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The essence of 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, and the "law on this matter is designed to protect traders against that firm of unfair competition which consists in acquiring for one’s self, by misleading devices, the benefit of the reputation already achieved by rival traders.

In the words of Lord Kingsdown , " the fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader." Where passing off is proved, the plaintiff will be entitled to an injunction restraining the defendant from continuing the wrong, to damages for any loss he has incurred thereby, and to an account of the profits made by the defendant in consequence of the tort.

Passing off takes place when someone, such as a business, passes off another party’s goods or services as if they are their own, by misrepresentation. The law of passing off protects the goodwill of a business of person from other traders. 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. Businesses have common law rights protecting them from passing off by others in relation to their slogans, names, packaging and other advertising elements where the company will have accrued some form of goodwill.

In discussing the relevance of passing of as a form of economic tort in the 21st century I shall define economic tort.

Economic tort also called business torts are torts that provide the common law rules in liability which arise out of business transactions such as interference with economic or business relationships and are likely to involve pure economic loss.

One of its relevance of passing off as an economic tort therefore retains its importance in the protection of goodwill in such circumstances. In addition the common law tort of passing off remains a vital form of protection of intellectual property despite the introduction of a registered system of trade mark protection.

[[1]](#footnote-2)

The purpose of an action for Passing off is to prevent one trade from damaging or exploiting the goodwill and reputation built up by another. [[2]](#footnote-3)

In the 21st century the economic Tort has been relevant as the rate at which this tort of passing off has been very rampant. It protects ones product from being falsely represented in a way to deceive potential buyers. Today a lot of false products are being produced and sold. Currently most businesses and business men find it difficult most times to get their products sold. Using electronic appliances as a case study, someone could make a blender and put the plaintiff’s or manufacturers name there when the plaintiff had nothing to do with it.

Hendrick v. Montagu in Niger chemists Ltd. V Nigeria chemists

In this case the plaintiff had carried on business as chemists and druggists for several years, and had several branches in onitsha and other towns . The defendant later found a firm carrying on exactly the same type of business in onitsha under the name “Nigeria Chemist”. The plaintiff contended that the defendant using a name similar to theirs was actionable passing off and they sought an injunction to restrain it’s further use.

With regards to the case above People are able to raise an action for passing of in situations whereby their business name is being used or similarly used by another.

This tort also protects people trade names . This does not only apply to manufacturers but also artists, writers etc. ( which are more indulged in this 21st century as they are many artists and writers).

This 21st century is dominant of manufactures and also artists, writers, and others with a trade mark that would also want it be protected. This tort of passing off goes a long way to protect and safe guard all of that.

In conclusion the tort of passing off is of a great relevance and protection of people’s business from rivals. And this tort aims at safeguarding those rights associated with the ownership of those with trade marks and also traders.

Kodilinye and Aluko, The Nigerian Law of Tort, revised edition, page 221-223

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1. Kodilinye and Aluko, The Nigerian Law of Tort, revised edition, page 221-223 [↑](#footnote-ref-2)
2. Kodilinye and Aluko, The Nigerian Law of Tort, revised edition, page 221-223 [↑](#footnote-ref-3)