**NAME: ESSIEN WALTER BENJAMIN**

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**LECTURER: MRS. APARA OYEBANKE TAIWO**

**ASSIGNMENT: DISCUSS****THE RELEVANCE OF PASSING OFF AS A FORM OF ECONOMIC TORT IN THE 21ST CENTURY NIGERIA**

**ABSTRACT:**

This article is written to answer the question of what relevance is Passing Off as a form of Economic tort to Economic Tort in the 21st Century Nigeria. Passing off is a wrong, a common law tort which protects the goodwill of trader from misrepresentation. It is also the selling of goods or the carrying on of a business in such a manner as to mislead the public into believing that the defendant’s product or business is that of the plaintiff. More explanations will be seen as you go through the work.

**What is Economic Tort?**

 An intentional tort wherein a defendant uses an unlawful means to cause a plaintiff some economic loss.**Economic torts**, which are also called **business torts**, are [torts](https://en.wikipedia.org/wiki/Tort) that provide the [common law](https://en.wikipedia.org/wiki/Common_law) rules on liability which arise out of business transactions such as interference with economic or business relationships and are likely to involve pure economic loss.[[1]](#footnote-3)

[[2]](#footnote-4)Economic tort concern intentional harm to the business interests of a firm or individual and are frequently in the context of industrial disputes or unfair competition. A cause of action based on an economic tort is usually made in addition to another claim. These economic tort offers protection for a person’s trade or business form acts which the law considers to be unacceptable.

Economic torts are tort which inflict economic losses (theseis a term of art which refers to financial **loss** and damage suffered by a person such as can be seen only on a balance sheet rather than as physical injury to the person or destruction of property.They are simply torts which inflict financial injury or financial loss. They are mainly in the economic, commercial or business sector of life.

There are some Economic torts They are:

* Passing off.
* Breach of intellectual property rights, such as breach of copyright,patent,trademark and other merchandise marks.
* Injurious falsehood/Malicious falsehood
* Interference with contracts
* Conspiracy to interfere, that, civil conspiracy and so forth.

But this article will be talking mainly on Passing off.

[[3]](#footnote-5)**Passing off**

Torts law and Law in its entirety is kadeiscopic in nature. That brings us to the meaning of Passing Off, different legal scholars and legal entities in their various ways have posited the meaning of Passing Off which we shall take into cognizance.

**Ese Malemi,** in his book **Law of Torts:**

*“Passing off is the false representation of one’s product or business as that of another person, thereby deceiving buyers to patronize it. Passing off is the selling of one’s products, or the carrying on of one’s business as if it were that of another whose reputation and goodwill one thereby enjoys….”*

**MYADVO,** an online legal platform in one of their paper on Passing off, states thus:

 *“ Passing off is the selling of goods or the carrying on of a business in such a manner as to mislead the public into believing that the defendant’s product or business is that of the plaintiff”*

Passing off happens when someone deliberately or unintentionally passes off their goods or services as those belonging to another party. This action of misrepresentation often damages the goodwill of a person or business, causing financial or reputational damage. Passing off is governed by the civil law, and usually takes place in the business world where a misrepresentation is made by one party which damages the goodwill of another party, sometimes causing financial and or reputational damage.see the case of ***Starbucks vSky***[[4]](#footnote-6)whereThe Claimant, Starbucks (HK), was the operator of the largest subscription TV service in Hong Kong through its NOW TV channel. The Defendant, Sky, had launched an internet-based pay-per-view channel in the UK operating under the name NOW TV. The Claimant objected and brought an action for passing off against the Defendant. The UK Supreme Court upheld the longstanding principle that to bring an action in passing off the Claimant must have more than a reputation in the UK – it must have actual paying customers and the fact that the service is one known to individuals living in the UK does not affect this requirement[[5]](#footnote-7), there can also be:

* **Extended passing off** – where a misrepresentation as to the quality of a product or service causes harm to another's goodwill
* **Reverse passing off** - where a trader markets another business' goods or services as being his own

**THE PURPOSE OF THE LAW OF PASSING OFF:**

The tort of passing off is common in a competitive business community or economy. The tort of passing off is designed to protect a person’s business interest from the unfair trade practices and sharp practices of other persons. Its object is to protect the reputation and goodwill a business has built up for itself**. SIR JOHN SALMOND** in his book **Law of Tort** stated the reason for the tort of passing off thus:

“The law… is designed to protect traders against… unfair competition which consists in acquiring for oneself, by means of false, or misleading devices, the benefit of the reputation already achieved by rival traders”

In the words of **LORD KINGSDOWN** in **Leather Cloth Co v American Leather Cloth Co:**

 “The fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader”

In the law of passing off, the basis of the legal action is that passing off by the defendant off his goods and or business as that of the plaintiff, is injuring the right of property, product, services and business of the plaintiff.

**REMEDIES FOR PASSING OFF:**

The remedies for the tort of passing off include the following:

1. Damages

2. Account

3. Injunction, and

4. Intervention by the relevant regulatory agencies such as NAFDAC, SON, Intellectual Property Commission and so forth.

**DEFENCES FOR PASSING OFF:**

In a claim for the tort of passing off, a defendant may plead a number of defenses by saying that the passing off complained of is a:

1. Functional design or package

2. The mere descriptive name of the product

3. Consent, such as license given to him by the plaintiff to produce and or market the product;

4. Innocent passing off, and so forth.

**WHAT IS THE RELEVANCE AS A FORM OF PASSING OFF AS A FORM OF ECONOMIC TORT?**

The relevance of passing off as an economic tort includes the protection of the below

* Trades under a name closely related to that of the plaintiff as to be likely mistaken for. This talks about JOHN taking the trade name of MARK for the purpose of making people believe that JOHN trade name is that of MARK and so on. This has to do with the business/trade name. This act makes people believe that JOHN trade name is that of MARK so passing off as an economic tort help to protect or provide remedy for the trade name of MARKis not being tampered .see the case of *Niger Chemists Limited v. Nigeria Chemists and D.K. Brown (1961)[[6]](#footnote-8)*The plaintiff sued and the court granted an injunction against the defendant on the grounds that their use of the names ‘Nigeria Chemist ‘ was intended to deceive the members of the public into believing that there was a relationship between Nigeria Chemist and Niger Chemists .
* Marketing a product as that of the plaintiff. This talks about JOHN marketing the product of MARK for the purpose of making people believe that JOHN product is that of MARK sand so on. This has to do with the business product. This act makes people believe that JOHNproduct is that of MARK.so, passing off as an economic tort helps to protect or provide remedy for the business product ofMARK is not being used by another party. See the case of *Ayman Enterprises Ltd. v. Akuma Industries Ltd. (1999)[[7]](#footnote-9)*where the plaintiff instituted an action against the defendants in the Federal High Court in Lagos for passing off and alsosought an injunction restraining the defendants from manufacturing, importing, selling or offering for sale or supply, wigs and hair attachments in any package or Get-Up bearing the name “Original Queens”
* Imitation of the appearance of the plaintiff goods Thistalks about JOHN taking the appearance of the product of MARK for the purpose of making people believe that JOHN appearance of the product is that of MARK sand so on. This has to do with the appearance of the product. This act makes people believe that JOHN trade name is that of MARK so passing of as an economic tort help to protect or provide remedy for theappearance of the product of MARK not being tampered with. See the case of*Trebor Nigeria Ltd. v. Associated Industries Ltd. Associated Industries Ltd. (1972[[8]](#footnote-10))*where an action was held to lie in passing-off where the defendant packaged and marketed its product to resemble those of the plaintiff. The court held that the fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader.

Economic torts are torts which inflict mainly economic losses. In other words economic torts are torts which inflict financial losses or financial injury. Economic torts occur mainly in the economic, commercial or business sector of life.

One cannot over look the relevance of passing off as a form of economic tort in 21st century Nigeria. This tort of passing off have greatly affected the commercial sector of the Nigerian society as a whole. The false representation made on one’s business has led to the loss of goodwill and reputation of some companies.

To protect a plaintiff’s property rights, this is a relevance to the 21st century Nigeria which cannot be over emphasized. Economic tort which is interwoven with Passing Off goes a long way to ensure that the property rights of the plaintiff are not tampered with. If there is no right in place the defendant will have all full access to trample on the rights of the plaintiff thereby causing the plaintiff financial loss.

It is relevant because without it, a lot of people would be stealing other people’s ideas and getting money from it. This brings us to the concept of copyrights and trademarks which are birthed from the tort of passing off as a whole. Ideas are birthed by a person in order to make use of it, if there is no protection of these ideas then all is lost. Trademarks and Copyrights are vital necessaries for a business to prevent the stealing of one’s idea, goodwill, and reputation. Nigeria as a whole is a country which is saddled with the issue of piracy, majors approaches have been put in place in order to address this issue, and thus the relevance of passing off as a form of economic tort in 21st century Nigeria. Economic tort has affected Nigerian in a lot of ways. Financial losses and injury have been inflicted on the basis of this tort. Passing off is in consonance with the fundamental maxim of “ubi jus ubi remediu”- when there is wrong, there is remedy. Economic tort and passing off are interwoven.

Nigeria as a nation through passing off has enacted the Trademark act which is spelt out in the **Laws of the Federation 2004,** intellectual property has been birthed in Nigeria to address these ever growing challenges and has addressed the issue of passing off.

The 21st century Nigeria has seen the effects of the tort of Passing Off, in this sense the level of false representation has been mitigated.

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