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Rights to Intellectual Property and Law of Competition/Consumer Protection; Extremes or Parallel?

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Abstract:
This paper addresses consumer protection within Nigeria's intellectual property Rights (IPR) framework, defining consumers generally to include creators, innovators, owners of IP rights, and users of creative and innovative products. It is predicated on the assumption that consumer rights would be effectively preserved inside an IPR system via a regime that equitably balances the interests of artists, innovators, IPR owners, and users. This work examines the many ways in which Intellectual Property Rights and Consumer Protection Laws interact, including the various IPR can be used to protect competition and consumer interests and how also the CPL can be used to protect IPR. This paper then reviewed Nigeria's IP policy to assess if it supports the necessary balance that will provide successful consumer protection, focusing on copyright, patent, and trade mark. It recognized the present legal and policy reforms underway to attain this balance, particularly in the copyright sector, the paper makes recommendations that both regimes can and should coexist in a way that promotes consumer welfare, innovation and competition. Hence, it is recommended that both laws be applied side by side to avoid conflict and confusion when issues of intellectual property come up.

Keywords: Intellectual Property, Consumer Protection, Patent, Copyright.

1. Introduction.

In general, intellectual property rights (IPRs) are the rights that innovators, creators, and entrepreneurs have to manage and protect the results of their intellect, innovative and creative endeavors, and economic reputation and goodwill. Depending on the type of work, IPRs are automatically given by law or obtained through registration in order to foster creativity, innovation, and societal benefit. The World Intellectual Property Organization (WIPO) states that IPRs encompass rights pertaining to:

> *literary, artistic and scientific works, performances of performing artists, phonograms and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.*[1]

Owners of IPRs are granted exclusive rights, which can be compared to monopoly in economic and commercial terms[2], over the production and sale of the products embodying their IP and to solely derive economic benefits there from. This gives IP owners the ability to limit who has access to the IP underlying such items including the general public and consumers. The exclusive rights granted by IPRs are not unqualified, nevertheless, it is restricted by specific, legally defined

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[1] WIPO, WIPO Intellectual Property Handbook (Geneva: WIPO, 2004) 3 https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf (accessed 26th July 2023)

[2] R. A. Posner, '*Intellectual Property: The Law and Economic Approach'* (2005) Journal of Economic Perspectives 57-73; J. F.

limitations and exceptions (L&E), which support consumers' rights to freely access, under certain conditions, knowledge and information protected by IPRs, encourage entrepreneurship, and guarantee the continued production of goods incorporating the IP that adhere to specified standards for the welfare of society[3]. IP regimes ensure, through the L&Es, that creators, inventors, and entrepreneurs do not use their IPRs to unreasonably or unjustifiably confine the market for the products embodying their IP, to the disadvantage of consumers and the broader public.

Section 167 of the Federal Competition and Consumer Protection Act (FCCP Act) of 2018 defines consumers as "any person":

a. who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or

b. to whom a service is rendered[4]

However, in the context of intellectual property, the term "consumer" can be interpreted broadly to include both users of products that incorporate IP as well as the creators, innovators, and owners of the IPRs (IP producers) themselves since they typically draw on pre-existing IP held by others in order to develop and innovate[5].

The laws protecting IPRs directly in Nigeria include the Patents and Designs Act (PDA),[6] Trademarks Act (TMA), [7] Copyright Act,[8] the Plant Variety Protection Act (PVPA), [9] and the subsidiary regulations made pursuant to these Acts. Nigeria is also a party to, and have ratified, a number of treaties on IPRs, but the treaties are applicable locally only to the extent of their domestication[10]. Other laws, such as the FCCPA, also find relevance within the IPR system in Nigeria.

This work focuses on intellectual property rights and consumer protection. Essentially, it investigates how Nigerian IP rules safeguard consumers.

More particularly, this paper investigates the consumer-protection-related functions of various regulatory authorities within Nigeria's IPR regimes. It also goes through several important dispute resolution processes within IP regimes. The general purpose is to identify any shortcomings in IPR regimes that pertain to consumer protection and propose recommendations for improvements.

While not neglecting other forms of IPR, this work focuses on copyright, patents and trademarks

[3] R. L. Okediji, '*The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries*' (2006) 5 UNCTAD - ICTSD Project on IPRs and Sustainable Development 1-52; L
[4] *Section 167* of the Federal Competition and Consumer Protection Commission Act, 2018 (FCCPC Act).
[5] A. Stazi & D. Muler, '*Intellectual Property and Consumer Law' in A Ramalho & C Angelopoulos, Crossroads of Intellectual Property: Intersection of Intellectual Property and other Fields of Law* (New York: Nova Science Publishers, 2012) 1-47.
[6] Patent and Designs Act, Cap P2, Laws of the Federation of Nigeria, 2004 (PDA).
[7] Trade Marks Act, Cap T13, Laws of the Federation of Nigeria, 2004 (TMA).
[8] Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004 (CA).
[9] Plant Variety Protection Act, 2021.
[10] *Section 12* Constitution of the Federal Republic of Nigeria 1999 (as amended)

2. Conceptual Clarifications of Related Terms.

i. Patents.

A patent is often a grant given by a country's relevant government agencies to protect new innovations or enhancements to existing inventions that are thought to have enhanced the way(s) the previous inventions were created or used[11]. A patent is essentially a sort of market exclusivity awarded to inventors as an incentive to invent or innovate[12]. Because the monopoly is normally granted for a particular amount of time, the duration is commonly seen as allowing the patentee to realize the benefits of his labor before the patent expires and falls into the public domain for free use thereafter. In this regard, it is also a requirement for granting patents that, in addition to the product being useful, the manufacturing process must be thoroughly described, allowing for exact replication of the product or process by others with the necessary knowledge after the patent's expiration. It should be noted that in order for a Letter Patent to be issued, the potential patentee must demonstrate that the invention fits the necessary requirements.

It is now cliché to state simply that the requirement for granting a patent is that the innovation must be patentable. The Patents and Designs Act (PDA) of Nigeria does not define the term "invention" for the sake of awarding a patent.

Section 1 of the Nigerian Patents and Design Act[13] (PDA) specifies the conditions under which an invention may be regarded as patentable rather than attempting to define what constitutes a "invention" for the purposes of issuing a patent. A patentable invention is defined by the provision as one that:

a. It is new, results from inventive activity and is capable of industrial application, or

b. If it constitutes an improvement upon a patented invention, and also, is new, results from inventive activity and is capable of industrial application.

The occurrence of "newness" appears to be crucial in the PDA's consideration. This is often referred to as the "novelty incidence." An invention's novelty is typically evaluated in comparison to the "state of the art or existing knowledge based, and prior use."

ii. Copyright.

Copyright, like many other legal terminologies, does not lend itself to precise definition; yet, in order to have a fundamental understanding of the concept, it is important to attempt a definition by looking at those supplied by statutes and experts alike. The Nigerian Copyright Act[14] simply defines copyright as “copyright under the Act”. The existing Nigerian Copyright Act lacks a clarifying definition for the notion - which served as the foundation for the Act's enactment. It is appropriate to seek clarification from another jurisdiction because the Nigerian Copyright Act's concept of copyright presents challenges for laypeople.

[11] F.O. Babafemi, *Intellectual Property: The Law and Practice of Copyrights, Trade Marks, Patents and Industrial Designs in Nigeria* (2006) 342.
[12] William Cornish and David Llewelyn, *Intellectual Property: Patents, Copyright, Trade Mark, and Allied Marks* (2003) 112.
[13] Cap. P2 Laws of the Federation of Nigeria 2004
[14] Section 51(1) CAP C28, Laws of the Federation of Nigeria (LFN), 2004.

Copyright is defined as follows under UK Law[15]:
A property right which subsists in accordance with their part in the following descriptions of work –

a. Original literary, dramatic, musical or artistic works,

b. Sound recordings, films or broadcasts, and

c. The typographical arrangement of published editions.

Copyright is the legal area that protects "original works of authorship" such as paintings, sculpture, music, books, poems, plays, architecture, dance, instruction manuals, technical documentation, and software, among other things. It is the fact that an author independently generates the work and that his or her "expression" of an idea is original, rather than copied from another person, and he is provided with legal protection of original authorship and ownership[16].

The whole purport of copyright is that firstly, it suggests the right that a person has over the physical copy of his work. The second idea is the right to copy, i.e. the right that the owner of a work has to reproduce his work. This sense of the word is probably the closest to the modern concept of copyright. The third connotation suggests that the work must be copied "right". This suggests a license to copy on the condition that the copying would be done in a manner prescribed or permitted by law; leaving the copyright owner with a right to be remunerated.

The World Intellectual Property Organization[17] appears to have a more thorough definition:

"It is generally considered to be the exclusive right granted by law to the author of a work to disclose it as his own creation, to reproduce it and distribute or disseminate it to the public in any manner or by any means, and also to authorize others to use the work in specified ways…[18]"

Copyright, as a legal right, is separate from the protected object, yet it hangs and creeps around to limit the ownership of a buyer of an object subject to copyright to the boundaries specified by law. It is a private interest that is essentially different from others due to its intellectual content.

iii. Consumer Protection.

Consumer protection refers to a set of legislation that protects consumers from vendors' dishonest practices. It refers to the establishment of efficient mechanisms to safeguard the financial, health, safety, and security interests of all legal persons against deceptive, fraudulent, and harmful business practices, such as the manufacturing, trading, packaging, advertising, distributing, and selling of products/goods and services to the ultimate consumer[19].

In a broader sense, it governs the liability of not only manufacturers of goods and services, but also retailers, wholesalers, and other suppliers of goods and services to persons who use or consume them.

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[15] *Section 1(1)* Copyright, Designs and Patents Act, 1988
[16] Idris, K. *Intellectual Property A Power Tool for Economic Growth. Geneva*: WIPO Publication No.888 at 190
[17] The United Nations specialized agency responsible for intellectual property (including copyright) matters
[18] WIPO. 1980. Glossary of Terms of the Law of Copyright and Neighbouring Rights. Geneva: WIPO.
[19] M. T. Ladan (Prof.), "*The Limits of Legal and Enforcement/Regulatory Frameworks in Consumer Protection Against Counterfeit and Pirated Products – The Nigerian Experience*", Review Of Nigerian Law And Practice, Vol. 2(1) 2008, p. 3.

Closely related to this is the concept of Consumerism. The term consumerism has been used in different disciplines to mean different things. It may be defined as a programme to promote consumer interest including protection of the environment and restraints on abuse by businesses[20].

It is evident that the nature and extent of consumer protection regulation in a modern society is a reflection of its socio-economic values. Various factors influence and determine the stage a country's consumer protection framework has reached. These include the quantum of information available to the consumers; the extent to which the available consumer protection legislation is efficacious; the degree of consumer education available for the general public; awareness of the masses to consumer related issues and rights; and governmental agencies involvement in consumer issues.

In Nigeria, Consumer Protection is regulated by a plethora of legislations. These include the Standard Organisation of Nigeria (SON) Act[21], the Foods and Drugs Act[22], the Nigerian Communications Act[23] and the Utilities Charges Commission Act[24] amongst others.

iv. Trademarks.

A Trademark is a recognizable name or design, which is legally registered and used to identify and distinguish a product or service from others. Some of the trademarks that can be registered include name, slogan, shape. A trademark is a symbol or a sign which differentiates the goods and services of one business from another one[25]. A trademark provides protection to the owner of a mark by ensuring exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. The registration of a Nigerian trademark is overseen by the Registrar of Trademarks, who is in charge of trademark registration and other related actions relevant to the utilization of a registered mark.

Registration of trademarks is the basic concept of trademark protection. It is a pre-condition for the institution of infringement action under the Trademarks Act[26] . Taking into consideration that registration is not mandatory; it still establishes ones right in a mark as there can be no infringement of an unregistered mark. For registration purposes, the Trademarks Act CAP T13 LFN 2004 divides the trademarks register into two parts: Part A and Part B[27] . Under both parts, registration of trademarks is in respect of particular goods or classes of goods as specified by the applicant[28].

Registration of trademarks is usually in respect of specific goods such as medicines and cosmetics or classes of goods and reference would be made to the designated class as contained in the appropriate schedule of the Trademarks Act[29]. The Registrar of Trademarks is vested with the power to tackle any question regarding the class of goods within which any goods fall and his decision is final.

[20] Webster's Dictionary, The Lexicon Webster's Dictionary of English Language (1991).
[21] Cap. S9, LFN, 2004
[22] Cap. F32, LFN, 2004
[23] 5 Cap. N97, LFN, 2004
[24] Cap. U17, LFN, 2004
[25] How to register a Trademark or Patent in Nigeria available at https://legalnaija.com/how-to-register-trademark-or-patent-in/0290095194164768 1314/ accessed on 7th August 2023.
[26] *Section 42 and 45* Trademarks Act CAP T13 LFN 200
[27] Trademarks Act *Ibid*
[28] Section 4 *Ibid*
[29] *Ibid*

3. Legal Frameworks guiding Consumer Protection and Intellectual Property Rights.

3.1 Copyright Act[30]

This is the primary and possibly most complete legislation that fully addresses the definition, protection, transfer, and breach/infringement of works that fall under the scope of the act.[31]

This Act applies to [32], the following literary works;

a) artistic works;

b) musical works;

c) audiovisual works;

d) sound recordings;

e) broadcast and other related matters.

It is also interesting to know that unlike other forms of Intellectual Property like patent design and trademark, a work does not necessarily have to be registered to enjoy the enormous benefit and protection of the Act. Copyright generally vests automatically on authors the moment a qualifying work is expressed in any definite medium, as long as the works are original, and no registration is required for its protection. In the same vein, copyright does not protect mere ideas, but the form in which the ideas are expressed.[33]

The Act clearly provided for a body called the Nigerian Copyright Commission (NCC). This body performs various tasks that are clearly provided for in the Act such as accepting a deposit by owners of the aforementioned categories of Art in the Act and regulating it in order to notify the general public of its existence.

The Copyright Act also protects contiguous or connected rights, such as the rights of performers and folklore expression rights[34]. The NCC owns the sole rights to folkloric expressions[35].

Therefore, copyright over literary, musical or artistic works, cinematographic films, sound recordings and broadcasts are well secured by the Copyright Act and vests initially in the author of the work; the only limitation being works published in the course of employment by a newspaper, magazine or any such periodical; copyright therein resides in the proprietor of the newspaper, magazine or periodical only to the extent of any such publication.

The purports of Copy rights are hinged on moral and commercial rights are typically included in copyright. The perpetual, unassignable, and unrestricted moral right of the author of a work is the right to claim authorship of the work, be acknowledged as the author of the work, and to object to and seek redress for any distortion, mutilation, modification, or disparaging use of the work, particularly when such use would harm the author's honor or reputation.[36] On the flip side, the

[30] Copyright Act, 2022.
[31] https://punchng.com/i-signed-copyright-law-to-boost-creative-economy-buhari/ accessed 08/06/2023, President Muhammed Buhari on 17th March 2023 signed/assented to the Copyright Act 2022 thereby repealing the Copyright Act LFN 2004.
[32] CA, 2022, s. 2 (1).
[33] Section 1(2) of the CA
[34] Section 26-33 of the CA
[35] Section 31(4) of the CA
[36] Section 12 of the CA.

commercial rights, which vary depending on the type of the work, typically include the rights to duplicate, publish, distribute, lend, broadcast, transmit to the public, and adapt and translate the work, as appropriate.[37]

The Copyright Act also gives creators the ability to authorize the use of their works through suitable copyright transfer mechanisms and to bring legal action against third parties who infringe upon their copyright.[38]

Consumers who violate copyright by using it without authorization risk civil and criminal penalties. While creators' claims for financial damages may be pursued, it is the NCC's responsibility to bring criminal charges against the unauthorized use of copyright works.[39]

In order to avoid the aforementioned monopoly abuse and to provide some consumer protection within the copyright system, copyright law created certain internal control systems through the implementation of limitations and exclusions (L&Es) such as copyright time frame, fair dealing and fair use, and other specific exceptions; the idea/expression dichotomy; the first sale doctrine (principle of exhaustion). For the time being, suffice it to say that L&Es may be viewed as user rights (or consumer rights) within the copyright system due to their capacity to facilitate access to knowledge and prevent arbitrary. It is now sufficient to state that L&Es may be considered user rights (or consumer rights) within the copyright system due to their ability to enable the dissemination of knowledge and to prevent unreasonable restraint of competition in a given copyright market for the benefit of consumers, particularly where such L&Es are open and flexible.

The copyright duration or term,[40] fair dealing and other exceptions,[41] special exceptions in regard to sound recording of musical works,[42] and compulsory license for translation and reproduction of specific works are all covered by the first to fourth schedules of the Copyright Act.[43]

3.2 Patent and Design Act [44]

The extant law protecting patents in Nigeria is the Patents and Designs Act, Cape P2, LFN, 2004 (PDA). The Patent and Design Act provide the condition that must be met before an invention can be patentable; this is provided under Section 1(1) of the Act[45]. Not all inventions are eligible for patents under the PDA. A new invention that involves an innovative step and may be used in industry is required to qualify as patented.[46] A patent is considered to be new if it does not form part of public knowledge or what is termed 'the state-of-the-art'.[47]

The state-of-the-art refers to everything made available to the public anytime and anywhere by whatever means including by means of oral, documentary or any other form of disclosure before the date of application for the patent or the priority date claimed by the invention[48]. The act further provides for restrictions on areas where patents for an invention cannot be validly obtained under

[37] Sections 6-8, 26 and 31 of the CA.
[38] Section 11 of the CA.
[39] Sections 15-25, 26-31 and 38 of the CA
[40] First schedule to the CA.
[41] Second schedule to the CA
[42] Third schedule to the CA.
[43] 6 Fourth schedule to the CA
[44] Patent and Design Act, Cap P2 Laws of the Federation of Nigeria, 2004.
[45] Patent and Design Act, Cap LFN 2004.
[46] Section 1(1)(a) of the PDA
[47] Section 1(2)(a) of the PDA
[48] Section 1(3) of the PDA

Section 1(4) of the Act. Section 3of the Act provides for the modes and procedure to apply for patent under the Act, the registrar has a duty to examine every patent application and decide if it conforms with the provisions and requirements of the Act in order to settle whether or not the patent should be granted. Other notable provisions of the Act include infringement of patent, demotion and lapse of patent, patent priority application etc. A patent gives its owner a 20-year monopoly starting on the date of the patent application.[49] Therefore, without the patent owner's consent, no one may manufacture, import, sell, use, store, or stock up for the purpose of sale the patented invention.[50]

Similar to copyright owners, patent holders use the monopoly that is granted to them by patent law to control the market for and maximize profit from the sales of their patented goods. The exercise of such monopoly frequently takes the form of an unreasonable and unjustifiable refusal to grant licenses under their patent to rivals in the relevant market, the setting of unreasonable and unjustifiably high prices for their patent products, or the inclusion of restrictive agreements in licensing agreements that forbid users, for example, from competing in the same market as the patent holder.

In fact, from the standpoint of consumer protection, the patent system has internal procedures that can restrict patent exclusivity and make sure it is not used against consumers. Pre-grant and post-grant opposition of patent applications, provisions allowing forced licenses, provisions for substantive review of patent applications, prohibitions against ever-greening, and more are all included in the process.

The PDA encourages ever greening in view of *section 1(1)(b*) thereof, which allows the patenting of improvements on existing patented inventions. Ever-greening is a strategy adopted by patent owners resulting in the obtaining of multiple patents covering different aspects of single products, including obtaining patent for slight but incremental innovation on such products. The goal is to continue to control the market for such products usually at higher prices to the consumers, but without actual improvement in the quality of the product.

3.3 Trademark Act[51]

The extant legislation protecting trademarks is the Trade Marks Act, Cap T13, LFN, 2004 (TMA), as well as the Trademarks Regulations 1967. Trademark is an important aspect of intellectual property and was defined in the Trademark Act.[52] According to the Act, Trademarks are marks or indicators that can be used with respect to a business enterprise or goods and services to distinguish one business undertaking's goods or services from another. A mark can be 'a device, brand, heading, label, ticket, name, signature, word, letter, numerical, or any combination thereof'[53].

From this definition, it is clear that under the TMA, trademarks are used to indicate goods alone. This is a major lacuna in the TMA in the face of business realities where lots of commercial enterprises offer services and need trademarks in order to protect their goodwill and distinguish them in the market environment. The definition has however been a cause of legal controversy as most legal persons feel it is complicated and vague, this controversy notwithstanding, trademark entails marks, labels, headings, brands, ticket, name, signature, letter, numerical, or any

[49] Section 7(1) of the PDA.
[50] Section 6(1)(a) of the PDA
[51] Trade Marks Act, Cap T 13, Laws of the Federation of Nigeria, 2004.
[52] TMA, Cap T 13, LFN 2004, s. 65.
[53] *Ibid*

combination. The Act provides for the protection of well-known trademarks, as well as for the cancellation of any trademark registration on certain grounds, such as non-use or abandonment of the mark.

The Act also provides for the establishment of the Trademarks Registry, which is responsible for the registration and administration of trademarks in Nigeria.

The Trademarks Register is divided into Parts A and B. Marks that are distinctive in that by their nature they distinguish the goods of the trademark owner are registrable under Part A while those that acquire distinction from usage are registrable under Part B of the Register.[54] Registrable marks include names of companies, individuals, firms represented in special or particular manner; signature of the applicant; invented word(s); words that do not have direct reference to the character, geographical origin or quality of the goods or services among others.[55] Deceptive or scandalous marks will not be registered.[56] Also, marks that are identical or resemble a registered mark cannot be registered.[57] Upon registration, trademarks are valid for an initial period of seven years and can be subsequently renewed.[58]

Overall, from a consumer protection perspective, the mechanism provided by the trademarks regime is very useful to prevent instances of deceptive packaging and false advertisements by suppliers of goods and services in Nigeria. The mechanism will also be important in the promotion of enhanced accountability on the part of vendors and service providers in Nigeria.

Overall, the Trademarks Act in Nigeria provides a legal framework for the protection of trademarks and ensures that trademark owners have the necessary legal remedies to protect their brands and reputation.

3.4 Federal Competition and Consumer Protection Act[59]

This is the principal Act that promotes or regulates competition and consumer rights protection in Nigeria. The Act repealed the Consumer Protection Council Act and it further established the Federal Competition and Consumer Protection Commission and the Federal Competition and Consumer Protection Tribunal. The Act is a laudable attempt at promoting fair competition and consumer protection in Nigeria. The Act provides that the commission carryout the entire provisions of the Act and the Tribunal created is responsible for adjudicating on issues prohibited by the Act and which falls within its jurisdiction. It empowers the president to from time to time, to declare a fixed price for goods and services provided bythe Act, to be controlled in accordance with the provisions of the Act. This order must be published in the National gazette.

Trading under false representations, such as the unauthorized use of another party's trademarks or the passing off of products or services as those of another, is expressly forbidden by the FCCPA[60].

The FCCPA has specific provisions that give the FCCPC the authority to take a number of steps that may help with trademark infringement and counterfeiting protection. When there is a reasonable suspicion that a location is housing, harboring, or utilized to make or distribute

[54] Sections 9 and 10 of the TMA
[55] Section 9 of the TMA.
[56] Section 11 of the TMA.
[57] Section 13 of the TMA
[58] Section 23 of the TMA.
[59] Federal Competition and Consumer Protection Act 2018.
[60] Section 125 of the FCCPA

fraudulent or inferior goods or services, the FCCPC is authorized to seal off the location.[61] The FCCPA also includes concise provisions on warrants, searches, and item seizures, all of which are essential tools in the fight against trademark infringement and counterfeiting.

Section 27(1) of the FCCPA provides that the FCCPC may, for the purpose of ascertaining whether any undertaking has engaged, is engaging or is likely to engage in conduct constituting or likely to constitute a contravention of the FCCPA, require an authorized officer to:

a) Enter and search any premises; and

b) Inspect and remove from the premises any article, document or extract in the possession or under the control of any person.

The Commission also has the authority to investigate an a monopoly situation if it considers that the supply of products or services, or the importation or exportation of any goods or services, has an impact on competition in any of Nigeria's markets.[62] Where monopoly is found to exist, the Commission shall consider the actions to be taken to remedy or prevent any adverse effects resulting from a monopoly situation and make necessary recommendations to the tribunal,[63]which will make an order stipulated in *section 86(3)* of the Act as follows:

i. Declaration of the agreement is unlawful.

ii. To require any party to the agreement to terminate the agreement within a specific time.

iii. To require publication of prices of goods or services by the supplier.

iv. To prohibit or restrict acquisition by any undertaking of the whole or part of another undertaking. etc

The FCCPC is the apex and primary commission established under the Federal Competition and Consumer Protection Act, 2018 and the commission is responsible for carrying out the various sections of the Act which primarily consists of developing fair, efficient and competitive markets, facilitate access by all citizens to safe products and secure the protection of rights for all consumers in Nigeria. The body also plays as an adjudicatory body relating to matters arising from the Act. The body is empowered by the Act to prevent the circulation of goods and services which constitute public hazard or imminent danger, and also to seal up any premises on reasonable suspicion.

Section 104 of the FCCP Act provides "Notwithstanding the provisions of any other law but subject to the provisions of the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection, the provisions of the Act shall override the provisions of any other law". The above provision is the supremacy clause which makes every other law in relation to competition law, with the exception of the 1999 constitution, subject to the FCCP Act.

[61] Section 18(1)(f) of the FCCPA
[62] Section 76; 77 FCCPA 2018,
[63] Section 84 FCCPA 2018

3.5 Standard Organization of Nigeria Act[64]

The Standards Organisation of Nigeria Act establishes both the Standards Council of Nigeria (the "Council"), which acts as the organization's governing body, and the Standards Organisation of Nigeria (the "Organisation"), a body corporate with perpetual succession and a common seal[65].

According to Section 4 of the Act, these responsibilities include, but are not limited to, establishing and approving standards for goods, services, and commercial processes; offering quality control measures; and advising the federal government on the standards and quality control procedures to put into place and use in accordance with the national policy.

According to *Section 5(2)* of the Act*,* the Organization is permitted to conduct research as it sees fit and to use the facilities of other institutions—public or private—for research purposes.

According to Section 17 of the Act, the Director-General has the authority to seize or destroy goods which he determines to be dangerous or harmful to life or property. Along with sealing off the location where the goods are made or stored and forbidding their sale, he has the authority to order the maker to fix the product's flaw. The Director-General's powers under this section can only be put into effect once a request for an order authorizing their use has been made to the local Magistrate Court.

Section 15 of the Act stipulates that any person, other than the permitted manufacturer, who makes or sells or exposes for sale or uses for the purpose of advertising any material or document on or in which is portrayed:

a) An industrial standard in any way resembling or purporting to be any of the Nigerian Industrial Standards established in pursuance of this Act; or

b) A certification mark resembling or purporting to be a certification mark issued in pursuance of *section 14* of this Act, shall be guilty of an offence and on conviction liable to a fine not exceeding N1,000 (One Thousand Naira) or an imprisonment term not exceeding one year or both fine and imprisonment.

The Organization faces a significant difficulty in dealing with the frequent influx of substandard goods, which is partly owing to the arrival of abject poverty seen throughout the country.

As a result, consumers who cannot buy standard items are more likely to settle for poor and less expensive alternatives.

4.0 Rights to Intellectual Property and Law of Competition/Consumer Protection; Extremes or Parallel.

The laws governing intellectual property rights and consumer and competition protection are two fundamental legal systems that have a big impact on how the modern world economy is shaped. While Intellectual Property Rights seek to protect and encourage creativity by granting exclusive ownership to creators and inventors, Competition/Consumer Protection Laws seek to guarantee fair market competition while safeguarding consumers from unfair business practices; in other words, competition laws aim to maintain a market's open and free nature. Both legal regimes strive to achieve a compromise between encouraging innovation and protecting consumers' interests.

[64] Standard Organization of Nigeria Act, 2015.
[65] Section 1 and 3(1) SON Act, Cap.S9, LFN, 2004.

As previously established, intellectual property rights are a type of property granted by trademarks, patents, industrial designs, copyrights, and geographical indications, among others, that allow the owner to exercise monopoly over the instrument/subject of the intellectual property rights.

They have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. Intellectual property rights provide certain exclusive rights to the inventors or creators of that property. They are not only instrumental in protecting the innovative and creative capacity of the owner of such intellectual property and promoting competition in various industries, but also have to do with the welfare of the consumers of the goods and services to which they apply.

Every human being who consumes anything for survival is a consumer; every individual is a consumer, regardless of occupation, age, gender, community or religious affiliation. The Federal Competition and Consumer Protection Act[66] is an important legislation that protects the consumers from exploitation from the business and trading community with bad intentions. Under the Act, the government had made provision for the establishment of consumer commissions and other authorities for the settlement of consumer grievances and for the matters connected therewith to secure speedy and in-expensive redressed of their dissatisfaction. With the enactment of this law, consumers now feel they are in a position to deal with the business community and corporations against their exploitation. The broad salient features of consumer protection Act are:

i. The Act is exclusively passed for the interest of the consumers;

ii. It seeks to promote/protect the right of the consumers;

iii. It covers private public and cooperative sector;

iv. The provisions of the Act are compensatory in nature.

There have been claims that intellectual property is anti-competitive and not subject to competition and consumer protection legislation, on the surface, there appears to be a general tension between intellectual property and competition laws. This friction intensifies where the owner of an intellectual property right begins to cause difficulties for its competitors to enter markets or begins to abuse its dominant position. This argument or tension is also based on a flawed assumption that intellectual property is not property *per se*, but it is important to state early that intellectual property rights and competition law are not necessarily inharmonious as the promotion of market efficiencies may lead to greater innovation and variety in a market. However, intellectual property rights have broader implications than only protecting the business interests of the owner of such rights, as they aim to strike a balance between private and public interests. The pursuit of research and development, innovation, trade related strategies, all revolve around the ambit of intellectual property, which in turn, shapes the end product that is delivered to the public. Therefore, intellectual property may appear to be a part of the product development, but holistically, it is much more than just that since it dictates the aftermath of the launch of the product as well.

Consumer and competition law in relation to intellectual property is so central that, for instance, trademark law, which is a type of intellectual property, is drafted from a consumer's perspective and also to guarantee the consumer's protection. A key consideration with issues such as the ability to register trademarks is the perception of consumers towards the marks. For example, when assessing whether one mark is confusingly similar to another, the courts consider whether the

[66] Federal Competition and Consumer Protection Act 2018.

casual consumer in a hurry with an imperfect recollection, would likely be confused when seeing the trademark.[67]

Although it is argued that intellectual property rights create monopoly on the intellectual property in favor of the owner, but however, intellectual property has inherent mechanisms to curb anti-competitive behavior. These mechanisms include strict examination systems prior to assignment of intellectual property rights, and also cancellation regimes. The latter allows third parties to apply to the relevant regulations to expunge registered intellectual property rights. To further prevent anti-competitive behavior, other laws buttress the mechanisms provided in intellectual property law, for example, the Federal Competition and Consumer Protection Act[68] prohibits restrictive trade arrangements or agreements as well as the abuse of a dominant position.[69]

Particularly, an agreement that amounts to the use of an intellectual property right in a manner that goes beyond the limits of legal protections is a restrictive agreement and an abuse of a dominant position and therefore is prohibited. This way, consumers are protected from any abuse of the market by owners of intellectual property rights.

Where the licensing arrangement is likely to affect consumers adversely, by for instance affecting the prices, quantities, quality or varieties of goods and services, such agreement would amount to a restrictive trade practice, some of the listed examples of what constitutes restrictive trade agreements relating to intellectual property include;

a. Territorial restrictions; where a patent license is restricted to certain geographic regions or groups of customers.

b. Undue influence over the quality control of the licensed patented product beyond what is necessary for guaranteeing the effectiveness of the licensed patent.

c. Exclusive licensing agreements such as grant – backs and acquisitions of intellectual property rights and cross licensing by undertakings in oligopolistic markets. This would include patent-pooling agreements whereby firms in a manufacturing industry decide to pool their patents and agree not to grant licenses to third parties, at the same time fixing prices and supply quotas. Tie-in arrangements are also restrictive practices, such as requiring a licensee to acquire raw materials solely from the patent holder, thus foreclosing other producers on the market from accessing the license; Vertical price-fixing agreements. It is an inescapable fact that intellectual property rights do not function in a vacuum, but in a market where other factors such as competition and consumer protection come into play.

Having x-rayed the above, it is the viewpoint of this research that intellectual property is neither inimical nor hostile to competition/consumer protection law. That the extremes of this debate lie in two opposing perspectives, firstly the argument that strong intellectual property rights laws are essential to incentivize innovation and creativity, leading to economic growth and societal benefits. And secondly that without adequate protection, creators and innovators may be discouraged from investing in new ideas, which could hinder technological progress. On the other end of the debate or spectrum exists argument that strong intellectual property right laws can stifle competition and restrict access to essential goods and services. That excessive protection can lead to monopolies,

[67]*Niger Chemists Limited v Nigeria Chemists*(1961) ANLR 180.
[68]Federal Competition and Consumer Protection Act 2018, s. 59 – 69.
[69]Federal Competition and Consumer Protection Act 2018, s. 70 – 75.

high prices and limited consumer choices. But it is however crucial to strike a balance between intellectual property rights and competition/consumer protection laws.

5.0 Conclusion.

The relationship between intellectual property rights and competition/consumer protection laws has been a topic of debate for many years now. On one hand, intellectual property rights grant exclusive rights to creators and innovators, encouraging them to invest in research and development by providing them with a monopoly over their creations, while on the other hand, competition and consumer protection laws aim to ensure fair competition, prevent monopolistic practices, and safeguard the interests of consumers. In other words, intellectual property deals with laws that protect and enforce rights of the creators, while competition/consumer protection is tasked with ensuring healthy competition by keeping at bay and prohibiting monopoly of the market. The work corrects the misnomer that intellectual property is at loggerhead with competition/consumer protection law, but rather shows that both co-exist in *tandem*.

This work also concludes that while strong intellectual property right laws are crucial for incentivizing innovation, they must be balanced with fair competition and consumer protection. Excessive protection can lead to monopolies and hinder economic growth, while weak protection can discourage investment in research and development. That is, intellectual property rights should not be absolute, and limitations should be in place to prevent abuse or anti-competitive behavior. Fair competition is vital for innovation and economic development, and consumers should have access to diverse products and services.

6.0 Recommendations.

In view of the above mentioned as regards the coexistence of both laws, it can be inferred that both laws exist to complement each other, and as such the application of both laws enhances the areas pertaining to intellectual property. Therefore, in other to assuage the tensions and arguments and strike the right balance between intellectual property rights and competition/consumer protection laws, the following recommendations are made and can contribute to achieving this harmonization;

1. Fostering a Pro-Competition and Innovation Culture:
    - Competition authorities should be encouraged to actively enforce competition laws and promote fair market practices. This will prevent anti-competitive behavior and ensure a level playing field for all market participants.
2. Legislative Reforms:
    - Lawmakers or policymakers can enact laws and regulations that explicitly address the harmonization of intellectual property rights and competition/consumer protection laws. These reforms can provide clearer guidelines and standards for courts and businesses to navigate potential conflicts and even ease the long raging debates on this topic.
    - Enhance consumer protection by strengthening consumer protection laws to safeguard consumer interests, ensure transparency, and prevent unfair practices.
    - While protecting intellectual property rights, policymakers should promote policies that encourage innovation, such as providing incentives for research and development, supporting startups.

3. Collaboration and Cooperation:
    - Collaboration and cooperation between intellectual property rights holders and competitors can lead to mutually beneficial agreements, such as licensing agreements or cross-licensing, which can encourage innovation and competition while respecting intellectual property rights.
    - Promote open innovation models that facilitate the sharing of knowledge and technologies while respecting intellectual property rights.
4. Limit the Scope and Duration of Intellectual Property Rights:
    - Intellectual property rights should have reasonable limitations to prevent abuse. This could include shorter patent terms, stricter criteria for patentability, and exceptions for essential goods and services.
5. International Harmonization and Cooperation:
    - Strengthen collaboration between intellectual property organizations, such as the World Intellectual Property Organization and competition authorities to address the interplay between intellectual property rights and competition/consumer protection laws.
    - Encourage international harmonization of intellectual property laws to minimize conflicts and facilitate global trade.
    - Support the development of international agreements and treaties that strike a balance between intellectual property rights and competition/consumer protection concerns.