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This writer will be discussing the relevance of passing off as a form of economic tort in the 21st Century Nigeria. This writer will be defining economic tort then proceed to discuss passing off. This writer will also focus on the relevance of passing off in Nigeria in this discuss.

Economic torts are torts which inflict mainly economic losses. In other words, economic torts inflict financial injury.[[1]](#footnote-2) Passing off is a form of economic tort and would be the focus of this discuss. What is passing off? Passing off is the false representation of ones product or business as that of another person, thereby deceiving buyers to patronize it.[[2]](#footnote-3)

The Duhaime’s Legal dictionary, defines Passing off as making some false representation likely to induce a person to believe that the goods or services are those of another. Passing off is said to be a false representation of one’s product as that of another which deceive the general public into patronizing that product.

Passing off is in consonance with the fundamental maxim of ‘ubi jus ubi remedium’- when there is a wrong, there is a remedy. In the sense that an unregistered owner of certain goods and services is not without remedy when there is an infringement on his products.The purpose of the law of passing off is to protect business names, names of product, trademarks among others. Passing off is actionable per se.

The common forms of passing off:

1. Trading with the name resembling that of a plaintiff,
2. Marketing a product as that of the plaintiff,
3. Marketing goods with a name resembling that of the plaintiff goods,
4. Marketing products with the plaintiff’s trademark or its imitation,
5. Imitating the appearance of the plaintiff’s product and its advertisement,
6. Selling inferior or expired goods of the plaintiff as original or current stock.

The elements of passing off are the requirements a plaintiff must prove in order to succeed in a claim of passing off. They include:

1. Goodwill owned by the trader,
2. Misrepresentation and
3. Damage to goodwill.

**The relevance of passing off in Nigeria**

Everyone has a right to enjoy the benefits of what they create, be it monetary benefit or even simply the goodwill and reputation that comes with it. In a country such as Nigeria , where people have little or no regards for the rights of other people, infringement on the trademark of many people has become of great concern to the public. It is common to see goods in the shops bearing almost the same name or trademarks or even having similar packages.

In Nigeria today, there are so many products imitating other products. A typical Nigerian when they go shopping for products always make enquires whether it is the original one. Most times customers are confused as to which product is the appropriate one. Due to this passing off is very relevant in Nigeria.

The most common forms of passing off in Nigeria includes: using a name that closely resembles the name of an existing product, imitating the appearance of the plaintiff’s product, copying the plaintiff advertisement, selling the plaintiffs expired or inferior products thereby causing an injury to the plaintiff reputation.

One of the relevance of the law of passing off in Nigeria is that it protects a person’s business interests from the unfair trade practices and sharp practices of other persons. For example Mr. John Jack owns a company that produces chocolates and he names the chocolates ***XSS.*** Mr. Tony Thomas also produces chocolates and names it ***SXX*** so that customers will think his chocolates and that of John Jack are the same product will be liable in the tort of passing off. In the case of ***BEECHAM GROUP LTD V. ESDEE FOOD PRODUCT NIGERIA LTD*** it was held that the trademark ‘ glucose-aid’ is calculated to deceive the public in sound in consideration of the trademark ‘Lucozade’. Also in the case of ***NIGER CHEMISTS LIMITED V. NIGERIA CHEMISTS,*** the plaintiff sued and the court granted an injunction against the defendant on the grounds that their use of the name ‘ Nigeria Chemists’ was intended to deceive the members of the public into believing that there was a relationship between Nigeria Chemists and Niger Chemists. Similarly, in ***OGUNLENDE V. BABAYEMI*** the plaintiffs who were building and civil engineering contractors carrying on business as ‘ Mercury Builders’ were granted an injunction to restrain the defendants, from carrying on a similar business under the name ‘Mercury Builders Nigeria Limited’.

Also the law of passing off protects the benefits and advantage of the good name, reputation, and customers of the business. It protects that attractive force of the business which brings customers to it. In the case of ***OMNIA NIGERIA LIMITED V. DYKETRADE LIMITED***: In 1989 Dryketrade limited initiated a trading venture with an Italian company to manufacture grinding stones for the washing of terrazzo floors and adopted the trademark ‘ Super Rocket’ for the grinding stones which it registered in Nigeria. The plaintiff/appellant sold substantial quantities of ‘Super Rocket’ grinding stones in Nigeria and had acquired substantial reputation and goodwill in the trademark. In December 1992, the defendant/respondent began to import consignments of grinding stones branded ‘Super Rocket’ and distributed and sold them in Nigeria. Dyketrade Limited obtained an Anton Piller Order against Omnia Nigeria Limited and brought an action seeking to restrain the company and Directors/Officers from infringing the trademark ‘Super Rocket’ and for passing off or enabling others to pass off grinding stones used for the purpose of terrazzo floors inscribed with the trademark ‘Super Rocket’.

Another relevance of the law of passing off in Nigeria is the protection of the reputation and goodwill a business has built for itself. It will be unfair for a product to take advantage of the reputation and goodwill of another product. This will endanger the reputation of products because consumers might get confused and this will in turn affect the product. In Nigeria, the law of passing off see to protect the product reputation and goodwill of products.

Furthermore, the tort of passing off in Nigeria is relevant because it also protects a business against misrepresentation of the business, directed at its customers and calculated to damage the reputation and goodwill of the business. In the case of ***TREBORNIGERIA LIMITED V. ASSOCIATED INDUSTRIES LIMITED***, Trebor Nigerian Limited the makers of Trebor Peppermint brought an action against Associated Industries limited the makers of Minta Supermint claiming that the wrapper used to package the product by the Defendant was similar to that of the Plaintiff and they were guilty of passing off their product like that of the defendants. The Defendants raised dissimilarities in the two products as a defence to the action, the judge however found the Defendants to be liable for Passing off their product as that of the Plaintiff. In this instance passing off occurred by the use of a package strongly similar with that of another product such as to deceive the public that they are one and the same.

**CONCLUSION**

In conclusion, the relevance of passing off in Nigeria is quite visible as most cases examined above protected the business good will and reputation of businesses. We earlier stated the common forms of passing off and all these forms are covered in Nigeria to protect people’s business good name and reputation.

The purpose of an action of Passing off is to prevent one trade from damaging or exploiting the goodwill and reputation built up by another one. The principle is that no man is entitled to represent his goods or his business as that of another. It is therefore important, that the necessary framework for passing off actions be strengthened to defend the goodwill and reputation of business.

Furthermore, small and medium businesses should be enlighten and educated to explore the possibility of seeking legal action on Passing off and take advantage of the remedies available to protect their goodwill, trade name and profits. Passing off is something that needs to be taken seriously in a country like Nigeria because a lot of people have fallen victims to lack of knowledge on how to protect their goods or ensure that they get the right remedy when such infringement occurs. It is therefore, very important to enlighten the public of the relevance of the law of passing off in Nigeria.

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