



Trademarks and Domain Names Conflicts in Nigeria: How Can Corporate Entities Win This Fight?

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Abstract - The rise of the internet over the past two decades has seen to the establishment and escalating growth of businesses online, and this growth has occasioned an increase in cybersquatting activities, a practice which is hinged on the illegitimate interest in the domain name right of an established trademark or trade name belonging to another. To ensure that registered trademarks, brands and trade names are accorded protection as intellectual property rights in the cyberspace, cybersquatting is declared unlawful in the international clime as well as in Nigeria. And to ensure compliance with the extant anti-cybersquatting regulations as well as compensation for victims of cybersquatting (corporate entities), arbitration mechanisms were set up using the UDRP and NDRP Rules of WIPO and NIRA as mainstream. In Nigeria, the other remedial mechanisms for corporate entities who are victims of cybersquatting are found in the Cybercrimes Act and a throw at passing off. As a synopsis, this work conceptualises trademark and domain name, analyses the nature and resolution of conflict between them in the wake of administrative and judicial mechanisms, marks the challenges of anti-cybersquatting enforcement in and outside Nigeria, then furnishes strong recommendations for the trademark and domain name governing regime in ensuring stronger protection for corporate entities seeking profitable online presence.

Keywords - Trademark, Domain name, Cybersquatting, Trade name, Internet.

I. INTRODUCTION

With the proliferation of profit ventures came the need to protect business ideas and brands through intellectual property rights. One of such rights is the recognition of trademarks. Trademarks are recognised nationally and internationally and recognition, in this sense, connotes protection from infringement in the country of registration (country of origin) and in several other countries of the world where international registration is afforded [1]. Arguably, one of the unique rights of a protected trademark is the right to preclude competitors who find solace, either intentionally or for a dearth of due diligence, in using a trademark so identical with a trade name already in existence or a registered trademark without the trademark proprietor's consent such that it confuses the customers on to the source of the trademark which is already in existence and deceptively persuades the customers into flying patronage on the impersonating brand [2]. This has been the core purpose of trademark wherever a trademark regime subsists but the upsurge of the internet has joined the league of many hitches to that goal. With the advent of cyberspace, domain names are now an integral part of any business [3] with businesses leveraging on online visibility knowing it allows for easy identification by customers and clients alike.

There is no gainsaying that the presence of a corporate entity in the cyberspace must begin with a domain name as a corporate identifier [4] but domain name theft (formally called cybersquatting) has made it difficult and sometimes impossible for businesses to obtain and register domain names using their choice, lawful trade names or make predictable profit online. Where the registration of the corporate entity's choice domain name succeeds, cybersquatting activities may bring about a redirection of the website visitors to another site with a similar domain name. But knowing that a domain name is as much a business identifier as a trademark brings to fore the question of which of the business identifier models should have legal dominance over the other and whether there can be a valid legal claim by corporate entities against domain name registrants amidst the priority of 'first in time' domain names are generally assigned.

In a bid to see how corporate entities can win cybersquatting fight, this work assesses trademark protection in Nigeria and the under WIPO, analyses domain names, its regulation and resultant effect on the exclusive use of trade names by corporate entities, reviews resolved tradename-domain name disputes and the mechanism for resolving them, then unravels the place of cybersquatting in the wake of existing limitations to the international and Nigerian anti-cybersquatting rights. To

achieve the foregoing, this work has been organised into the sections of introduction, related works, methodology, trademark in perspective, domain name and its administration, the need for a domain name, conflict between trademarks and domain names, remedies and adjudicatory mechanisms, limitations and challenges to anti-cybersquatting enforcement, domain name protection, then conclusion.

II. RELATED WORKS

In the course of developing this paper, certain research works were relied on. Onele and Onyilofor examined the concept of cybersquatting within the context of Nigerian law; the appropriateness or otherwise of an action for trademark infringement or an action for passing off in the event of a dispute arising from the use of domain names; the criminalization of cybersquatting in Nigeria; and the civil remedies available against cybersquatting. Discussing the regulation of cybersquatting in Nigeria, they noted that despite the Cybercrimes Act criminalising cybersquatting and other computer-based offences in the country, the Act makes does not provide for the establishment of a separate or special regulatory or enforcement body with the objective of implementing its provisions.

McCarthy, in his work Trademarks, Cybersquatters and Domain Names [5], focused on how domain names infringe on trademark rights. Speaking on the lack of an integrated system for the administration of trademarks and domain names, McCarthy wrote: "It is important to understand the distinction between trademark rights which are enhanced through 'registration' with a government bureau or office, on the one hand, and Internet domain names which are obtained from registrars-typically private entities. To speak of both as involving a 'registration' without an explanatory adjective is an invitation to confusion and mistake. That is why I prefer referring to domain names as being 'reserved' through a registrar, not 'registered'."

Furthermore, in an article [6] published on the 4th of June, 2018, Davidson Oturu focused on the leveraging on the Uniform Domain Name Dispute Resolution Policy (UDRP) and the NIRA Dispute Resolution Policy (NDRP) to protect domain name rights and resolve cybersquatting disputes. In doing so, he provided a guide into the relevant provisions of the UDRP and the NDRP Rules in resolving cybersquatting disputes by arbitration. Also, in his paper, "The Anticybersquatting Consumer Protection Act: Will It End The Reign Of The Cybersquatter?", Kaplan strives to analyse the importance of the Anticybersquatting Act in curbing the incessance of Cybersquatting in the United States. Also relevant was the work of Singh seen in "Domain Name Disputes and Their Resolution under UDRP Route: A Review" [7] where he reviewed the resolution of domain name conflicts under the UDRP system.

III. RESEARCH METHODOLOGY

To achieve the objective of this work, this research utilizes both primary and secondary sources in gathering the facts used in the work. The primary sources used are treaties and legislation, decisions of the Panel and Court while journals, opinions of authors, jurists and internet materials constitute the secondary sources. However, legislation, journals, opinions of authors and personal opinions will be accredited with a reasonable part of the work.

To achieve the goal of the paper, being a legal research work, footnotes and references are used as against endnotes, since endnotes may not allow for the full expressions that legal works usually demand.

IV. TRADEMARKS IN PERSPECTIVE

An understanding of the constituents of trademark is arguably a better take off point. A trademark is basically a class of intellectual property made up of an identifiable and recognisable name, word, sign, their plural or their combination, used in distinguishing the goods or services of a particular business owner from that of other business owners. To further expound on what trademark is, an assemblage of two principal guiding rules on trademark will be exhumed. First is the TRIPS Agreement [8] and then the Nigerian Trade Mark Act. The TRIPS Agreement, in defining trademark in Article 15.1, provides that any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. The paragraph further provides that such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. In another page, the Nigerian Trade Marks Act defines trademark as a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods of some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person [9]. And mark has been stated to include device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

Notice that the Trade Marks Act defines trademark in relation to products and not services. This helps bring to fore the fact that although the class of goods under which trademarks may be registered was extended from 35 classes to 45 classes according to the manner and structure of the 9th Edition of the Nice Agreement on the 19th of April, 2007, by the Minister of Commerce and Industry at the time through regulation made pursuant to sections 42 and 45 (1)(b) of the Nigerian Trademarks Act thereby incorporating the Nice Classification of Goods and Services which consists of 34 classes for goods and 11 for services [10] service marks have not gained judicial notice in the country. In 2017, for instance, the Court in *Ramhead Industrial & Commercial Co' Ltd. v. Ekulo International*

Ltd & 2 Ors, [11] defined trademarks to the exclusion of service marks as it canvassed that “the Act in its present form does not cover service marks (marks used by service organisations to distinguish their services from those of others).” It is submitted that since Nigeria has not ratified the Nice Agreement by having it domesticated by the National Assembly pursuant to section 12(1) of the Constitution, the amendment of the Trade Marks Regulations extending the initial classification of items which can be registered under the Act to cover both goods and services is, regrettably, unlawful [12]. As it stands, brands and trade names that provide services can only register their mark as goods. This births the need for the amendment of the Trade Marks Act to reflect the lawful registration of service marks in the Country.

By and large, trademark in Nigeria is essentially a word, name, sign, symbol, slogan or word registered in relation to goods or used by a proprietor over time such that the sign, symbol, slogan or word becomes tied to such a person or business and cannot be used by another without the prior consent of the registered user or proprietor. In effect, a trademark is the commercial substitute for one’s signature, as long as it is distinctive or capable of being distinctive in use. It is that which the general public can point to that easily identifies the product a business venture offers [13].

Most trademarks are the trade name of the corporate entity as against symbols, spectacular marks and designs. A trade name is the name under which goods are sold or made by a certain person and which by established usage has become known to the public as indicating that those goods are the goods of that person [14]. Also called a business name, a trade name is a fictitious name with which the company has come to the limelight which may be different from its registered name under the foremost corporate affairs regulation [15]. Practical examples will suffice in explaining this. Emerging Markets Telecommunication Services (EMTS) was the corporate affairs registered name for the defunct company with the trading name Etisalat Nigeria; the popular search engine, Google, is the trading name for a company called Alphabet Incorporation; Superglue is a trade name owned by the American company, Superglue Corporation; and there exists tons of other examples.

V. DOMAIN NAME AND DOMAIN NAME ADMINISTRATION

The relationship between trademark and the cyberspace is best described in the relationship between domain names and trade names. A trade name had earlier been defined in relation to the name a company trades with or a name with which the company had gained popularity as distinct from its registered company or business name. Conjunctively, a domain name is a uniform resource locator (often shortened as URL) or web address created to make internet protocol (IP) addresses more accessible and easier to remember [16]. It is a unique name that an individual,

business, company identifies a website with on the internet. Domain names often look like ‘https://www.domainname.com’ and necessity demands every individual, business or company seeking for an online presence to have a domain name registered with its trade name. Having a domain name would normally mean owning a functional website.

A domain name, though similar with what is called top-level domains (TLDs), differs instructively from it. Alternatively called domain extension, a TLD is the suffix that follows the domain name in a web address, say a ‘.ru’. TLDs are managed by the Domain Name System (“DNS”) [17] of the internet which controls how domain names are translated into IPs or IP addresses [18]. Top-level domains (“TLDs”) vary, depending on the outlook of the domain name. There exist generic top-level domains (“gTLDs”) such as ‘.org’, ‘.net’, ‘.com’, sponsored ones like ‘.edu’, ‘.gov’, ‘.co’, and the extension category known as country code top-level domains (“ccTLDs”) like ‘.ng’, ‘.us’, ‘.cn’, ‘.uk’. Country code top-level domain (ccTLD) are domains set aside for sovereign countries identified with a country code. So, while ‘dot-coms’ are the most registered for commercial entities in the gTLDs category, country code domains (ccTLDs) have the most registered domains. In all, over five hundred million domains have been registered worldwide [19].

Generic top-level domains (gTLDs) and some country code top-level domains (ccTLDs) are generally registered, controlled, managed and administered by the Internet Corporation for Assigned Names and Numbers (“ICANN”) [20]. As the leading global internet policy makers and the coordinator of the global internet’s systems of unique identifiers who ensure that these systems operate steadily. ICANN has recorded many achievements [21] including the implementation of a Uniform Domain Name Dispute Resolution Policy (shortened as “UDRP”) prepared by WIPO in the August of 2009 for the resolution of domain name disputes. The UDRP is accompanied by Rules through which the UDRP is evoked. Conversely, the registration of ccTLDs in Nigeria such as ‘.ng’, ‘.com.ng’, and ‘.gov.ng’ is under the regulatory framework and supervision of the Nigeria internet Registration Association (“NIRA”). NIRA maintains a database of domain names registered in the dot-ng category of TLDs. The Association basically liaises with domain name hosts and providers to ensure that a domain name registered with them cannot be used by someone else. With this, a domain name can be an intellectual property entitled to protection [22], however limited.

VI. THE NEED FOR A DOMAIN NAME

From the foregoing, the importance of a domain name to a corporate entity in a digitally-dominated market cannot be thrown to the confines of the trash can. Little wonder the clamour for cyberspace. Having a domain name for a business establishes credibility and professionalism for an online and offline market. As posited by Onele and

Onyilofor, the domain name not only indicates a connection in the course of trade between goods and someone having the right to use the name, it also allows for direct access to the goods or services from any part of the world. A commercial domain name carries a stamp of legitimacy and authenticity and creates trust among the patronages of the brand. And the advent of digital marketing has made easy the reach of a wide range of customers for conversions (sales), and digital marketing itself is a possibility only with a domain name and a functioning website. So, for certain businesses, achieving or over achieving a business goal today is dependent on the quality of content created on social media channels and an active website, and the later cannot be created without first choosing and registering a domain name.

VII. THE CONFLICT BETWEEN TRADEMARK AND DOMAIN NAME

Not only is a domain name important to a corporate entity, using the right domain name, one that carries the trade or business name of the corporate entity, is as important. This is the confluence of the conflict. Conflict, therefore, arises where corporate entity or proprietor of a registered trademark who surfs the internet for the purpose of getting a domain name assigned to him with its trade name discovers that his or its choice domain name had been usurped by another who is merely cybersquatting with it. What then is cybersquatting?

Cybersquatting is any or all of the act of registering, selling or using a domain name with the intent of profiting from the goodwill of someone else's trade name. Also known as domain name theft or Domain squatting, cybersquatting is a term which generally refers to the practice of buying up a domain name which uses the name of an existing business with the reason of selling the name at a profit to that existing business [23]. Cybersquatting takes up various forms and typo-squatting, cyber piracy, cyber smearing, reverse domain name hijacking and pseudo cybersquatting are the most common forms. Typo-squatting occurs when a party registers a domain name which is akin to a well-known trade name or domain name; cyber piracy occurs when a trademark is integrated in a domain name to attract larger traffic to the web-pages associated with a similar domain name; cyber smearing is the registration of diminishing and disparaging domain names that has derogatory meanings when the trademarks are joined with other phrases; reverse domain name hijacking occurs where the owner of a registered trademark tries to secure a domain name by making untrue cybersquatting claims against the owner of the domain name; and pseudo cybersquatting occurs when a domain name having semblance with a trademark is registered with no intent of using the name. As noted by a scholar, the conflict between trademark and domain name, one which has made an easement for cybersquatting, has its roots in the fact that the allocation and registration of trademarks and domain names is controlled by two non-

integrated systems and overseen by different entities, one private, one governmental.

Generally, there can be a valid cybersquatting claim by a registered trademark owner against a domain name registrant amidst the priority of first in time domain names are generally assigned especially where the trade name as (trademark) existed before the domain name. However, 'reverse domain name hijacking' reveals that where the domain name was registered before the tradename, there can be no valid legal claim by registered trademark owners against domain name. Instead, the domain name registrant may go against the trademark claimant as cybersquatting. Even though preference is often titled toward the trademark owner, the dominance of the two business identifier models is determined by the theory of first to exist.

For the purpose of regulations, various intellectual property jurisdictions have promulgated laws for online trademark theft. The United States, for instance, described cybersquatting in its extant law, the Anticybersquatting Consumer Protection Act ("ACPA") of 1999 [24]. In Nigeria, it is the Cybercrimes (Prohibition, Prevention, Etc) Act "the Cybercrimes Act") that principally embodies cybersquatting. The Cybercrimes Act was established in 2015 to, among other objectives, combat cybersquatting activities in the country. In section 58, the interpretation section of the Act, cybersquatting is defined as:

"the acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, and deprive others from registering the same if such a domain name is similar, identical or confusingly similar to an existing trademark registered with the appropriate government agency at the same time of the domain name registration; identical or in any way similar with the name of a person other than the registrant, in the case of a personal name; and acquired without right or with intellectual property interest in it."

Although this definition can make for a working definition, cybersquatting under the Act cannot be fully appreciated without recourse to section 25(1) of the same Act, a sub-section that criminalises this cyberspace theft. Paraphrasing the section 25(1), cybersquatting is the intentional act of taking or making using, on the internet, domain name, trademark or word belonging, registered or in use by any individual, body corporate or the Nigerian government without authorisation with the goal of hindering the owner or registrant from using them.

The combination of the description afforded in sections 58 and 25(1) of the Cybercrime Act appear all encompassing and includes using a different TLD but the same or very similar domain name of a company which has a registered domain name. Take for example a mobile gadget company with the registered trade name "Kirana" is assigned the domain name "Kirana.com" and another person who is

fully aware of the trade name and registered domain name goes on to register the name “Kirana.net”. That will pass for cybersquatting under the Cybercrimes Act. It also will amount to cybersquatting where the person registers the name “kiranaggadgets.com” with the same knowledge. As gleaned from the use of the phrase ‘intentionally’ in section 25(1), mistake or ignorance will not amount to cybersquatting. Another element that can be factored from the definition of cybersquatting under the principal Nigerian legislation is that the domain name must be created and registered without the approval of the registrant or owner of the trade name whose intellectual property interest still subsists. It is a premise which concludes that the endorsement of the registrant or legitimate prior user by way of consent, permission and authorisation (“CPA”) will excuse the act from cybersquatting. Again, for the act to be a violation, the domain name must be registered with the aim of interfering with the usage by the prior user, registrant or owner, or for profit or to mislead others. This is what is referred to as ‘bad faith’ in section 58, and there will be no successful dispute on the part of the Complainant in the absence of this element.

A prototype of cybersquatting was found in the case of *The Nigerian Air v. Olumayowa Elegbede*. On July 8 2018, the Federal Government of Nigeria launched the National Carrier/Airline. Olumayowa Elegbede quickly purchased the domain names ‘NigeriaAir.ng’ and ‘NigeriaAir.com.ng’ on the same day the the Airline was and then auctioned them. Even though no legal action was taken against him, his action is a clear case of cybersquatting as it falls within section 58 of the Cybercrimes Act.

Sometimes, other than being directed to a site which states the alleged Cyber squatter’s intention to sell the domain name at a bid, as the Nigerian Air case with Elegbede reveals, the site visitor will be notified of the non-functionality of such site in the form of pop-up information such as “under construction” or “can’t find server”. At other times, the site will be an actual functional site as the case *Philip Morris International Incorporated v. r9.net*. will later reveal.

VIII. REMEDIES AND ADJUDICATION MECHANISMS

In the event that a trademark holder or a registrant of a trade or business name discovers that a registered domain name infringes on his or its trademark and is certain of the presence of all the conditions and elements of cybersquatting, he can enforce his right against the Cyber squatter through several mechanisms, procedures and realms. In Nigeria, the complainant has sundry options to enforce his right against the alleged Cyber squatter. The first is dispute resolution through the WIPO-UDRP proceedings; the second is dispute resolution under the NIRA system; the third is a criminal action under the Cybercrimes Act; and the fourth is the institution of a

passing off action under common law. These enforcement realms and procedures offer certain remedies where the alleged Cyber squatter is found wanting and held liable. The remedies include an order of court or adjudicating panel for relinquishing of the domain name, cancellation of the domain name, payment of damages, an imprisonment term and payment of fine. Generally, and by default, the Cyber squatter is the Respondent or Defendant in the dispute leaving the trademark owner as the Complainant or Plaintiff.

1. Dispute Resolution under WIPO.

For emphasis, the World Intellectual Property Organisation (“WIPO”) established a set of arbitration procedures called the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) for the resolution of disputes with bearing on domain names among the UN member States. The UDRP permits Complainants of cybersquatting to file a complaint joining the dispute resolution service provider as a co-complainant against the Respondent/Cyber squatter and the registrar who saw to the registration of the domain name. The complaint is accompanied with the grounds for the complaint. However, the right of the Complainant to apply to the ICANN dispute resolution service providers is only exercisable on the fulfilment of three elements. The three elements which are that:

- i. The Respondent’s domain name is identical or strikingly similar to the trade mark or service mark over which the Complainant exercises his rights;
- ii. The Respondent has no legitimate interest or right in the domain name; and
- iii. The said domain name of the Complainant has been registered and is being used in bad faith (mala fide) [25].

From the wordings, a Complainant’s claim is only due when he already had a domain name registered and the Cyber squatter is only trying out a ‘redirecting’ scheme (typo-squatting and cyber piracy). In determining the issue of “bad faith”, the WIPO resolution Panel is compelled by the UDRP Rules to take the following into consideration:

- i. Whether selling the domain name was the main rationale behind its purchased and registration.
- ii. Whether the disruption of the Complainant’s business was the main rationale for the registration of the domain name.
- iii. Whether the prevention of the Complainant from reflecting the name in a corresponding domain name was the rationale for the domain name registration.
- iv. Whether attracting internet users and web surfers was the reason the Cybersquatter created and registered the domain name [26].

In resolving these disputes, there is no option for monetary compensation in the form of damages, neither is there any injunctive or equitable relief. This WIPO Panel only offers

the under-listed, mutually exclusive remedies. Thus, the Panel can either:

- i. Grant the complaint by cancelling the domain name.
- ii. Make an order for the transfer of the domain name to the Complainant [27];
- iii. Refuse the complaint for not meeting the elements under Paragraph 4(a) of the UDRP Rules; or

The decision entered by the Panel is binding on accredited registrars or hosts of domain names who will take necessary steps in enforcing the decision by either transferring the domain name to the Complainant or completely striking out the domain name. This is, however, subject to the aggrieved party's right to institute a suit within the prescribed time [28]. An appeal of the decision will serve as a stay of enforcement of the decision.

The WIPO Panel has resolved many trademark-domain name disputes using the UDRP system. In 2003, the case between *Shell Trademark management B.V. v. Domains – Best Domain* came to the Panel for resolution. The dispute in the case was the contention by Shell that the domain name 'www.shell.com' was registered by the Respondent through ICANN, a domain name connected to 'www.abortionismurder.org.' Before the Panel, the Complainant, Shell, argued that the Respondent was a Cyber squatter who had no legitimate interest in the domain name. Shell further submitted that the Respondent offered to sell the name to them for Five Hundred and Forty-Nine Thousand Dollars (\$549,000), making the registration of the domain name by the Respondent one done in bad faith. The Respondent never responded to these allegations and the Panel decided in favour of Shell and ordered the transfer of the domain name in their favour. In the case of *Philip Morris International Incorporated v. r9.net*, the Complainant's case, an American multinational cigarette and tobacco manufacturing company, was that the Respondent (r9.net) misappropriated the well-known Marlboro marks by registering the domain name 'Marlboro.com'. The Complainant alleged the similarity of the registered domain name to its trademark. It was also the undisputed contention of the Complainant that the Respondent had registered the domain name *mala fide* having had no legitimate interest in the mark. In finding the complaint and argument of the Complainant valid, the WIPO Panel transferred the contended domain name to the Complainant in 2007. Similarly, in the case of *Hitachi Limited v. Value Domain*, the WIPO Panel made an order transferring to the Complainant the domain name registered by the Respondent, 'hitachi-am.com'. The Complainant's complaint was that this domain name was similar to its trademark "Hitachi". It was reasoned by the Panel that the Complainant being an international dealer in asset management known in over 175 countries, the 'am' in the domain name represented asset management which was the capital involvement area of the Complainant [29]. Companies like Panasonic, Avon and Hertz are among other notable victims of cybersquatting.

UEFA v. Funzi Furnitures [30] is the first cybersquatting case reported in Africa. The complainant was Union des Associations Europeennes de Football (UEFA), the governing body for European football and the organiser of an international football competition popularly known as "Champions League" and the registered proprietor of the international trademark registration of the name 'Champion League' in several countries. Funzi Furnitures was the Respondent who registered the domain name Champions League in 1998. The Respondent wrote the Complainant in April 2000, with an offer to sell to it the registered domain name to the Complainant for One Million, Four Hundred and Fifty Thousand Dollars (\$1,450,000). There was a break-down in negotiations and the Complainant lodged a complaint with WIPO. After hearing from both sides, the Panel held on the 22nd day of October, 2000, through sole panelist Tony Willoughby, the domain name to be confusingly similar to the Complainant's trademark; the respondent had no rights or legitimate interest in the domain name; the domain name was registered and used in bad faith. Consequently, there was an order for the transfer of the domain name to the Complainant.

2. Dispute Resolution under NIRA.

Founded in 2005, the Nigeria Internet Registration Association ("NIRA") is the second remedy mechanism available to a Nigerian or a resident of Nigeria who may have become a victim of cybersquatting. The NIRA has a NIRA Dispute Resolution Policy ("NDRP") provides a forum for settling conflicting registration of domain names squarely on the '.ng' country code top level domain name registry to the exclusion of complaint hinged on generic top-level domains like '.net' and '.com' [31]. Under the NIRA Policy/Rules, a complaint can be filed by the Complainant at any time he reasonably believes his trademark or domain name rights have been usurped by another (the Registrant/Respondent). The complaint is to be lodged with the particulars of the domain name in conflict, the grounds upon which the complaint is made and the particulars of both the Complainant and the Respondent [32]. Upon lodging the complaint, the Respondent is to file a response within 20days of the receipt of the complaint, and the Complainant has 5days to file a Reply, if any, where there was a response from the Respondent [33], a complaint which must be in alignment with the requirements of Paragraph 5 to Schedule B of the NDRP Rules. Like the UDRP Rules, the Complainant's right to apply to the NIRA dispute Resolution Panel is conditional upon the presence of three elements in the complaint. The three elements include:

- i. The domain name of the Respondent/Registrant is identical or confusingly similar to a trade mark where the rights of the Complainant subsist;
- ii. The Registrant has no right or legitimate interest in the domain name; and
- iii. The domain name is registered in abuse of the trademark or is subsequently used in bad faith [34].

To determine whether a domain name had been used in bad faith, the NIRA Arbitration Panel often considers: whether the Registrant has registered the domain name or has acquired the domain name for the primary purpose of selling, leasing, or otherwise transferring the domain name registration to another person at a profit; whether the Registrant has registered the domain name for the reason of preventing the owner of a trademark from reflecting that name in a corresponding domain name; whether the Registrant has intentionally attempted to attract, for profit, internet users to the website or other online location by creating a likelihood of confusion with the Complainant's trademark or name regarding the source, sponsorship, affiliation, or endorsement of a product or service on the website; whether the Registrant has registered the domain name chiefly to disrupt the business or activities of the owner of a trademark; whether the Respondent is using the domain name in a way which has confused people or businesses into believing that the domain name is connected to, registered or operated by the Complainant; whether the Complainant has succeeded in demonstrating that the Respondent is engaged in a pattern of registrations, where the Respondent is the registrant of domain names (under the dot-ng TLDs or otherwise); whether the domain name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant has been using the domain name registration exclusively and paid for the registration and/or renewal of the domain name; or whether the Respondent gave false contact details to NIRA [35]. All these considerations are mutually exclusive, although the presence of more than one element may persuade the Panel further and tilt its hands in favour of the Complainant.

Where any or more of the elements above are found to be present, the NIRA Panel will be compelled to find for the Complainant and will order any of the following:

- i. Cancellation of the domain name, in which case the domain name becomes normally available for registration.
- ii. Transfer of the name to the Complainant.
- iii. Make changes to the domain name registration in line with the terms of the Registrant Agreement or other legal requirements [36].

In paragraph 9 of the Rules, however, if the Complainant is unsuccessful and Respondent goes on to prove before an Expert, on a balance of probability, that the complaint was commenced by the Complainant in an unfair attempt to cancel or obtain a transfer of any registration which is the subject of the proceeding, the Expert may order the Complainant to pay to the Respondent an amount rising to Five Hundred Thousand Naira (₦500,000) in defray of the cost of proceedings. This money is paid to NIRA who hold such in trust for the Respondent [37]. This is often referred to as reverse domain name hijacking earlier explained as a form of cybersquatting. Panel decisions under the NDRP are binding on both parties. Parties, however, wield the right to appeal the decision to a team of independent experts or initiate legal proceedings against the other party within 10 working days of the decision of the NIRA Panel.

One Nigerian case which would have enjoyed the application of the NDRP is that which involved Linda Ikeji and one Emmanuel Efremov. Linda Ikeji happens to be a renown Nigerian blogger who runs her blog, www.lindaikejisblog.com, and is reported to average an annual income of Nine Hundred Thousand Dollars (\$900,000). On the other side of the divide is Emmanuel Efremov who owns a media outfit, 9jalife. Efremov registered the domain name 'lindaikeji.net' in 2011 and used the name to earn himself advertisement revenue. When this was made public, Emmanuel redirected the site to Linda's blog in an attempt to erase evidence of his cyber-squatting activities and evade any infringement suit [38]. The dispute has since been overtaken by events. There still exists no reported case sat over by the NIRA Dispute Resolution Panel so far, with the closest being a hint that the agency will deliver judgment on a domain name, mtn.com.ng, soon [39]. The actualisation of the judgment is still elusive.

3. Remedy under the Cybercrimes Act.

The Cybercrimes (Prohibition, Prevention, Etc) Act, 2015 provides for penalty as the Complainant's remedy for a successful cybersquatting action. In section 25 of the Act, a person who is found guilty of Cybersquatting is liable to a maximum imprisonment of two years or a maximum fine of Five Million Naira (₦5,000,000) or serve both the prison term and the fine. In this adversarial system, it is the Federal High Court that is clothed with the jurisdiction and power to entertain the allegations to the exclusion of all other courts, and the alleged Cyber squatter need not be a Nigerian. The Act allows an action to be brought where the alleged cybersquatting activity was committed in Nigeria by a citizen or resident of Nigeria or anywhere else as long as the Complainant is a citizen or one who resides in Nigeria [40]. As strongly observed by Oтуру, the owner of the domain name that is being subjected to cybersquatting does not need to prove that he owns a trademark that is related to the domain name. What he would be required to do would be to show that he has a domain name or business name registered by the said name.

Accelerated hearing is given only where the action is brought or initiated by the Commission [41], except that the Act never created a Commission but a Council (the Cybercrime Advisory Council) whose holistic function is to make suggestions on issues that bother on the prevention and combating of cybercrimes [42]. Reference to the 'Commission' can only be vaguely assumed to mean the NIRA. The non-establishment of a Commission saddled to directly enforce the provisions of the Cybercrimes Act, even where the word "Commission" was mentioned, has made the Act another product of legislative boredom; for leaving the enforcement of cybercrimes and cybersquatting in the hands of all law enforcement and security agents [43] is a signature of failure being in full awareness that every other law enforcement agency has its unique functions and lack the technicality and skills needed to enforce cybercrimes and cybersquatting.

4. Passing-off Action.

Passing-off is a cause of action which is foremostly founded in tort and has its root in common law [44]. It is a legal principle that prevents one from deliberately or unintentionally misrepresenting the unregistered trademarked goods or services of others by using the name, mark, or sign of the said unregistered trademark [45]. Passing off is uniquely an unfair competition leading to confusion among customers to businesses of both physical and domain addresses. The primary purpose that underlies the tort of 'passing-off' is the protection of a goodwill already acquired by a trade name. It presupposes, therefore, that such goodwill must be established by the party alleging infringement [46]. Although 'goodwill' has no specific delineation, the House of Lords, in the very old case of *IRC v. Muller Margarine* [47], described it, in relation to passing off, as the benefit of the good name, reputation and connection of a business that attracts customers.

As apposite as goodwill is, it is not a sole, independent criteria for prove of passing-off. The following are all the elements which must be proved in alleging passing off. Thus:

- i. The Claimant must establish the goodwill or reputation attaching to the goods or service in question and the identifying 'get up' under which the goods and services are offered to consumers;
- ii. The Claimant must establish that there has been a misrepresentation by the defendant which has caused or is likely to cause the members of the public to believe that goods or service emanate from the Defendant;
- iii. The Claimant must show that he has suffered or is most likely to suffer losses owing to the misrepresentation [48].

In the determination of a passing-off, the mental state or intention of the alleged infringer is immaterial and not considered. What is also not considered that the false representation of the goods or services was made expressly, impliedly, or by the use of imitation of a mark, trade name or get-up with which the goods of another are associated in the mind of the public. What is material is that the infringement has occurred. This makes passing off a strict liability tort [49]. Since the means of false representation is not material, it connotes that online misrepresentation through domain name registration and cybersquatting can find its way into passing-off. The Nigerian Constitution specifically provides for passing-off actions and crowns the Federal High Court with exclusive jurisdiction in trademark matters [50]. In *Omnia (Nig.) v. Dyktrade Ltd* [51], the Federal High Court was held to have exclusive jurisdiction in the determination of passing-off claims, whether the claim arises from the infringement of a registered or unregistered trademark. This authority lays to rest the fact that the proprietor of an unregistered trademark has an enforceable right over his trademark where it is infringed upon, subject to the fulfilment of the conditions afore-stated.

In the 1961 case of *Niger Chemists Limited v. Nigeria Chemists* [52], the plaintiff sold drugs as Niger Chemists in Eastern Nigeria (Onitsha precisely), while the defendant began operating a shop on the same street and was dealt on the same line of business, drugs sale. The plaintiff dragged the defendant to court and an injunction was granted against the defendant on the ground that their use of the name 'Nigeria Chemists' was poised at deceiving the members of the public into believing that the defendant was related to the plaintiff in a way. Judge Palmer, J., quoted Lord Cozens Hardy MR in *Ewing v. Buttercup* [53] in holding the defendant liable where the later voiced:

"I know of no authority, and I can see no principle, which withholds us from preventing injury to the plaintiff in his business as a trader by a confusion which will lead people to conclude that the defendants are really connected in some way with the plaintiff or are carrying on a branch of the plaintiff's business..." That is the danger which can reasonably be foreseen in the present case, namely that people will be misled into thinking that Nigeria Chemists are a branch of, or in some way connected with, Niger Chemists. It is a confusion which leads to deception" [54].

Since passing off most likely extends to domain names and e-commerce businesses, it may be argued that a claimant for cybersquatting could institute an action at the Federal High Court against a Cyber squatter premise on the fulfilment of the conditions required for the proof of passing-off. The claim will neither be hinged on the registration of the trademark nor on the registration of the domain name; unregistered trademarks and domain names being competent grounds for an action in passing-off. The business entity must have, however, been registered under the corporate affairs commission as a company. It is after this checklist has been met that the remedies can be accessed. Where accessed, the remedies available are damages for infringement and injunction against the Cyber squatter/defendant, while the defences are usage with the claimant's consent and innocent use. A Claimant who brings a passing off action on cybersquatting claims should be aware that there would not be an order of Court requesting that the domain name be transferred to him in the event that his claim is successful. Rather, he may bring the action at any time even where the domain name has been transferred to him through the NDRP, thanks to the nature of the remedy of damages. And even though no passing-off action as it relates to cybersquatting has so far been reported, it is a make believe that such an action may succeed when hinged on trademark infringement.

IX. LIMITATIONS AND CHALLENGES TO ANTI-CYBERSQUATTING ENFORCEMENT

It is true that there abound cybersquatting regulations that afford for domain name rights in several countries of the world. The drawback is that their enforcement by the trade name Complainant, Corporate entity or domain name

owner may be a tug of war. These constraints take various forms, although only the foremost will be afforded an overview in this work.

1. The Elements of Cybersquatting.

The elements of cybersquatting itself is the first challenge of domain name rights. Flowing from the definition of cybersquatting afforded by the Anticybersquatting Consumer Protection Act (ACPA), it appears, as it has become the law, that there will be no cybersquatting unless there is an attempt on the part of the Cyber squatter to sell the domain name for profit. Anything else is merely 'fair use'. In the popular cybersquatting case involving actor *Kevin Spacey Fowler*, United States Congress stated that in as much as the alleged Cybersquatter makes no attempt to sell on a "personal name" web site for profit, it falls within the confines of "fair use" and permission is not needed from the trademark owner [55]. The UDRP Rules also possess elements and considerations which conform with this. This element cripples the morale of a registered proprietor of a trademark against a Cyber squatter who does not or has not offered to sell or resell the domain name for profit, as it generally contradicts the purpose of the anti-cybersquatting law itself whose aim is to restrain persons from benefitting from the brand name of another without consent.

The position does not hold sway in Nigeria under the extant regulating legislation. It must be recalled that the extant Nigerian law on cybersquatting only criminalises the Act, and a downward read from section 25(1) of the Cybercrimes Act will reveal that an attempt to sell the domain name will only come into play when convicting the alleged Cyber squatter and not in finding him guilty. Section 25(2)(b) of the Act, therefore, provides that in awarding any penalty against an offender in the section, a Court is to take cognisance of any attempt by the offender to obtain compensation in any form for the release to the rightful owner for use of the name, business name, trademark, domain name or other word or phrase registered owned or in use by any individual, body or corporate or belonging to either the federal, state or local government in Nigeria.

2. The Lack of an Enforcement Agency.

The enforcement mechanism in Nigeria is in contradistinction with those of similar jurisdictions. It is not without new that the Cybercrimes Act, an act that defines and penalises cybersquatting, did not establish any agency for its administration and enforcement. The Cybercrimes Act is a unique piece of legislation that provides for specialised offences and, like other peculiar enactments, should have a special agency set up for its enforcement, but the Federal Legislative House (the National Assembly), for legislative inexactness, failed to do so. This leaves the bulk of the work on the trademark Registrant/Corporate entity, the owner of the domain name or business name. The cybersquatting cases reported in Nigeria so far have been ones that have had the owner of the domain name under circumspect of cybersquatting

personally seeing to the enforcement of the Act. It is for this reason that the jurisdiction has a low rate of reported cases on cybersquatting.

3. The Lack of an Integrated System of Administration.

The summary of this challenge can be gleaned from the observation of Kaplan when he stated that "the root of the conflict between trademarks and domain names is that the allocation of each is conducted by means of two non-integrated systems administered by different types of entities, one governmental, one private". Trademark registration and administration is regulated by the Trademark Registry of different States which are government agencies, Nigeria inclusive. Generic top-level domains (gTLDs) and country code top-level domains (ccTLDs) are registered, controlled and managed by the non-governmental agencies ICANN and NIRA, as it is peculiar to Nigeria, but assigned through accredited private companies called registrars. Cybersquatting would be easily checked and its incessance ameliorated if the same entity were to conduct the registration of both trademark and domain name. The absence of this fusion will cause an even greater and escalated number in cybersquatting.

4. Lack of Uniform Domain System.

Unlike trademark which is territorial in nature but can still be protected in multiple countries when it is registered under the Madrid Protocol, domain names require universal exclusivity due to its global connectivity. In the event of concurrent registration of a domain name in different countries, it may be impracticable to conduct a search in each of those countries given the expenditure involved. This leaves a Complainant with little hope of universal protection of his domain name rights. In a scholarly observation, countries simply lack what it takes to protect domain names which is revealed in the lack of uniformity among the various national legislation.

X. CONCLUSION AND FUTURE SCOPE

In a post covid-19 era where the world is embracing remote work even more, Cybersquatting regulation like the Cybercrimes Act should be treated with more seriousness, especially in Nigeria where people and businesses pay for brands and not products or services. Even though corporate entities can win the fight against cybersquatting through the ICAAN and NIRA Arbitration mechanisms, the criminal enforcement under the Cybercrimes Act and passing-off action at common law, more can be done to mitigate the prevalence of cybersquatting. The responsibility of mitigating cybersquatting first lies with the trademark owner/corporate entity who seeks to monopolise her domain rights and own a website free from cybersquatting activities. The plan then should be to ensure that the trademark or trade name is registered promptly both in Nigeria and internationally under the Madrid System for an all-rounded protection. That way, nothing related to the brand name can be registered in any

WIPO state just as nothing related to Google such as '.net' or '.biz' can be bought globally, Google having owned the trademark. The rate of cybersquatting can also be mitigated where there is an integrated system for the appropriation and registration of trademarks and domain names. Far from annulling the Trademark Registry and NIRA, an integrated system demands the establishment of a central independent body overseeing the extant administrations. Connected with the act to mitigate cybersquatting activities is the need to amend the Cybercrimes Act to reflect a Commission solely in control of the administration and enforcement of the provisions of Act.

To avoid cybersquatting disputes however, it is suggested that the trademark owner or brand opts for a name which has no registered domain name. This may be done by conducting a search on a domain host or registrar platform. This way out is anchored on the need to have a framework where those registering a gTLD would have to verify their brand name on a global level and those registering ccTLDs will have their brands or tradenames verified nationally. Where these suggestions are implemented, the low rate of cybersquatting and cybersquatting disputes as well as the proliferation of the profits of corporate entities can only be imagined.

END NOTES

[1] The international registration of trademarks is made possible by the Madrid System in country states that are signatory to the Madrid Protocol. This is in turn made possible by the World Intellectual Property Organisation (WIPO).

[2] Section 5(2) of the Trade Marks Act, Cap. T13 Laws of the Federation of Nigeria ("LFN") 2004.

[3] J. Onele, E. Onyilofor, "Domain Names and Cybersquatting: Implications for Trademarks in Nigeria," *The Gravitass Review of Business & Property Law*, Vol. 9, No.4, pp. 115-133, 2018.

[4] J. H. Kaplan, "The Anticybersquatting Consumer Protection Act: Will It End The Reign Of The Cybersquatter?" *University of California Los Angeles Entertainment Law Review*, Vol. 8 Issue 1, pp. 38-50, 2000.

[5] J. T. McCarthy, "Trademarks, Cybersquatters and Domain Names," *DePaul Journal of Art, Technology & Intellectual Property*, Vol.10, Issue 231, pp.1-22, 2000.

[6] D. Oturu, "Cybersquatting – How to Protect your Domain Name/Website from Cybersquatters in Nigeria," <https://www.mondaq.com/nigeria/seurity/706866/cybersquatting-how-to-protect-your-domain-name-website-from-cybersquatters-in-nigeria>, accessed 17/1/2021.

[7] H. P. Singh, "Domain Name Disputes and Their Resolution under UDRP Route: A Review," *Archives of Business Research*, Vol.6, Issue 2, pp.147-156, 2018.

[8] TRIPS is an acronym for Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the TRIPS Agreement is a treaty between all member States of the World Trade Organisation ("WTO") whose current number is 164. Effective from January 1 1995, the

Agreement is a minimum standard agreement which allows members to provide more extensive protection of intellectual property subject to the wish of the nation State.

[9] Section 67(1) of the Trade Marks Act

[10] The fall is that although Nigeria is signatory to the International (Nice) Classification of Good and Services for the purpose of the registration of marks established by the Nice Agreement concluded in June, 1957 and later revised Geneva in 1977, it has not ratified it. And the Nice Classification of Goods in the Fourth Schedule of the Trademarks Regulation 1967 extends the classes of goods to include services in classes 35-45 in the Nice Classification. The Nice classification ensures an international uniformity in classifying such goods or services.

[11] Suit No. FHC/1/256/2012 unreported, delivered 7/6/2017.

[12] G. Henshaw, "Legality of Service Marks in Nigeria", 10th March 2020, <https://tnp.com.ng/insights/legality-of-Service-Marks-in-Nigeria>, accessed 5/1/2021.

[13] The duration for trademark varies between jurisdictions. For members of the WTO, Article 18 of the TRIPS Agreement stipulates 7years as the least number of years a registered trademark can enjoy protection and exclusive use, subject to an indefinite renewal term. The Nigerian system allows for 7years protection of trademark where registered and an indefinite renewable period of 14 years each. Under the Madrid System however, a registered trademark enjoys protection for a 10-year period, subject to a further indefinite renewable period of ten years. The duration envisaged covers both physical and virtual brand marketing rights.

[14] J. Salmond, "Law of Tort," (7th edn), *Sweet and Maxwell, England*, pp. 405– 412, 1977.

[15] In Nigeria, the foremost corporate regulation is the Companies and Allied Matters Act (CAMA) 2020 and it is administered by the Corporate Affairs Commission (CAC).

[16] An internet protocol (IP) address is a set of numbers which every computer connected to the internet is assigned. It aids in identifying networks and location addressing. IP addresses are of two types, IPV4 and IPV6. They are written in notations readable by humans such as 192.168.43.1 in IPV4 and 2003:92:16855:0:43:1 in IPV6

[17] A domain name system (DNS) is defined by *wikipedia*

in https://en.m.wikipedia.org/wiki/domain_name_system as a hierarchical and decentralised naming system for computers, services, or other resources connected to the internet or a private network. It associates different information with domain names assigned to each of the participating entities. A DNS predominantly translates domain names that are readily memorised to the IP addresses necessary to locate and identify computer services and devices using the cardinal network protocols.

[18] <https://www.bigcommerce.com/ecommerce-answers/what-is-a-top-level-domain/>, accessed 5/12/2020

[19] Domain Name Stats at www.domainnamestat.com/statistics/tldtype/genric accessed 1/12/2020.

- [20] ICANN is an international US-based not-for-profit corporation whose services were originally performed under the Internet Assigned Numbers Authority (IANA) in the United States government. Domain names are assigned, in the United States, by registrars. These registrars are private entities which are accredited by ICANN to become part of the Shared Registration System ("SRS"). The SRS came into existence in the October of October 1998 when the United States Department of Commerce and Network Solutions amended their cooperative agreement which originally limited the registration of TLDs to a sole registrar and registry administrator. The introduction of the SRS saw the initiation of a Shared Registry System that allowed a limitless number of registrars to partake in the registration of domain names using a single registry. Seen at https://icannwiki.org/Shared_Registry_System accessed 7/12/2020.
- [21] www.archive.icann.org/tr/english.html for some of the stellar marks of ICANN.
- [22] This protection only precludes the registration and assignment of one domain name to more than one person. It does not bar the assignment of similar domain name or the same domain name on a different TLD. It is the limit to domain name protection in intellectual property law.
- [23] <https://www.nolo.com/legal-encyclopedia/cybersquatting-what-what-can-be-29778.html>, accessed 1/12/2020. ICANN defines cybersquatting as domain acquired in bad faith (or mala fide)
- [24] Cybersquatting is defined under the ACPA as registering, trafficking in, or using an internet domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else.
- [25] Paragraph 4(a) of the UDRP Rules, ICANN 1999.
- [26] UDRP Rules, Paragraph 4(b).
- [27] This remedy has been the easy-place-to-turn-to by WIPO Panel over the years. The cases of *eBay v. Du Hongxia* WIPO Case No D2014-2015, *Koninklijke Philips Electronics N.V. v. In Seo Kim* (2001).
- [28] The aggrieved party has a right to institute an adjudicatory action in any competent court within 10 business days (working days) of the Panel's judgment in the form of an appeal.
- [29] This decision was entered in 2010. See also the cases of *Goldline International Incorporated v. Gold Line (2001)*, *SAFE Credit Union v. Mike Morgan (2006)*, *Donna Karan Studio v. Raymond Donn (2001)*.
- [30] WIPO Case No D2000 - 0710. See <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0710.html>, accessed on 6/12/2020
- [31] <https://www.nira.org.ng/who-are-we/about-nira>, accessed 4/1/2021
- [32] Paragraph 3, Schedule B of the NIRA Rules, 2008. The complaint will be accompanied with Ten Thousand Naira (₦100,000) filing fees.
- [33] Paragraphs 5 and 6, Schedule B of the NIRA Rules, 2008.
- [34] Paragraph 4(a) Schedule A of the NIRA Rules, 2008.
- [35] NIRA Rules, paragraph 4(b) Schedule A.
- [36] NIRA Rules, paragraph 3 Schedule A.
- [37] Non-payment of the defray cost by the Complainant acts as a subsequent suspension to any complaint he files in respect of any Registration with NIRA, pending the defrayment by him.
- [38] News Rescue, <https://newsrescue.com/man-got-linda-ikeji-suspended-admits-director-cybersquatter-owner-linda-ikeji-net/#ixzz3oH9OwNRu>, accessed 6/12/2020
- [39] <https://www.cio.com/article/2433021/NIRA-todeliver-judgment-on-mtn-com-ng-soon.html>, accessed 7/12/2020
- [40] Section 50(1) of the Act.
- [41] Section 50(3) of the Act
- [42] Section 43(1)
- [43] Section 41(3). This section provides that "All law enforcement agencies and intelligence agencies shall develop requisite institutional capacity for the effective implementation of this Act and shall in collaboration with the Office of the National Security Adviser, initiate, develop or organise training programmers nationally or internationally for offers officers charged with the responsibility for the prohibition, prevention, detection, investigation and prosecution of cybercrimes." The section clearly puts into the hands of every law enforcement and intelligence agency in Nigeria the power to prosecute cybersquatting, what ought not to be.
- [44] D. Kitchin, D. Llewelyn, J. Mellor (eds), "Kerly's Law of Trade Marks and Trade Names," (14th edn.), *Sweet & Maxwell, England, 2005*.
- [45] Section 3 of the Trademark Act, supra
- [46] Kitchin, supra. It is noteworthy that the goodwill must not be actual nor anticipatory since an anticipated goodwill is hinged on uncertainty and may never be reality.
- [47] (1901) AC 217, 223 et seq
- [48] www.templars-law.com/trademark-infringement-suing-passing-off-nigerian-courts, accessed 9/12/2020
- [49] *Spading v. Gamage (1915) 84 L.J. 449*. A tort is said to be strict liability when the fault or intention for carrying out the tort is not considered when finding liability. What matters is that the tort has been carried out or falls within the restricted purview.
- [50] Section 251(f) of the Constitution of the Federal Republic of Nigeria, 1999.
- [51] (2007) 15 NWLR (Pt. 93) 138.
- [52] (1961) ANLR 180.
- [53] (1917) 2 Ch 1
- [54] Niger Chemist case, supra. See also the case of *Trebor Nigeria Limited v. Associated Industries Limited (1972) NNLR 60*.
- [55] https://www.theregister.com/2001/11/26/kevin_spacey_loses_pivotal_cybersquatting/ accessed 17/1/2021

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