DOI: https://doi.org/10.68193/unijoslawjournal.2025.9h98jfii

THE INTERSECTION BETWEEN TRADE MARKS AND CONSUMER PROTECTION

Paul T.M Angya*

ABSTRACT

Whilst Intellectual Property law deals with creations of the mind, Consumer protection is about ensuring consumer interest in the marketplace. The interplay between trademarks and consumer protection represents a critical aspect of modern market economies. Trademarks serve not only as identifiers of the source of goods and services but also play a pivotal role in consumer decision-making processes. By examining the dual role of trademarks, as instruments for brand differentiation and as protective mechanisms for consumers, this paper aims to provide a comprehensive understanding of their impact on consumer welfare. The doctrinal method of research was utilised in this paper, drawing on key cases and legal principles to elucidate these concepts. It further relied on laws, statutes, regulations, written texts and articles. In that regard, it discussed the enforcement of trademarks as a means to shield consumers from misleading and substandard products, thereby fostering trust and reliability. Additionally, the paper addresses Contemporary Challenges in Trademark Law, Digital Marketplaces and Counterfeit Goods. Through these analyses, the paper finds that trademarks are very important for the maintenance of brand integrity and consumer confidence, and recommends, amongst others, that understanding the relationship between trademarks and consumer protection is essential for developing policies that effectively balance the interests of businesses and consumers. AI and machine learning can enhance the detection of counterfeit listings and automate the monitoring of online marketplaces. While existing laws provide a foundation, there is a need for continuous updates and reforms to keep pace with the rapidly evolving digital landscape, for effective consumer protection as well as ensuring a well-functioning marketplace.

Keywords: Trademarks, Intellectual Property, Caveat emptor, Consumerism, Consumer Protection.

1. INTRODUCTION

The interplay between trademarks and consumer protection represents a critical aspect of modern market economies. Trademarks serve not only as identifiers of the source of goods and services but also play a pivotal role in consumer decision-making processes. By examining the dual role of trademarks as instruments for brand differentiation and as protective mechanisms for consumers, this paper aims to provide a comprehensive understanding of their impact on consumer welfare.

Trademarks, defined under intellectual property law, are distinctive signs or symbols used by businesses to distinguish their products or services from those of competitors. This distinctiveness is crucial in building brand recognition and loyalty, enabling consumers to make informed choices based on their prior experiences or perceptions of a brand's reputation. The fundamental purpose of a trademark is to prevent consumer confusion,

ensuring that when a consumer selects a product bearing a particular trademark, they are assured of its quality and origin[1].

Consumer protection, on the other hand, encompasses a wide range of laws and regulations designed to safeguard buyers from fraudulent, deceptive, and unfair business practices. These protections are vital in maintaining trust in the marketplace and ensuring that consumers are not misled about the products or services they purchase[2]. Trademarks intersect with consumer protection by providing a reliable signal of quality and origin, which helps to prevent deception and reduce the risk of counterfeit goods entering the market.

The historical evolution of trademark law reveals its increasing alignment with consumer protection objectives. Initially focused on protecting the interests of producers, trademark law has progressively expanded its scope to include the protection of consumer interests. This shift reflects a broader understanding that a well-functioning trademark system benefits not just businesses, but also consumers and the economy at large. By ensuring that trademarks are used accurately and responsibly, trademark law helps to foster fair competition and enhance consumer confidence. This was the essence of the decision of the Supreme Court in the case of *Ferodo Ltd* v *Ibeto Industries Ltd,* where the court found in favour of Ferodo on a claim of trademark infringement. Ferodo, a manufacturer of brake linings, sued Ibeto for trademark infringement and passing off, claiming Ibeto's product packaging was too similar to its own. This case reinforces the protection of consumers from confusion and deception by ensuring that trademarks serve as reliable indicators of product origin and quality[3].

To showcase and amplify the role of trademarks in consumer protection, this paper will explore the legal frameworks governing trademarks and consumer protection, analysing key legislations such as the Trademarks Act Cap T.13 LFN 2004 and the Federal Competition and Consumer Protection Commission Act of No. 1 of 2018. It will examine case studies where trademarks have played a crucial role in protecting consumers, as well as instances where misuse of trademarks has led to consumer harm. Furthermore, the paper will discuss contemporary challenges in trademark law, including the rise of digital marketplaces and the global proliferation of counterfeit goods.

2. DEFINITION / CLARIFICATION OF TERMS AND CONCEPTS

---

* Ass. Prof. Paul T M Angya LL.B (Hons) LL.M, Ph.D, fsi, Deputy Dean of Faculty of Law, and the PG Rep of the Faculty of Law, Bingham University, Karu, Nassarawa State. He has interests in: Consumer Protection Laws, Intellectual Property Law and Commercial Law. <paulangya@gmail.com> <paul.angya@binghamuni.edu.ng> Phone no. 08022236855

1 *Coca-Cola Co.* v *Koke Co. of America,* 254 U.S. 143 (1920) here, the US Supreme Court recognized that the Coca-Cola trademark represented a particular quality of beverage that consumers had come to expect. This case highlights how trademarks assure consumers that they are purchasing the same quality product they have previously enjoyed, thereby protecting consumer expectations and fostering trust.

2 See *Federal Trade Commission* v *Wyndham Worldwide* Corp. (799 F.3d 236) The FTC brought action against Wyndham for failing to adequately protect consumer data, leading to fraudulent charges. The court upheld the FTC's authority to regulate corporate cybersecurity practices under the unfairness prong of the FTC Act whose Objective is to protect consumers from deceptive practices that can result in financial loss or identity theft.

3 (2004) 5 NWLR (Pt. 866) 317

2.1 Intellectual Property

There's no single or concise definition for Intellectual Property Rights (IPR). Many authors and jurists have attempted a definition of the terminology, but a simple but clear and concise definition of IPR is that offered by Poonam Nahar[4] and quoted by Angya[5] in his essay, stating:

> …You wake up from your 'Sleepwell' mattress, brush your teeth using 'Sensodyne' toothpaste, you bath under 'Jaquar' shower with a 'Lux' soap and 'Lakme' face wash then wear 'Zara' clothes, eat 'Red Banana' fruit in breakfast while reading 'The Hindu' newspaper and finally drive a 'Kia' car to your office… this sounds crazy right but this is IP, where there's not even a single moment you are not using anything or any brand products. The products that you use have Intellectual Property in them. From the mattress you sleep on to the car you drive everything has Intellectual Property in it. Now, you might be wondering what IP is.[6]

You can substitute the Indian products or brand names with Nigerian brands, and you get the beauty and clarity of his definition. However, these rights are not secured or protected until granted by the state. IPR is therefore, the sum of the rights that the state grants to human creations, either artistic or industrial, as well as the recognition of the holder's authorship and of his exclusive right to obtain economic benefit from those rights[7] It is the exclusive rights granted by the State over creations of the human mind, in particular, inventions, literary and artistic works, distinctive signs and designs used in commerce.

The laws regulating intellectual property ensure the rights[8] and enable the owners or authorised persons to appropriate to themselves the economic value and proprietary rights of the asset and at the same time, the freedom to alienate the same. It ensures recognition and credit as the creator of such things as an invention; literary and artistic works; designs, and software. To protect these types of IP, there are registrable IP Rights such as patents, trademarks and design rights, as well as unregistered rights such as copyright.[9] IPR rights legally protect brands, inventions, designs or new plant varieties.

From the above definitions, with particular regard to the law in Nigeria, we can observe that Intellectual Property is the generic term from which two (2) classes of intellectual property rights merge, namely: copyright and industrial property. As its name indicates, Industrial Property deals primarily with industry-related creations, defined by the State as those of mainly economic importance. It covers the rights in patents, trademarks,

---

4 Poonam Nahar, 'Difference between Intellectual Property and Intellectual Rights' (June 25, 2021) <https://t.me/joinchat/J_0YrBa4IBSHdpuTfQO_sA> accessed 17 June 2023

5 Paul T M Angya, A Basisc Introduction to Intellectual Property Rights BHULJ Vol. 1 No. 1 August 2023 P70

6 ibid. Poonam Nahar is an Indian Student of Diploma in Intellectual Property, Media and Entertainment Laws.

7 Juan Carlos Ortiz Rico - Intellectual Property: Differences between Industrial Property and Copyright <http://LawyerME/article/view/ 29/10/2019> accessed 08 May 2023

8 <https/www.Miere sparaza.Com> accessed on the 23 June 2022

9 <https://www.ipaustralia.gov.au> accessed 08 May 2023

industrial designs, utility models, plants and animal varieties[10], etc, whilst Copyright is concerned with literary, musical, and artistic creations. In summary, whilst the focus of copyright law is to contribute to the development of culture, that of industrial property law is the development of industry.

2.2 Trademarks

A definition or description of the term Trademark can be found in both judicial pronouncements and the statute. For the Judiciary, 'A trademark is a distinctive sign or indicator used by an individual, business organisation, or other legal entity to identify that the products or services to consumers with which the trademark appears originate from a unique source, and to distinguish its products or services from those of other entities. Trademarks can be words, logos, symbols, designs, or a combination of these elements. A trademark is typically a name, a word, a phrase, a logo, symbol, design, image, or a combination of these elements. In *Proctor & Gamble Co.* v *G.S & D. Ind. Ltd*.,[11] the court defined a trademark as a distinctive picture which would indicate to a purchaser of an article bearing the means of getting the same article in future by getting an article with the same mark on it. It is 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 and some person having the right either as a proprietor or a registered user to use the mark. In the same vein, the case of *Society BIC S.A.* v *Charzin Ind. Ltd*[12] defined a trademark as a distinctive mark of authenticity through which the product of a particular manufacturer may be distinguished from those of others by word, name, symbol or device. A trademark is registered and remains personal to the manufacturer.

The law of trademark strikes a balance between protecting the rights of the holder to the dividends of his ingenuity and the interests of the consumer in being able to identify the particular product and being secured against fraud. This understanding was expressed by the court in the case of *Virgin Ent. Ltd.* v *R. BEV. (NIG.) Ltd*.[13] , where it stated that the purpose of a trade mark is to give an indication to the intending purchaser as to the manufacture or quality of the goods to be sold, to indicate by their appearance the trade source or trade hands through which they have reached the market.

Under statute, the definition can be found in both the UK Trademark Act of 1994 and the Nigerian Trademark Act Cap T.13 LFN 2004 to the effect that, 'A trademark is an exclusive right, which confers on its owner the right to prevent someone else from making use of the trademark, it declares that, registered trademarks are personal property, in the same way that all other forms of intellectual property are classified as intangible rights[14]. Specifically, the Nigerian Act states that:

> Trademark means, except in relation to a certification trademark, a mark used or proposed to be used in relation to

---

10 Ibid (n. 5 P72

11 (2013) 2 NWLR p. 409 CA.

12 (2014) 4 NWLR (Pt. 1398) 497 SC particularly P. 539, paras. E - G

13 (2009) 12 NWLR (Pt. 1156) 498 CA.

14 See Section 2 of the Trademark Act 1994 (UK)

> goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and 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, and means in relation to a certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act[15]

The term trademark is also used informally to refer to any distinguishing attribute by which an individual is readily identified, such as the well-known characteristics of celebrities. McCarthy discusses how the concept of a "trademark" has expanded beyond traditional commercial contexts to include personal attributes of celebrities. According to him, this is often in the realm of the right of publicity, where the law protects the commercial use of an individual's identity[16]. When a trademark is used in relation to services rather than products, it may sometimes be called a service mark, particularly in the United States[17] Gary Myers in his book 'Principles of Intellectual Property Law' covers the fundamental principles of intellectual property law, including the section dedicated to the treatment of service marks under U.S. law.

We have seen in both text, statute and all the judicial decisions discussed above that trademarks are consistently defined as distinctive symbols that identify the origin of goods or services, ensure quality, and protect consumers from deception. The courts in all jurisdictions emphasise the dual role of trademarks in safeguarding the interests of the trademark owner and the public. A trademark is therefore simply a mark that includes a device, brand, heading, label, ticket, name or other signal that helps a customer identify a particular article or product. There is also a range of non-conventional trademarks comprising marks, which do not fall into these standard categories, such as those based on colour, smell, or sound[18].

2.3 Consumer Protection

Note that the term Consumer protection is a compound word that has no single or settled definition. It comprises the words, Consumer and Protection to form the term, consumer protection. No statute, therefore, has attempted a definition of consumer protection. Rather, they all deal with the term Consumer or consumerism. A good example is the Federal Competition and Consumer Protection Act (FCCPA)[19] , which defines only the term consumer to include 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

---

15 See section 67 of Trademark Act LFN 2004

16 See J. Thomas McCarthy, 'The Right of Publicity: A Doctrinal Innovation' (1989) The University of Louisville School of Law Press

17 Gary Mayers , 'Principles of Intellectual Property Law' 2017 West Academic Publishing

18 See the English case of *R v Johnstone* [2003] UKHL 28 which involved an appeal regarding trademark infringement and counterfeiting. The House of Lords provided this comprehensive definition of trademarks, emphasizing their role in indicating the origin of goods or services and distinguishing them from others in the market. It affirmed that trademarks serve to guarantee the quality of the products or services and to communicate this guarantee to consumers.

19 The FCCPA Act No.1 of 2018

> the production or manufacture of any other goods or articles for sale; or (b) to whom a service is rendered.

However, the focus of this paper is not on the word consumer or consumerism but rather the terminology of Consumer protection. We will therefore try to explore the meaning thereof. The term/terminology - consumerism has been defined and clarified by many authors, dictionaries, as well as judicial interpretations. This paper will explore a few of these definitions with a view to helping our understanding of the concept of consumer protection as been used and addressed in this paper.

For the Macmillan dictionary, the term 'Consumerism' refers to the promotion and protection of consumers. It is concerned with protecting consumers from all organisations with which there is an exchanged relationship. It encompasses the set of activities of government, business, independent organisations and concerned consumers that are designed to protect the rights of consumers[20].

Two Nigerian authors, Agbonifoh and Ibeh, have also attempted definitions of consumer and or consumerism. Agbonifoh defines consumerism as the organised efforts of consumers aimed at promoting, protecting and enforcing the rights of consumers in their exchange relationships with all organisations and individuals[21]. This definition is limited in the sense that consumer protection efforts are not left to consumers alone. Ibeh however, expands and improves on Agbonofoh's definition when he defines consumerism as an organised effort of concerned citizens, business and government to equate the balance of power between parties to an exchange and redress and remedy injustices done to the consumers in the pursuit of a standard living[22]. This certainly is broader and more encompassing. For this author, consumer protection is most effective when it is achieved through Public Regulation, rather than the consumer's effort[23].

In my view, the Americans have a more encompassing definition of the concept of consumer protection. From their Judiciary, Consumer protection refers to the set of laws, regulations, and practices designed to ensure the rights of consumers, fair trade, and the free flow of truthful information in the marketplace. It encompasses a broad range of issues, including product safety, fraud prevention, and the regulation of advertising and labelling. The primary objective is to protect consumers from unfair, deceptive, or fraudulent practices and to ensure they have access to accurate information to make informed decisions[24] Two American authors, Dee Pridgen and Richard M. Alderman, in their book 'Consumer Protection and the Law' offer an in-depth look at consumer protection statutes and regulations, including discussion of landmark cases and their implications for consumer rights and business practices[25]. This perspective and view of the Americans is more encompassing and represents this paper's conception of the term consumer protection as it is to be understood and used in this essay.

---

20 See Macmillan English dictionary for advanced learners of American English 2002

21 Benjamin Agbonifoh et. al., *Marketing in Nigeria: Concepts, Principles & Decisions,* Afritowers Limited (2007)

22 Kevin Ibeh, *Exporting as an Entrepreneurial Act: An Empirical Study of Nigerian Firms,* Ashgate Publishing (1999) 306

23 Paul T M Angya, *Standards and Quality Regulation in Africa: Institutions and Legal Frameworks*. Aboki Publishers (2016) Pp. 49 - 61 on the concept of regulation generally

24 See Generally American Bar Association, Consumer Protection Law Developments' (2020) American Bar Association

25 Published by Thomson Reuters (2019)

2.4. The Rationale for Modern-Day Consumer Protection

Globally, there has been a shift from the traditional principle of 'caveat emptor', a good olden day principle which meant buyer beware, to the public protection of the consumer. In this era of e-commerce, the need for consumer protection has become more compelling than ever before. This was the central theme of the essay by Mathew on "Consumer Protection and Online Shopping: The Shift from Caveat Emptor to Consumer Right"[26]. The concept of modern-day consumer protection is aptly captured by Smith J in his essay titled, 'E-Commerce and Consumer Protection: An Analysis' when he states that:

> In the era of open markets buyer and seller came face to face, seller exhibited his goods, and buyer thoroughly examined them and then purchased them. There was a presumption then that the buyer would use all care and skill while entering into transaction. This scenario does not often play out in today's world of e-commerce.[27]

This view is also shared by Brown, L. in his article 'From Caveat Emptor to Consumer Rights: The Legal Transformation in the Digital Marketplace.[28] These views and more continue to justify the urgency and compelling need for the nature of consumer protection in the modern era.

3. LEGAL FRAMEWORKS GOVERNING TRADEMARKS AND CONSUMER PROTECTION

As seen in the introduction, Trademarks are pivotal in protecting both businesses and consumers by ensuring product authenticity and preventing market confusion. They serve as identifiers of the origin and quality of goods and services, thus playing a crucial role in consumer protection. This paper will therefore proceed to explore the legal frameworks governing trademarks as well as consumer protection, which are designed to ensure that consumers can make informed decisions and that businesses can compete fairly. Two key pieces of legislation in Nigeria that govern these areas are the Trademarks Act Cap. T 13 LFN 2004 and the FCCPC Act No. 1 of 2018.

3.1 The Trademarks Act Cap. T 13 LFN 2004

The Trademarks Act provides the foundation for trademark registration and protection in Nigeria. Some of its key provisions include:

i. *Trademark Registration*: The Act stipulates the process for registering trademarks, which includes conducting a search to ensure no similar trademarks exist and the submission of an application to the Registrar of Trademarks[29].

---

[26] Matthews, S. . Consumer Protection in the Digital Age. Journal of E-Commerce Law, (2021) 34(2), 145-160

[27] Smith, J. E-Commerce and Consumer Protection: An Analysis. International Journal of Law and Technology, (2019) 27(1), 78-94

[28] Brown, L. Consumer Law and Policy in the Age of E-Commerce. (2020) Cambridge University Press. See also Wilson, R. (2022). The Future of Consumer Protection in E-Commerce. Harvard Law Review, 115(3), 245-268

[29] Trademarks Act Cap. T 13 LFN 2004, Sections 1, 2, 17 - 25 on Registration of Trademarks which outlines the procedure for registering a trademark in Nigeria. It specifies the requirements for a valid application and the role of the Registrar of Trademarks

ii. *Infringement and Remedies:* The Act outlines what constitutes trademark infringement and the legal remedies available to trademark owners. These remedies include injunctions, damages, and an account of profits[30].

iii. *Defensive Trademarks*: The Act allows for the registration of defensive trademarks, which can protect a well-known trademark across different classes of goods and services, even if the trademark is not used in those classes[31]. This section provides for the registration of defensive trademarks, allowing well-known trademarks to be protected across different classes of goods and services, regardless of actual use in those classes.

iv. The Act also provides offences and penalties in relation to Trademarks.[32]

3.2 The Federal Competition and Consumer Protection Commission (FCCPC) Act No. 1 of 2018

This is the law that establishes the framework for consumer protection in Nigeria. Some of its key provisions include:

i. *Consumer Rights*: The Act enumerates the rights of consumers, including the right to information, the right to choose, and the right to redress[33].

ii. *Prohibition of Unfair Practices*: The Act prohibits unfair trade practices, including false advertising and the sale of substandard goods[34].

iii. *Enforcement Mechanisms*: The FCCPC is empowered to investigate complaints, conduct hearings, and impose penalties on businesses that violate consumer protection laws[35]. and

iv. Section 74, which provides Penalties for Non-Compliance with the FCCPA. It specifies the penalties for businesses that fail to comply with the provisions of the Act, including fines and other sanctions

4. TRADEMARKS: A TOOL FOR CONSUMER PROTECTION

As seen from paragraph 1 dealing with introduction, but particularly in paragraph 3.0 above, both the Trademarks Act and the FCCPC Act provide a robust legal framework for trademark and consumer protection in Nigeria. We can infer from paragraph. 1 that trademarks have several identifiable and verifiable functions that serve as essential tools for consumer protection, ensuring product authenticity, and maintaining market integrity.

To illustrate the critical relationship between trademarks and consumer protection, this essay will explore several landmark cases from various jurisdictions that provide valuable insights into these uses. These cases highlight how trademark law has been applied to protect consumers from confusion, deception, and unfair practices.

Beginning with the seminal US case of *Abercrombie & Fitch Co.* v *Hunting World, Inc*. which established the "Abercrombie spectrum" of distinctiveness for trademarks, thus

---

30 Ibid Section 5 on Infringement and Remedies. This section defines what constitutes trademark infringement and details the legal remedies available to trademark owners, including injunctions, damages, and accounts of profits.

31 Ibid (n.21) Section 32 on Defensive Trademarks.

32 Ibid (n.21) see Sections 60, 61 & 62 on Offenses and Penalties which details the penalties for offenses related to trademark infringement, including fines and imprisonment

33 The FCCPA Act No. 1 of 2018 Part xv , Sections 114 - 133 on Consumer Rights which enumerates the rights of consumers, including the right to information, the right to choose, and the right to redress

34 Ibid Section 127 on Prohibition of Unfair Practices

35 See Sections 18 pwers of the FCCPC, 27 - 38 on Enforcement Powers of the Commission.

classifying marks as generic, descriptive, suggestive, arbitrary, or fanciful, which classification is crucial for determining the level of protection a trademark can receive, and directly impacts consumer protection by ensuring that only distinctive marks, capable of indicating source, are protected. By clearly defining the levels of distinctiveness required for trademark protection, the case helps prevent consumer confusion over the origin of goods and services[36]. Another important case that underscores the intersection of trademarks and consumer protection is the US case of *Polaroid Corp.* v *Polarad Electronics Corp*. Where the US Second Circuit developed the 'Polaroid factors', a multi-factor test used to assess the likelihood of consumer confusion in trademark infringement cases. These factors include the strength of the mark, similarity of the marks, proximity of the products, and evidence of actual confusion, among others[37]. By providing a comprehensive framework to evaluate potential consumer confusion, this case strengthens the ability of courts to protect consumers from misleading trademarks.

To further underscore the intersection of Trademarks and Consumer protection, it is important to review some of the functions of trademarks, which ultimately serve the purpose of consumer protection. They include:

4.1 Origin Function

One of the major functions of trademarks is the serve as a badge of origin. This has been underscored by several decisions of the courts, as can be seen in the case of *Ferodo Ltd.* v *Ibeto Industries Ltd*, where Ferodo Ltd accused Ibeto Industries of trademark infringement and passing off for using similar packaging for brake pads. The court found in favour of Ferodo Ltd., emphasising the significance of trademarks in maintaining product quality standards and ensuring that consumers can trust the origin and quality of the goods they purchase[38] . Trademarks tell the consumers about the commercial origin of the goods they are about to buy. The consumer does not have to know the origin of the product, all that matters is that the consumer can link the goods to the source and recognises the consistency of the source of supply[39]. Also, in the case of *Arsenal Football* v *Matthew Reed*[40] the court declared that the essential function of a trademark was to guarantee the identity of origin of the marked goods or services to the consumer or end user (as the case may be) by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin.

To achieve its originality function, the trademark must offer a guarantee that all the goods or services bearing the mark have been manufactured or supplied under the control of a single undertaking responsible for their quality. Indeed, Trademarks are unique symbols that distinguish products or services of a particular source from others. They are invaluable in signifying a consistent level of quality, which consumers rely on when making purchasing decisions. This was the view of the American Supreme Court in the case of *Coca-Cola Co.* v *Koke Co*. of America[41], where the Court recognised that the Coca-Cola trademark represented a particular quality of beverage that consumers had come to expect. This case

---

36 US (537 F.2d 4)
37 US (287 F.2d 492)
38 (2004) 5 NWLR (Pt. 866) 317
39 See *McDowell Application's* (1926) 43 RPC 313.
40 [2003] EWCA Civ 696.
41 See *Coca-Cola Co.* v *Koke Co. of America*, (1920) 254 U.S. 143 .

highlights how trademarks ensure consumers that they are purchasing the same quality product they have previously enjoyed, thereby protecting consumer expectations and fostering trust.

The same reasoning persuaded the courts in the case of *Unilever Plc* v *Multilinks Ventures Ltd.* Here, Unilever Plc brought a suit against Multilinks Ventures Ltd. for trademark infringement, alleging that the defendant's use of a similar trademark for its soap product would likely confuse consumers. The court ruled in favour of Unilever, highlighting the importance of trademarks in distinguishing products and protecting consumers from being misled about the source and quality of the products they buy[42] In a similar vein, the European Court of Justice (ECJ) faced with similar facts, underscored the role of trademarks in safeguarding consumer interests by preventing counterfeit and inferior products from being passed off as high-quality branded goods when it ruled that the use of similar packaging and branding to imitate L'Oréal's products constituted trademark infringement. The ECJ emphasised that trademarks protect consumers by ensuring that they are not misled about the origin and quality of products[43].

Back home, the Supreme Court of Nigeria affirmed the origin function of trademarks in the case of *Patkun Industries Ltd* v *Niger Shoes Manufacturing Co.*[44] where it provided an in-depth analysis of the role of trademarks in commerce. The Supreme Court affirmed that trademarks are crucial for protecting the reputation of businesses and ensuring that consumers are not misled about the origins of goods and services.

4.2 Product Differentiation Function

In contemporary digital society, the prevalence of technology with the ability to produce and duplicate or replicate at will, Trademarks serve to enable consumers to choose between competing products, enabling them to distinguish the goods of one undertaking from those of others. Perhaps it was in recognition of this role that the Nigerian Supreme Court in the case of *Ayman Enterprises Ltd* v *Akuma Industries Ltd* recognised that a trademark is a symbol that distinguishes the goods of one person from those of another and protects the proprietor's exclusive rights to use it[45]. Another important case that served to emphasis the role of product differentiation for consumers is the case of *Niger Chemists Ltd* v *Nigeria Chemists*[46] which involved a dispute over similar business names and trademark usage. Here again, the court used the opportunity to emphasise the importance of trademarks in preventing consumer confusion and protecting the goodwill associated with the trademark[47].

4.3 Guarantee Function

Similar to its origin and differentiation role to consumers, trademarks serve to guarantee to consumers the source and quality of products, goods and services. It indicates that the trademark operates to reassure the consumer about the consistent quality of the goods. This

---

42 (2003) 3 NWLR (Pt. 966) 75
43 See *L'Oréal SA* v *Bellure NV* (C-487/07)
44 Ltd (1988) 5 NWLR (Pt. 93) 138
45 (2003) 13 NWLR (Pt. 836) 22
46 (1961) All N.L.R. 171
47 See also the case of *Cadbury Schweppes Pty Ltd* v *Pub Squash Co Pty Ltd* [1981] 1 All ER 213 which case addressed the issue of trademark confusion and passing off. Here the court held that trademarks serve to protect both the trademark owner's goodwill and the public from deception.

function of trademarks has been recognised in several cases, including the case of United *Biscuits (UK) Ltd v Asda Stores Ltd*[48], which involved supermarket own-brand 'lookalikes. The court held that the adoption by the defendant supermarket of the 'get up' of chocolate biscuits which imitated that of the claimant's famous PENGIUN biscuit would lead shoppers to think that the biscuits, although cheaper, had been made for Asda by the claimant, so they would expect the same quality.

The courts also used the case of *Arsenal Football Club Plc* v *Reed*[49] *(*earlier cited), to affirm the guarantee function of the trademark when the European Court of Justice (ECJ) highlighted the function of a trademark in guaranteeing the identity of the origin of the marked product to the consumer. In this case, Arsenal Football Club sued Matthew Reed for trademark infringement under Section 10 of the Trade Marks Act 1994, claiming Reed was selling unauthorised merchandise that bore the club's registered trademarks. The Court ruled that the use of a trademark on products, even as a badge of support, could constitute infringement if it jeopardises the trademark's ability to guarantee origin, leading the Court of Appeal to overturn the initial judgement that had favoured Reed[50].

Also, in the case of *Reckitt & Colman Ltd* v *Borden Inc.* (the "Jif Lemon" case)[51], the House of Lords held that Borden's packaging could lead to consumer confusion and constituted passing off. The issue involved the packaging of lemon juice. Borden's product used a lemon-shaped container similar to Reckitt & Colman's Jif Lemon. The decision underscores the importance of protecting consumers from being misled about the origin of products based on packaging and presentation, ensuring they receive what they believe they are purchasing.

Similarly, the court ruled in favour of the plaintiffs in the Nigerian case of Niger Chemists v. Nigerian Chemists[52] The issue in dispute was the use of a similar business name by Nigerian Chemist. Niger Chemists sued Nigerian Chemists for passing off, arguing that the similarity in names was misleading to consumers. These ruling highlights the importance of preventing business name confusion to protect consumers from deception regarding the source of goods and services.

Furthering the objective of preventing confusion and deception of the consumer, the Supreme Court of Nigeria applied the same wisdom in favour of Patkun Industries which sued Niger Shoes for trademark infringement. Patkun had claimed that Niger Shoes' use of a similar mark on their footwear products would confuse consumers. The court once again underscored the necessity for protecting consumers from trademark infringements that could lead to confusion and misrepresentation of product origin[53].

4.4 Advertising Function

A fourth and very important function of the trademark that serves to protect the consumer is its advertising function. As already seen above, a trademark is a veritable vehicle for creating goodwill, be it for product origin, product differentiation or guarantee function. As such,

---

48 (1997) RPC 513
49 Ibid (n.36)
50 Ibid (n. 33)
51 (1990) 1 All ER 873
52 (1961) All NLR 180
53 See *Patkun Industries Ltd* v *Niger Shoes Manufacturing Co. Ltd* (1988) 5 NWLR (Pt. 93) 138

there's a need to protect its advertising power against free riding by those who wish to take advantage of its reputation. This was the Ratio decidendi in the *Arsenal's* case[54].

Another important case that addresses the advertising benefit of trademarks to consumer protection is the case of *Cadbury Schweppes Pty Ltd* v *Pub Squash Co Pty Ltd* (the "Pub Squash" case)[55] . Cadbury Schweppes claimed that Pub Squash's advertisements were misleading and unfairly disparaged their product. Here, the court issued an injunction in favour of Cadbury Schweppes, highlighting the role of advertising in consumer perception and the importance of ensuring that advertisements are truthful and not misleading[56].

A marker for trademark value in preventing deceptive advertising and ensuring truthful information in the marketplace was laid down in the case of *Federal Trade Commission* v *Colgate-Palmolive Co.*[57], when the Supreme Court upheld the FTC's decision against Colgate-Palmolive for deceptive advertising practices. The company had falsely claimed that its shaving cream could shave sandpaper, which was held to have misled consumers.

Two American cases further underscore the pivotal role of trademarks to consumer protection with regard to advertising, they include: *Carter Products, Inc.* v *Federal Trade Commission*[58], where the 7th Circuit Court of Appeals upheld the FTC's order against Carter Products for misleading advertisements about its weight-loss product. Here, the court emphasised the importance of protecting consumers from false claims that could lead to purchasing decisions based on inaccurate information. The same reasoning persuaded its ruling in the case of *American Home Products Corp.* v *Federal Trade Commission,* [59] where the 3rd Circuit upheld the FTC's findings that American Home Products' advertisements for Anacin were deceptive. The ads implied medical endorsements and misrepresented the product's effectiveness, thus violating consumer protection laws by misleading consumers.

Yet in another case of confusing identity (trademark), that the courts come to the aid of consumers is the case of CLAERYN/KLAREIN[60], where the owner of CLAERYN Dutch gin was able to prevent Colgate using KLAREIN for toilet cleaning liquid, on the grounds that both marks had an identical pronunciation in the Dutch language and consumers would not wish to be reminded of a cleaning agent while drinking a glass of high-quality gin.

4.5 Trademark Dilution and Consumer Expectations

Even where the issues of origin, differentiation, guarantee and deceptive advertising are not contentious, the real fear and apprehension of trademark dilution of Consumer Expectations exists. The courts seek to insulate consumers from this situation, which occurs when a famous trademark's distinctiveness is weakened, even without causing consumer confusion about the source. This can erode consumer confidence in the quality associated with the trademark. A good example is the case of *Starbucks Corp.* v *Wolfe's Borough Coffee, Inc*., where the court recognised that dilution, even without direct competition or confusion, could

---

54 Ibid (n. 33)
55 (1981) 1 WLR 193
56 See also Pom Wonderful LLC v. Coca-Cola Co., 573 U.S. 102 (2014) which case emphasizes the significance of truthful labeling and advertising, ensuring consumers have accurate information.
57 (380 U.S. 374, 1965)
58 (186 F.2d 821, 7th Cir. 1951)
59 (695 F.2d 681, 3rd Cir. 1982)
60 (1976) 7 IIC 420

diminish the strong association of the Starbucks trademark with high-quality coffee, thereby affecting consumer expectations. The subject matter was a claim by Starbucks that the use of the name "Charbucks" by a small coffee company diluted its famous trademark[61].

5. CONTEMPORARY CHALLENGES IN TRADEMARK LAW, DIGITAL MARKETPLACES AND COUNTERFEIT GOODS

As shown in paragraphs 2-4 above, Trademark law as a critical component of intellectual property (IP) rights, ensures that brands can protect their distinct identities from misuse or imitation, which ultimately benefits the consumer by way of origin guarantee, product differentiation, ability to distinguish products source from one another, and preventing deceptive advertising as well as ensuring truthful information in the marketplace[62]. However, as the global economy and technological landscape evolve, trademark law and its protection capacity for consumers of goods and services face new challenges. Among these, the rise of digital marketplaces and the global proliferation of counterfeit goods stand out. To ensure the sustainability of the value of trademarks to consumer protection, it is necessary to examine these phenomena.

5.1 The Rise of Digital Marketplaces

The advent of digital marketplaces such as Amazon, eBay, and Alibaba have revolutionised commerce, enabling businesses to reach global audiences. However, this revolution has also brought about significant challenges for trademark protection with particular regard to Jurisdictional Issues. Because digital marketplaces operate globally, they often make it difficult to enforce trademark rights across different jurisdictions. In the case of *McBee* v *Delica Co. Ltd.*, [63] the U.S. Court of Appeals for the First Circuit held that the application of U.S. trademark law in foreign jurisdictions is limited, highlighting the complexities of cross-border enforcement.

The rise of digital marketplaces has also thrown up the challenge of Policing trademark infringement online. This is a daunting task due to the sheer volume of listings and the dynamic nature of online content. In the case of *Tiffany (NJ) Inc.* v *eBay Inc.,*[64] Tiffany sued eBay for trademark infringement, alleging that the online marketplace facilitated the sale of counterfeit Tiffany products. The court ruled that eBay was not liable for direct trademark infringement, thus emphasising the difficulty in holding platforms accountable without direct involvement in the infringing activities.

5.2 The Global Proliferation of Counterfeit Goods

---

61 See *Starbucks Corp.* v *Wolfe's Borough Coffee, Inc*., (2d Cir. 2009)588 F.3d 97
62 Ibid (n. 44)
63 417 F.3d 107 (1st Cir. 2005),
64 600 F.3d 93 (2d Cir. 2010),

The second emerging challenge to trademarks and their value for consumer protection is the phenomenon of Counterfeit Goods, which infringe on trademark rights. This has become a significant global issue, exacerbated by the ease of online commerce, as these goods pose a risk to consumer safety and dilute brand value in two major ways:

i. Economic Impact: This brand of goods has a tremendous effect on the economy as the global trade in counterfeit goods is substantial, with estimates suggesting it constitutes around 3.3% of global trade[65]. This was disclosed by the Organisation for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) report which provided an in-depth look at the global trade in counterfeit and pirated products, examining the scope and scale of the problem, its economic impact, and the challenges it poses for trademark enforcement and global trade. Apart from its effect on the economy, it also affects brand owners due to lost revenues and jobs.

ii. Another challenge is the Enforcement Mechanisms: Enforcing trademark rights against counterfeiters is challenging due to the anonymity and transitory nature of online sellers. In the case of *Louis Vuitton Malletier S.A.* v *Akanoc Solutions, Inc*.[66], the court held internet service providers (ISPs) liable for hosting websites that sold counterfeit goods, setting a precedent for secondary liability. However, this case also underscores the difficulty in tracking and prosecuting individual counterfeiters.

5.3 Legislative and Judicial Responses

With regards to legislative and judicial responses, we will look at both the domestic and the foreign approach. Though the Nigerian Legislators and Judiciary may not have addressed these challenges as of now, a look at the international scene may be helpful in mapping the way forward for the country.

i. The United States of America: The primary statute governing trademark law in the US is the Lanham Act[67] . This Act provides the legal framework for trademark registration and enforcement. In response to the rise of digital infringement, amendments and judicial interpretations have sought to extend their applicability to the online realm. The Lanham Act's provisions for contributory liability, as interpreted in cases like *Inwood Laboratories, Inc. v Ives Laboratories, Inc.*[68], allow for action against parties indirectly involved in infringement, such as online marketplaces. There is also the US Trademark Modernisation Act of 2020, which introduced several measures to strengthen trademark enforcement, including the establishment of procedures to expunge or re-examine registrations based on non-use, making it easier to clear the register of fraudulent marks that facilitate counterfeit trade.

---

65 *Trends in Trade in Counterfeit and Pirated Goods*. Organisation for Economic Co-operation and Development, & European Union Intellectual Property Office (OECD/EUIPO) (2019).

66 658 F.3d 936 (9th Cir. 2011)

67 (15 U.S.C. § 1051 et seq.).

68 456 U.S. 844 (1982)

ii. The Nigerian Situation: Though for Nigeria, the response is not precise, a holistic view of existing legislation and judicial decisions may give some insight into a probable approach to meeting this global challenge:

a. As seen earlier, the primary legislation governing trademarks in Nigeria is the Trademarks Act,[69] which provides for the registration, protection, and enforcement of trademarks in Nigeria. However, it pre-dates the digital age and does not specifically address online infringement issues. Despite its traditional focus, it forms the legal basis for combating trademark infringement, including online scenarios, through judicial interpretation.

b. Another relevant legislation is the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015. Though primarily focused on cybercrime, it includes provisions relevant to digital infringement. It criminalises various online offences and provides a framework for prosecuting cyber-related crimes, indirectly supporting trademark protection by addressing issues like online fraud and identity theft, which can be related to counterfeit goods.

c. The National Office for Technology Acquisition and Promotion (NOTAP) Act[70] is also a relevant legislation with regard to digital marketplace and online counterfeiting. It plays a role in regulating technology transfer agreements and ensuring the protection of IP rights in technological transactions. This includes addressing issues related to digital trademarks and online infringements.

d. Copyright Act no. 8 of 2022, though primarily concerned with copyrights, makes provisions that can indirectly protect trademarks in digital spaces, particularly regarding the illegal online distribution of copyrighted materials that might involve trademark misuse.

Though the Nigerian Judiciary has tried to address the complexities of jurisdiction in digital infringement cases, the transnational nature of the internet complicates the enforcement of Nigerian trademark laws against foreign entities so much so that the Courts have had to navigate these complexities, often requiring international cooperation and the application of international treaties. A good example is the case of *MTN Nigeria Communications Ltd.* v *Emmanuel Godwin Udeh* [71] , where the defendant registered domain names similar to the plaintiff's trademarks. The court found that it was a case of cybersquatting and ruled in favour of MTN, thus reinforcing the protection of trademarks in the digital space.

6. SUMMARY/FINDINGS AND RECOMMENDATIONS

6.1 Summary

An overview of this paper shows that Trademarks play a vital role in quality assurance and consumer protection by signalling consistent quality, preventing consumer confusion, and safeguarding consumer expectations. Through the enforcement of trademark laws, courts help maintain the integrity of brands and ensure that consumers can trust the products and services they purchase. However, the emergence of digital marketplaces and counterfeit goods poses a major challenge to the traditional value of trademarks to protect both consumers and brand owners, in a well-functioning marketplace.

---

[69] Cap T13, Laws of the Federation of Nigeria 2004
[70] Act No. 70 of 1979, CAP 62 LFN 2004
[71] (2015) 3 NWLR (Pt. 1443) 484

6.2 The paper has therefore found that:

i. Trademarks are fundamental to consumer protection, serving as symbols of origin and quality that consumers rely on when making purchasing decisions. By preventing confusion, deception, and the dilution of brand value, trademarks help ensure that consumers receive the quality they expect from the products and services they choose.

ii. Trademarks serve as critical elements in the marketplace, fulfilling essential roles in quality assurance and consumer protection. They not only identify the source of goods or services but also symbolise a certain standard of quality that consumers come to expect.

7.3 In that regard, the paper recommends as follows:

i. Understanding the relationship between trademarks and consumer protection is essential for developing policies that effectively balance the interests of businesses and consumers.
ii. That as markets become increasingly globalised and digitalised, robust trademark protections and consumer protection measures will be indispensable in ensuring a fair and trustworthy marketplace.
iii. Technological advancements offer potential solutions for trademark enforcement. AI and machine learning can enhance the detection of counterfeit listings and automate the monitoring of online marketplaces. For instance, companies like Red Points use AI to identify and take down counterfeit listings, providing brand owners with powerful tools to combat infringement.
iv. That Blockchain Technology can offer robust solutions for verifying the authenticity of products by creating an immutable ledger of product information, brands can ensure that consumers and authorities can trace the origin and authenticity of goods, thereby reducing the incidence of counterfeiting.

v. That though Nigeria's legislative and judicial frameworks are gradually adapting to the challenges posed by digital infringement of trademarks, while existing laws provide a foundation, there is a need for continuous updates and reforms to keep pace with the rapidly evolving digital landscape.

6.3 Conclusion

Finally, the paper concludes that the rise of digital marketplaces and the global proliferation of counterfeit goods present significant contemporary challenges to trademark law and its protection capacity for consumers of goods and services. While legislative and judicial measures have evolved to address these issues, the dynamic nature of digital commerce and the global scale of counterfeiting require ongoing adaptation and innovation. Future efforts must combine robust legal frameworks with technological advancements to effectively protect trademark rights and consumer protection in an increasingly digital and interconnected world.