

ARTICLE SERIES

**INTELLECTUAL PROPERTY CONCERNS FOR
SOCIAL MEDIA INFLUENCERS IN NIGERIA**



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INTRODUCTION

As the world advances, new ventures in the media and internet world are emerging. One of the most recent enterprises that technological and internet evolution has witnessed is social media influence/influencing.

According to Tech Target, social media influence is a term for an individual's ability to affect other people's thinking in a social media/online community[1]. This enterprise has become popular, particularly in recent years. The players here, are known and addressed as Social Media Influencers or simply as "Influencers".

These influencers overtime, amass large followings and subscribers on the various social media platforms (such as Tiktok, Twitter, Facebook, LinkedIn, Instagram and even YouTube) by making or creating contents and posts that are attractive, entertaining and enlightening to their followers and other persons that comes across their page. They further leverage on these large followings to work with established and well-known brands, by marketing the products of these brands to their followers. As a matter of fact, these established brands are the ones that often approach these influencers and pay them (as consideration) to help them promote their products or ideas.

These influencers can either be popular and well-known celebrities or random persons that through the influence developed from making posts and uploading alluring contents, are able to garner a large following on the various available social media platforms.

With respect to popular celebrities, examples are the legendary footballer, Cristiano Ronaldo and American Pop Star, Ariana Grande. Apart from being the most followed Athlete on Instagram, with over 429million followers, Cristiano Ronaldo stands out as the highest paid Instagram influencer in the world (according to Influencer Marketing Hub) with a pay ranging from \$619,497 (Six Hundred and Nineteen Thousand, Four Hundred and Ninety Seven Dollars) to \$1,000,000 (One Million Dollars) per sponsored post, while Ariana Grande earns an average of \$500,077 (Five Hundred Thousand, Seventy Seven Dollars) to \$833,461 (Eight Hundred and Thirty Three Thousand, Four Hundred and Sixty one Dollars) per sponsored post[2]. Clearly, being an influencer can be profitable!

[1] Tech Target Contributor, "Social Media Influence" (<https://bit.ly/3OkikkN>)

[2] Werner Geyser "20 of Instagram's Highest Paid Stars in 2022" (<https://influencermarketinghub.com/instagram-highest-paid/>).

IN NIGERIA

Interestingly, social media influencing has become mainstream in the social media space, as a lot of influencers are springing up by the day, particularly on Platforms like TikTok, Instagram and Twitter. While this is commendable, it is important to note that there are certain regulatory measures in place that guide these influencers, particularly as they work for the brands that approach them. Furthermore, although there are no standalone laws governing or established for the use of social media in Nigeria[3], there are regulatory concerns that must be noted.

For the purpose of this article, we will focus on concerns that directly and indirectly govern or impact on IP in Nigeria.

INTELLECTUAL PROPERTY CONCERNS FOR SOCIAL MEDIA INFLUENCERS IN NIGERIA

When influencers make posts/upload contents for the purpose of gathering followership (influencing), they must ensure that the posts being made, and the contents being uploaded, are posts and contents that do not infringe on the IP rights of others. Similarly, when influencers are approached by brands to promote products and ideas,

these influencers must ensure that the products are those that these brands have IP ownership or control over. This is because under the relevant laws, both the brands and the influencers may be deemed liable where a product that infringes on another person's IP right is marketed or advertised. The succeeding paragraphs of this article highlights how these relevant laws can impact on the activities of influencers with respect to IP.

UNDER THE NIGERIAN COPYRIGHT ACT

Under the Nigerian Copyright Act ("the Act"), copyright infringement is prohibited by Section 15(1)(a) which provides that *"Copyright is infringed by any person who without the licence or authorisation of the owner of the copyright (a) does, or causes any other person to do an act, the doing of which is controlled by copyright"*.

This provision implies that where without the approval (authorization or licence) of the owner, any person does an act to a copyrighted work, such person automatically infringes on the IP right of the owner of such copyrighted work. Hence, where an influencer uploads a content or post that another person or entity has control or ownership over, such influencer automatically becomes liable for IP infringement under Section 15(1)(a) of the Copyright Act.

[3]It must be noted that there are currently attempts to regulate social media

Also, with respect to advertising and marketing for brands and companies, Section 15(1)(c) *provides that any person that exhibits in public, any article in respect of which copyright is infringed upon*, is liable for infringement. While Section 15(1)(a) of the Copyright Act already imposes liability on the person that originally infringed on the intellectual property right of another, it also imposes another liability (by virtue of this Section 15(1)(c)) on the person that exhibits (in this case advertises or markets) the product that infringes on another person's IP right. Consequently, in order to avoid liability here, as earlier noted, influencers must ensure that as they work (i.e., advertise and promote) for brands, they are not advertising products or ideas that infringes on the IP right of others.

UNDER THE NIGERIAN TRADEMARKS ACT

The Trademarks Act ("the Act") grants to the owner of a registered trademark (upon registration), the exclusive right and use of such trademark[4]. This means that save for where there is an assignment[5], only a registered trademark owner has the right to use its trademark.

In the course of their business, influencers may be tempted to make use of the trademark of certain brands or entities. This if done, will make them liable for trademark infringement.

Interestingly, the Act grants the owner of a registered trademark, the right to sue/commence an action against an infringer at the Federal High Court. To avoid liability here, influencers must ensure that while in the course of their business of influencing, they do not unlawfully i.e., without authority, utilize or infringe on the trademark of another person or entity.

UNDER THE NIGERIAN CODE OF ADVERTISING PRACTICE, SALES PROMOTION AND OTHER RIGHTS/RESTRICTIONS ON PRACTICE

Article 10 of the Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice ("the Code")[6] prohibits any form of copyright infringement, by providing that all advertisements must not contain any item which is in breach of Nigerian and international copyright laws, or any item that omits anything which the laws of intellectual property require. It further provides that copyright permission must be obtained from the original owner before such right may be used.

This provision is quite clear and instructive enough. Its adherence is also very imperative and it mainly applies to influencers that are engaged by brands to market and distribute their products.

[4]Section 5 and Section 6 of the Trademarks Act.

[5]Assignment of the trademark rights., [6] The 5th Edition.

UNDER THE CYBERCRIMES PROHIBITION ACT

The Cybercrimes Prohibition, Prevention etc. Act (the Cybercrimes Act) prohibits IP infringement on the internet and cybersquatting as it provides that:

Any person who, intentionally takes or makes use of a name, business name, trademark, domain name or other word or phrase registered, owned or in use by any individual, body corporate or belonging to either the Federal, State or Local Governments in Nigeria, on the internet or any other computer network, without authority or right, and for the purpose of interfering with their use by the owner, registrant or legitimate prior user, commits an offence under this Act and shall be liable on conviction to imprisonment for a term of not more than 2 years or a fine of not more than N5,000,000.00 or to both fine and imprisonment[7].

The inference drawn from this is that any person that infringes on the IP right of another by intentionally using or taking for any purpose, the name, business name, trademark, domain name or other registered word or phrase, on the internet or any other computer network, without authority or right, is liable to a fine of N5,000,000 (five million Naira) or two years imprisonment.

Influencers will certainly be liable here, because their activities are carried out and performed on the internet (the social media platforms where they operate).

It is also instructive to note that intellectual property infringement under the Cybercrimes Act is deemed an offence.

CONCLUSION

While social media influencing is indeed a lucrative enterprise, it is imperative for influencers to always put into cognizance, the IP concerns highlighted in the body of this article.

Failure to be cautious and prudent in this regard may not only attract punitive consequences, but it may also end up damaging the career of influencers found liable, as for example, under the Cybercrimes Act, cybersquatting and IP infringement on the internet are punishable by an imprisonment term of not more than 2(two) years or a fine of N5,000,000 or both[8]. When convicted, this may affect the reputation of such influencer, as brands may be reluctant to work with influencers that are deemed ex-convicts. On the reverse side, adherence to laws against IP infringement will strengthen the business of influencers.

[7] Section 25 of the Cybercrimes Act , [8] Ibid.



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