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**17/Law01/166**

**Answer**

All forms of Economic Tort are relevant because they help to protect trades and businesses from unacceptable interferences. What is Economic Tort? Economic Tort can be defined as the protection for a persons business, or trade from acts which the law considers unacceptable.

Economic torts can also be said to be torts that provide the 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. They are also called business torts.

Economic torts are torts which inflict economic losses. They are tort which inflict financial losses or financial injury. They occur mainly in the economic, commercial or business sector of life. These torts include;

* Passing Off
* Breach of Intellectual Property Rights: such as breach of copy right, patents, trademarks and etc
* Injurious Falsehood/Malicious Falsehood
* Interference with contracts
* Conspiracy to interfere

For the purpose of this assignment, my case study is “Passing Off”.

The Black’s Law Dictionary defines passing off as “the act or an instance falsely representing one’s own product as that of another in an attempt to deceive potential buyers.

Passing off is the selling of goods and carrying on of business in such a manner as to mislead the public into believing that the defendant’s product or business is that of the plaintiff. It is described as an unfair competition by misrepresentation or literally speaking "the cause of

confusion or deception.”

Passing off can also be defined as misleading the public into believing falsely, that the brand

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1. G. Kodilinye and O. Aluko, Nigerian Law of Torts (2nd edn, Spectrum Books Limited 1999)

being projected was the same as a well known brand is a wrong.

Generally, an action for Passing off arises where the deception is made in the course of trade, which could lead to confusion amongst customers.

The fundamental rule is that one man had no right to put off his goods for sale as the goods of a rival trader. As seen in the case of ***N. R. Dongre Vs. Whirlpool Corporation*** where it was held that “a man may not sell his own goods under the pretense that they are the goods of another man.”

There are various forms of Passing Off which includes;

* Marketing a product as that of the plaintiff,
* Trading Under a name so closely resembling that of the plaintiff,
* Marketing goods under a trade name already appropriated for goods of that kind by the plaintiff,
* Marketing goods with the trade mark of the plaintiff or any deceptive imitation of such mark and
* Imitating the Get-up or appearance of the plaintiff’s goods.
1. **Marketing a product as that of the plaintiff**

This is when the defendant sells a merchandise with a direct statement that the goods are manufactured by the plaintiff, where in fact they are not. For instance where Rebecca, a manufacturer of milk will then advertise her product as Peak Milk or Dano Milk, because it will be more profitable in terms of profit and reputation established by the rival businesses.

1. **Trading under a name so closely resembling that of the plaintiff**

This is when the defendant uses a name closely resembling that of the plaintiff who already has an established business, in selling his products or merchandise. Sometimes the defendants go as far as establishing same type of business in the same place as the plaintiffs causing confusion or

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2.. G. Kodilinye and O. Aluko, Nigerian Law of Torts (2nd edn, Spectrum Books Limited 1999)

3.(1996) 5 SCC 714

4.. <https://www.lawteacher.net/free-law-essays/business-law/tort-of-passing-off-project-assignment-law-essays.php> (Accessed 4th May,2020)

deception. This may however be further established in the case of ***Niger Chemist Ltd v. Nigeria***

***Chemist***, where the lord plaintiff has carried on business as chemists and druggists for several

years, and had several branches in Onitsha and other towns. The defendant later founded a firm carrying on exactly the same type of business in Onitsha under the name “Nigeria Chemists.” The plaintiffs contended that the defendants’ use of a name similar to their own was actionable passing-off, and they sought an injunction against on restrain further use. It was held that holding that the use of name “Nigeria Chemists” was calculated to deceive persons who know of and intend to deal with Niger Chemists, therefore the injunction was granted.

1. **Marketing Goods under a trade name already appropriated for goods of that kind by the plaintiff.**

A trade name is one under which goods are sold or made by a certain person and which by established usage has become knows to the public as indicating that those good are the goods of that person. For instance, Nasco they produce a lot of food products eg. Biscuits, cornflakes. Nasco is the trade name for that particular brand which means no other brand can name their goods using the name Nasco because it’s a trade name.

This protection of trade applies not only to traders and manufacturers but also to any artist, writer or musician who gets to be known under a particular name which becomes inevitably part of his own stock-in-trade.

1. **Marketing goods with trade mark of the plaintiff or with any deceptive imitation of such marks**

A trade mark is any design, picture, mark, name or other arrangements affixed to goods which identifies those goods with the plaintiff manufacturer or seller. Trade mark receives protection

not only under the law or passing off but also, if registered, under the Trade Mark Act 1965, under which most actions are brought.

1. **Imitating the Get-up or appearance of the plaintiff’s goods.**

Where there is anything in the appearance or get-up of the plaintiff’s goods which particularly

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6. G Kodilinye and O. Aluko, Nigerian Law of Torts (2nd edn, Spectrum Books Limited 1999)

7. (1961) 4 NIPJD SC

8. Trade Mark Act, Cap T13, LFN 2004

identifies those goods as the merchandise of the plaintiff, the defendant will be liable for passing

off if, in marketing his goods, he imitates or copied such appearance or get-up in a manner to likely confuse the public. For example in the case of ***U.K. Tobacco Co. Ltd. v. Carreras Ltd.*** Where the defendant marketed cigarettes called “Barristers” in packets ok which appeared a white man in a Barrister’s wig and gown. This was held to be an actionable imitation of the get-up of the plaintiff’s cigarettes called “Bandmasters”, whose packet featured a white man in bandmaster’s uniform.

However, an action will not succeed where the appearance complained of is necessary for better performance of the defendants goods or for greater efficiency in handling or processing them; that is where appearance is purely functional.

The state of Nigerian Economy in 21st century is highly Privatized and Commercialized. Most businesses and companies in Nigeria today are private business owned by private individuals or group or individuals. Due to this effect, these private business and companies are highly competitive. The main aim or objective of private owned businesses is for profit maximization and not for the interested of the public. Therefore any business can go at any length to make profit for their own business or trade even if it’s at the detriment of another persons years of hard work and efforts.

Many businesses of today due to the fact that they are privately owned it has given them enough space to engage in passing-off and most of them are getting away with that offense. Using myself as an example I have had a person experience “where I wanted to get my soap, I usually use extract soap so at some point I started reacting to this soap that I have been using for years then I went back to the store to complain and the store owner outrightly told me that the soap maybe I may have bought the other type that there are two and he showed me a particular writing that would make me know the original product.” Due to causes like this, businesses have experienced financial loss and financial injury, they have lost customers and etc.

The establishment of the law of passing off, is to prevents one trader from misrepresenting goods or services as being the goods and services of another, and also

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9. G Kodilinye and O. Aluko, Nigerian Law of Torts (2nd edn, Spectrum Books Limited 1999)

10. (1931) 16 N.L.R 11

prevents a trader from holding out his or her goods or services as having some association or connection with another when this is not true.

Another relevance is to enable businesses to continue to earn profit that is other trades or business will be restricted from misrepresentation of their goods which will enable the original owner of the trade to enjoy maximum profit.

Also, the law aims to protect traders from this form of unfair competitions. It aims to protect the right of property that exists in goodwill. Goodwill in the sense that the part of business value over and above the value of identifiable business assets. So basically it is an intangible asset.

It enables a business to continue to earn a profit that is in excess of the normal or basic rate of profit earned by other businesses of similar type.

However, there is no law without a remedy. Some traders or businesses have already suffered and are suffering from this form of tort can bring an action and if the action is successful they are entitled to certain remedies. They include; Injunction, Damages, Delivery up for destruction of infringing goods.

1). **Injunction**:- A plaintiff can ask the court to restrain or prohibit the use of a mark subject matter of the passing off suit in court. Further, a perpetual injunction can be granted by the court when the suit has been concluded i.e. the defendant will never use the mark again. In the case of ***Niger Chemist v. Nigeria Chemist*** , the court granted the injunction to prevent Nigeria Chemist from further use of the name.

2). **Damages**: It has been established through decided cases that a successful litigant in a Passing off action is entitled to damages. Damages here could be general, special or punitive. These usually emanate from losses which are presumed to have been suffered by a Plaintiff in a Passing off action.

3). **Delivery up for destruction of infringing goods:**- A plaintiff can also approach the court to grant him/her the delivery of the goods.

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(1961) 4 NIPJD SC

<https://www.mondaq.com/Nigeria/Intellectual-Property/704160/An-Appraisal-Of-Passing-Off-Actions-Under-Nigerian-Law> (Accessed 4th May, 2020)

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