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**MATRIC. NO: 17/LAW01/259**

**COURSE TITLE: LAW OF TORT**

**COURSE CODE: LPB 302**

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**QUESTION**

**Discuss the relevance of Passing Off as a form of Economic Torts in the 21st Century Nigeria.**

 Economic torts are intentional torts whereby the defendant makes use of unlawful means to cause damage to the plaintiff trade , this tort aims to provide immunity for a person's company or trade as well as ensure that businesses are protected from acts of unreasonable interference. There are five forms of economic tort which are Passingoff, Breach of intellectual property rights, Injurious falsehood/Malicious falsehood, Interference with contracts and, Conspiracy to interfere.

 With regards to the question provided this writer will now proceed to explain what passing off as an economic tort entails as well as providing the relevance of passing of in the 21st century.

 Passing off is a common law tort which can be used to enforce unregistered trademark right. The main purpose of passing off is theprotecting the goodwill of a trader from misrepresentation According to Darlington Solicitors LLP ' passing off is where a person or business offers goods or services as another business or with the consent of someone else in a way that deceives the consumer into believing that they are buying the goods or services of that person or business that they trust and are familiar with'. Beyondthestandard passing off, there may also be, Extended passing off and Reverse passing off.

When coming to court, there are three elements often referred too as the classical Trinity as statedby the House of Lords in the case of Reckitt & Colman Ltd V Borden Inc[[1]](#footnote-3)which must be fulfilled for success in the case. These elements are

1. Goodwill: the plaintiff must prove that heowns a 'reputation' in the mark that the public.

2. Misrepresentation: The plaintiff must prove that the merchant has created uncertainty and misled or deceive consumers to think that their products and services are really the defendant.

3. Damage- the plaintiff must prove that the misrepresentation harms his goodwill or causes real or foreseeable financial or reputational harm.

It is by law that the plaintiff has the burden of proof.

Apropos the 21st century the emergence of business owners hasrapidly been on the rise bringing about multiple competition as well as struggle for originality and success in market,A country such as Nigeria where economic situation is on a low citizens constantly struggle for financial security leading them to commit the civil wrong of passing off, and thissadly is bound to be seen as a common occurrence in our society today.Fortunately a legal solution has evaded most of thesecases saving numerous people from unfair use of their reputation and damage to their goodwill.In *the case of ContinentalPharmaceutical Ltd (CPL) Industries Ltd v SterlingProductsNig. Plc and Smith Kline Beecham[[2]](#footnote-4),* theplaintiff(CPL) who where manufacturers of a registered trade mark comprising the eclipse logo with a blue and white package design with the word ‘Conphamol'brought an action against the defendant for allegedly infringing on the salient features in packaging, Justice James Tsoho of the FHC stated ' the defendant illegally adopted the plaintiff's trademark to deceive the buying public in an attempt to pass out their Panadol as the plaintiff product substituting only the words Panadol and Panadol Extra but using the same style and format.The claim won in passing off.

In our society today a business trademarks has become has valuable to individuals and business owners as physical assets, making them an invaluable aspects of their various business and these trademarks and good will has long been established by their owners through handwork, originality, and creativeness and it would be seen as unfair in the eyes of the law if one was allowed to exploit another’s hard work and innovation, take for instance Mr James spends 10 years creating a unique car model and calls it lightings bolt and an individual fraudulently starts making copies naming it lighting botand claims he is the original ownersurely that’s won’t be accepted by the law and that’s where the tort of passing off comes to play. The law tries to avoid such situation as seen in the case of *Treboor Nigerian Ltd v Associated Industries ltd [1972][[3]](#footnote-5)*the defendant had packages and marketed it’s product to resemble those of the plaintiff, the court held that the fundamental rule is that, no man has the right to put off his goods for sale as the goods of his rival trader.

The law of passing off doesn't just forestall a business from misrepresentation; it additionally serves to cure organizations that have succumbed to the tragedy of passing off, serving as a remedy for the damage.

 Also if there is a high rate of business being passed off, this would bring a decrease in the economic development of the country as there would be no originality and new ideas serve as a blueprint for new job opportunities, development of new industries as well as enhance the quality and enjoyment of ones life’s, as the new invention would seek for the betterment of individual s life .

It’s is also believed that the quality and progress of human life lies in the ability of individual to create and invent new works, these originality would bring for a better Nigeria and the Tort of Passing off encourages this concept, where people are not allowed to copy or make fraudulent use of another’s brand, name, trademarks, this would make the individual to strive to produce new and blissful ideas which will help not only the economy but also humanity as a whole.

Although it has been reported thatIn modern society the act of passing off has become more and more rapid as more people prefer making profit off an already established trademark as a means of getting rich fast, resulting with them being mentally lazy and ending up not even putting effort to create but rather leach off another’s work for success and this brings about the relevance of the tort of passing off in other to protects the trademark owners reputation and goodwill. This in turn would lead to a healthy work environment as well as healthy and fair competition between businesses. In the case of *Niger Chemist Limited v Nigeria Chemists and D.K Brown [1961[[4]](#footnote-6)* the plaintiff company which was well known as Niger Chemist had established and conducted several businesses as a chemist in Onitsha and some parts of Eastern Nigeria, the defendant and his partners founded a firm which performed the same business as the plaintiff and named itNigeria Chemists, both the plaintiff and defendants business where on the same street and both where registered with the Corporate Affairs Commission (CAC) in Nigeria. The plaintiff sued. The court granted an injunction in favour of the plaintiff, it was gotten from this case that an action in passing off may lie in cases of misuse of trade names, trademarks, or in the design getup of the goods or business.

In conclusion passing off is a flexible right as well as economic Torts which can be used to protect the goodwillof businesses in a wide range of situations and its seen as very important aspect of tort in the 21st century as it sets to ensure a fair economic marketas well as protecting businesses form misrepresentation and passible harm. The tort of passing off is especially relevant in the aspects of protecting originality of works form fraudulent endeavours.

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1. *[1990] 1 All E.R. 873* [↑](#footnote-ref-3)
2. *38 NIPJD [FHC 1995] 460/1995* [↑](#footnote-ref-4)
3. *14 NIPJD [HC 1972] 127/1971* [↑](#footnote-ref-5)
4. *4NIPJD [SC. 1961]* [↑](#footnote-ref-6)