower Limited v. Numberger* (1910) Ch. D. 25 at 29, per Duckley L.J.

<sup>26</sup> *Sunday Uzokwe v. Densy Industries (Nig.) Ltd. & Anor* (2002) MJSC 37. Note that this pronouncement was approved by the Supreme Court in the further appeal.

<sup>27</sup> See Section 13(2) of the Nigerian Act.

<sup>28</sup> See Babafemi, F.O. 2007, op. cit. p.421.

<sup>29</sup> S.13(4) however provides that, an industrial design shall not be deemed to have been made available to the public solely by reason of the fact that within the period of six months preceding the filing of the application for registration the creator has exhibited it in an official or officially recognized exhibition.

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A design is deemed published if it has been disclosed to the public as opposed to being kept secret. It is sufficient publication if the knowledge of the design was either available to members of the public or actually in fact shown and disclosed to some individual member of the public who was under no obligation to keep it secret.<sup>30</sup> Thus, the Supreme Court of Nigeria held that the law is that the publication of an industrial design is confidential if the person to whom the disclosure is made is under an obligation as to secrecy or has himself an interest in the design.<sup>31</sup>

The Act however, further provides that an industrial design is not new merely because it differs in minor or inessential ways from an earlier design or concerns a type of product other than the type with which an earlier design is concerned.<sup>32</sup>

### **ii. If it is not contrary to public order or morality:**

According to Babafemi, public order or morality must be deemed to cover such matters as good government, the administration of justice, public services, national economic policy and the proper interest of the state and society. And that industrial design must not run contrary to the attainment of the above objectives.<sup>33</sup>

It must be noted here that the Act has no definition for what amounts to public ‘order or morality’ hence, it is at the discretion of the court on a case by case basis, which discretion must be seen to be used judicially and judiciously at all times.

Suffice to state that, in Nigeria, any design which is new and not contrary to public order or morality and meets the other requirements of non-publication qualifies for registration under the Act.

## **4.2 Who may apply to register an industrial design?**

By section 14(1) of the Nigerian Act, the right to registration of an industrial design shall be vested in the statutory creator, that is to say, the person who, whether or not he is the true creator, is the first to file, or validly to claim a foreign priority for, an application for registration of the design.

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<sup>30</sup> See Rusell, C. *Copyright in Industrial Designs*. (4<sup>th</sup> ed.) pp.41 – 42, cited in Babafemi, F.O. 2007, op. cit. p.422.

<sup>31</sup> *F.O. Ajibowo Co. Ltd. v. Western Textiles Mills Ltd.* (1976) 7 SC. 97.

<sup>32</sup> Section 13(5).

<sup>33</sup> Babafemi, F.O. 2007, op. cit. p.427.

The true owner is however entitled to be named as such in the register and this entitlement cannot be modified by contract.

It therefore means that the first to file for registration is treated with priority. However, if the essential elements of an application for the registration of an industrial design have been obtained by the purported applicant from the creation of another person without the consent of the other person both to the obtaining of those essential elements and to the filing of the application, all rights in the application and in any consequent registration shall be deemed to be transferred to that other person.<sup>34</sup>

Furthermore, where an industrial design is created in the course of employment or in the execution of a contract for the performance of specified work, the ownership of the design shall be vested in the employer or, as the case may be in the person who commissioned the work.<sup>35</sup> However, where the creator is an employee then if his contract of employment does not require him to exercise any creative activity but he has in creating the design used data or means that his employment has put at his disposal; he shall be entitled to fair remuneration taking into account his salary and the importance of the design which he has created, and the entitlement in question is not modifiable by contract.<sup>36</sup>

Babafemi opined on this, and we entirely agree with him that the provision appears to distinguish between designs which are of exceptional importance and those which are not without stating how to determine what design qualifies as such, and that once a design is registrable, the creator/employee should be rewarded. Furthermore, the determination of reward based on the employee's salary is capable of working injustice to an employee in that his salary may be very small. He submitted that reward should be an agreed percentage between the employer and the employee of the annual profits accruing from the created design.<sup>37</sup>

Also, by Section 24(1) of the Nigerian Act, a right holder in a design, either the right to apply for registration or right in the registered design may be assigned or transferred by succession or held in

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<sup>34</sup> See S.14(2) of the Nigerian Act.

<sup>35</sup> Ibid, S.14(4).

<sup>36</sup> Ibid.

<sup>37</sup> Babafemi, F.O. 2007, op. cit. p.432.

joint ownership. Such assignment must be in writing and signed by the parties and must be registered with prescribed fee paid for it to have any legal effect.<sup>38</sup>

### **4.3 Scope of Protection/Infringement**

Registration of an industrial design in Nigeria is effective first, for five years from the date of the application for registration, which registration may be renewed on the payment of the prescribed fee, for two further consecutive periods of five years.<sup>39</sup> In a nutshell, the registration of an industrial design can last for a period of fifteen years in Nigeria.

The right conferred by registration of an industrial design is an absolute right in the sense that there is infringement even though the infringer acted independently or without knowledge of the registered design. By Section 19 (1) of the Patents and Designs Act<sup>40</sup>, Registration of an industrial design confers upon the registered owner the right to preclude any other person from doing any of the following acts-

- (a) Reproducing the design in the manufacture of a product;
- (b) Importing, selling or utilising for commercial purposes a product reproducing the design;
- (c) Holding such a product for the purpose of selling it or of utilising it for commercial purposes.

It is however, immaterial that the reproduction only differs in minor or inessential ways from the design or that it concerns a type of product different from the type with which the design is concerned.<sup>41</sup>

When an industrial design is registered, the holder receives the right to prevent unauthorized copying or imitation without his consent. Because industrial design rights are territorial in nature; this right is limited to the territory for which the design is registered.

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<sup>38</sup> Section 24(2) & (3).

<sup>39</sup> Section 20(a)(b) of the Nigerian Act.

<sup>40</sup> Patent and Design Act cap P2 LFN 2004

<sup>41</sup> Ibid, Section 19(2). Note that, the right conferred herein only extends to acts done for commercial or industrial purposes and does not extend to acts done in respect of a product incorporating a registered industrial design after the product has been lawfully sold in Nigeria. S.19(2)(a) & (b).

An infringement on the right of a proprietor of an industrial design is said to occur if another person, without the license of the proprietor, does or causes to be done an act which that other person is precluded from doing under the Act and is actionable at the suit of the proprietor for damages, injunction, accounts for profit, and deliver up.<sup>42</sup>

## **5.0 ARE DESIGNS REGISTRABLE INTERNATIONALLY?**

It is pertinent to note that, generally, Industrial design is limited to the country in which protection is granted. However, the various International Conventions provide mechanism for securing protection of an industrial design in all designated member countries. The Paris Convention directly addresses the protection of industrial designs. Art. 5 of the Convention<sup>43</sup> sets forth that “industrial designs shall be protected in all the countries of the Union”.

According to Art. 25 (1) of TRIPS:

Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

The Hague Agreement which was first concluded in 2000 on its part, provides an international deposit system that allows national design proprietors to obtain protection in all member States by filing one application and depositing one sample.

## **6.0 ENFORCEMENT MEASURES**

Since the right conferred by registration of an industrial design is an absolute right in the sense that there is infringement whether or not there has been deliberate copying, it is important to bear in mind that the main responsibility for identifying and taking action against imitations or infringement of an industrial design lies with its owner. In other words, the industrial design owner is responsible for monitoring the use of his/her design, identifying any imitators or counterfeiters and deciding whether, how and when to take action against them.

When infringement occurs, the design holder, as a first step, should send a “cease or desist letter” informing the infringer of a possible conflict between his design and the owner’s exclusive rights. If

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<sup>42</sup> Ibid, S.25(1) & (2).

<sup>43</sup> the Paris Convention (1967)

the infringement persists, it may be necessary to take legal action against the infringer<sup>44</sup>. The Federal High Court is by section 26(1) of the Patent and Designs Act vested with jurisdiction to entertain suits under the Act.

Furthermore, there exist other administrative enforcement options formulated to protect Intellectual Property (IP) Rights in Nigeria. An instance could stem from the Strategic Action against Piracy (STRAP) initiative of the Copyright Commission. STRAP which ensures an intensified fight against piracy and protects IP rights with the use of hologram security device. Nigeria also boasts of an Industrial Property Tribunal set up under the Commercial Law Department of the Ministry of Commerce and Tourism<sup>45</sup>

## **7.0 CONCLUSION/RECOMMENDATION**

It is safe to conclude that Nigeria has a well-established legal regime for the protection of Industrial Designs as a follow up to her International commitments by way of treaties. However, if a product is infringing on a registered design, the design owner will need to determine a general policy on how to act as the right holder. The right holder will have to decide on the necessary actions to take, taking into account various factors, including the time and expenses required for the actions and remedy procedures, the consequences of not taking the action, the type, scope and strength and weakness of his case.

While it is commendable that in Nigeria, any design found contrary to public policy will not be registered, it is however worrisome that ‘public policy’ is not defined anywhere in the Act. There is a need to either legislatively or judicially define the term as used in the Act.

The Nigerian Act also needs to reconsider its position on the non-functionality requirement for registration. This, along with other recommendations made inset, we believe, if applied will provide Nigeria with a more robust IP Rights regime.

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<sup>44</sup>[http://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/looking\\_good\\_nig.pdf](http://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/looking_good_nig.pdf)

<sup>45</sup> Write up on Enforcement of Intellectual Property Right by Demola Adediji