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**Course:** Law of Tort II

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**LAW OF TORT**

**QUESTION**

Discuss the relevance of Passing off as a form of Economic Torts in the 21st Century Nigeria

**INTRODUCTION**

Economic torts are tortious interference actions designed to protect trade or business. The area includes the doctrine of restraint of trade. The aim of economic tort is solely for the protection of a person’s business from acts of unacceptable interference**[[1]](#footnote-1).** The tort of passing off has developed into a powerful branch of intellectual property law, expanding to be of application far from its original use in the 21st century. As such these are torts which inflict damage on a person’s business interest in the economic, commercial or business sector. Therefore this writer is going to focus on one of the various economic tort (Passing off) which are applied in the 21st century, its features, its defenses, and its importance.

**PASSING OFF**

Passing off takes place when someone, such as a business, passes off another party’s goods or services as if they are that of the plaintiff. It is the selling of goods or the carrying on of a business in such a manner as to mislead the public into believing such product belongs to the defendant. In other words 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**[[2]](#footnote-2).** The law of passing off prevents one trader from misrepresenting goods or services as being the goods and services of another, and also 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**[[3]](#footnote-3)**.There are various types of passing off in economic tort, thus;

1. Marketing a product as that of the plaintiff;

For example marketing your detergent as Ariel.

1. Trading under a name similar to that of the plaintiff;

Establishing a trade with a name that resembles like that of another which brings about a ‘’grave risk of confusion and deception’ ’as in the case of ***Ayman Enterprises Ltd v Akuma Industries Ltd[[4]](#footnote-4)***

1. Marketing under a trade name already established.
2. Marketing with the imitation of a trademark or the trademark of a plaintiff;
3. Imitating the appearance of the plaintiffs goods**.*[[5]](#footnote-5)***

**ELEMENTS OF PASSING OFF**

To establish a claim for passing off, you must meet these key requirements:

1. Product must have been made by the defendant.
2. Must have had the likelihood of causing injury to the business or goodwill of another trader.
3. Goodwill - you must prove that you own a 'reputation' in the mark that the public associates with your specific product or service.
4. Misrepresentation- you must show that the trader has caused confusion and deceived or misled the customers into believing that their goods and services are actually yours.
5. Damage - you must prove that the misrepresentation damaged or is likely to damage your goodwill, or cause actual or foreseeable financial or reputational loss.

It is also important to note that it is not necessary to prove that there was any intention to deceive**.[[6]](#footnote-6)**

**REMEDIES**

If you are successful in a passing off claim, there are several remedies available. You can:

1. apply for an injunction to prevent the business from using your trade mark or goodwill
2. apply to have the infringing goods destroyed
3. sue for damages or seek account for lost profit
4. request an inquiry to establish loss

**DEFENCES**

There are various defenses in place to protect persons from the tort of passing off. Such include;

1. Inconsistent use of the plaintiffs name
2. Generic usage of trademark or business name
3. Indistinct name, mark, sign and slogan of plaintiff.
4. Dissimilarities in trade mark of both parties

**CONCLUSION**

As there are many products introduced in the market there are always scenarios whereby persons would compete to sell their product with the use of various resources. The tort of passing is vital In the 21st century as it has serve as a limit to regulate the activities of marketers in the aim of preventing serious economic loss by a trader in the growing economy. From vehicles to clothing, passing off serves as to protect the business interests and idea of a trader so as to provide a platform for traders to freely express their idea without suffering economic loss via imitation by competition or capitalizing on its produ**ctivity.**

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3. WikiLaw, ‘Passing off’(2020) <https://en.m.wikipedia.org/wiki/passing_off> accessed & updated 2 April 2020 [↑](#footnote-ref-3)
4. (1999) S.C.116 (WLR) [↑](#footnote-ref-4)
5. U.K. Tobacco Co.Ltd v Carrera Ltd. (1931) 16 NLR 1. [↑](#footnote-ref-5)
6. Per Palmer, J. Niger Chemist case [↑](#footnote-ref-6)