



An Appraisal of the Role of Trademark in the Protection of Consumers: Nigeria and China Compared

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ABSTRACT

Trademark counterfeiting refers to the reproduction and use of another's trademark on identical or substantially similar goods. Counterfeiting products are often indistinguishable from the genuine products. Consumers are deceived into purchasing an inferior quality product disguised as a famous brand. The principal objective of the law of trade mark is to ensure that no one, not being the proprietor of a trademark, or registered user thereof uses a mark identical with it or so resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered. This protection is of great importance not only to the manufacturers of goods and products but also to their ultimate consumers. The study compares the administration of trademark law in Nigeria with the position in China, appraises the challenges and prospects of trademark in the protection of consumers in Nigeria with a view to putting forward propositions on how best to effectively apply and administer trademark law in Nigeria in the protection of consumers and made a case for an effective development of the trademark regime in Nigeria.

Keywords: Trademarks, consumer protection, China, Nigeria, Trademarks Act

INTRODUCTION

Meaning of Trademarks

The *Nigerian Trademark Act*¹ defined a trademark as:

a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and the person having the right either as proprietor or a registered user to use the mark, whether with or without any indication of the identity of that person.²

The *Chinese Trademark law*³ defined trademark as:

any visible symbols that may differentiate commodities of natural persons, legal persons, or other organizations from those of others including words, figures, characters, graphics, three dimensional symbols and combinations of the aforesaid factors shall be eligible for registrations as trademarks.

The Chinese definition of trademark is in conformity with the provision of the TRIPS Agreement.⁴ From the foregoing definitions, the primary and proper function of trademark is to identify the origin or ownership of goods to which it is affixed. A trademark must be registered in respect of particular goods or

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¹ Cap T13 Laws of Federation of Nigeria 2004

² Section 67 of the Trademarks Act Cap T13, LFN 2004

³ Article 8 of the Trademark Law 2001

⁴ Article 15 of the

classes of goods. Such registration confers on the proprietor of the mark exclusive right to the use of the trademark in relation to those goods.

Forms of Trademark

Trademark may include brand names, logos, product marks and similar identifying marks found on the signs of company letter heads, envelopes, advertisements, catalogues etc. A trademark may take any of the following forms; ordinary word, a word suggesting some characteristics of product function of quality. It could also take the form of a name, initials, numerals, a symbol, or any combination of these. Trademark serves as a guarantee of consistent quality; differentiates one trader's goods from those of another. This fact of differentiation becomes imperative in the face of competing goods/ deceptive products confronting an average consumer in the markets. It also guarantees function of a product and acts as a warning to safeguard against the purchase of inferior goods.

The Rationale for Protecting Consumers

The importance of the consumers in the production process cannot be over emphasized. According to Adam Smith,

Consumption is the sole end and purpose of production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer. But in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer; and it seems to consider production, and not consumption as the ultimate end and object of all industry and commerce.⁵

The above quoted statement implies the concept of consumer sovereignty; the centrality of the consumer in the production process. *Black's Law Dictionary* defines the word consumer as one who consumes, individuals who purchases, use maintain and dispose of products and services; users of the final product: a member of the broad class of people, who is affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which the State and general consumer protection laws are enacted⁶

The above definition is restrictive and therefore not helpful. It did not cover other ultimate users of products. Private businesses, governments' agencies and institutions are excluded from this definition. Consumer protection is based amongst others on the imperative that consumer policy must enhance the competitive forces of the market place by rules against unfair trade practices and positive disclosure requirement. This advocates a free market economy wherein the consumer is the central figure in the market and makes informed choices. In otherwise, positive disclosure requirements and information about goods and services will enable the consumer in his decision making in the market place. Consumer information and education advocates wise and responsible decision making in the market place. Such information must however not be false and misleading and must be relevant to consumers need. Such information should as much as possible disclose the truth about the performance (quality of a product, its side effects in relation to other similar products in the market.

The basic purpose of trademark law is to protect consumers identify the goods or products they desire through the protection of distinctive mark. It enables increase distributional efficiency by making products easy for consumers to locate without confusion. Therefore high quality standards will be maintained. Trademarks are a major platform by which product owner's project into streams of commerce. The fact of differentiation of products guarantees quality of the product in issue. This in turn creates products and services.⁷ Consumer protection laws are targeted at protecting the consumers against the whims and caprices of fraudulent and unscrupulous manufacturers.

⁵ A.Smith,R.H Campbell,W.B Todd(ed.), *An Inquiry into the Cause of the Wealth of Nations* (Indianapolls: Library Classics, 1981) p.660

⁶ B.A Garner; *op. cit* at p. 335

⁷ E.R Comish 4th Edition, *Intellectual Property: Patents, Copyright, Trade Mark and Allied Rights*(London: Sweet &Maxwell, 1999) p.597

The increase in commerce in both Nigeria and China necessitate that the trademarks system contribute to economic development by reconciling the disparate interests of manufacturers, consumers and the state. Trademarks are an integral part of any marketing and distribution strategy. Investments that will produce develop and produce high quality products will no doubt be achieved if consumers are able to identify such quality in the marketplace.

This will also reduce unfair competition to the barest minimum. Unfair competition gains ground and encourage unfair consequences that arise when competitions make it difficult for consumers to locate or identify the goods they want. Besides enforcing standards of marketing ethics, trademark policies also further economic goals of efficiency. Trademarks provide consumers a shorthand way for finding the goods or services they desire. This is because where there is no means of protecting exclusives right to an identification mark, then consumers might have to contend with a marketplace where products from different sources look identical.

TRADEMARK REGULATION IN NIGERIA

The *Nigerian Trademark Act*⁸ clearly spelt out that no trademark shall be registered in respect of any goods of which description is identified with a trademark belonging to a different proprietor already in the register with respect to the same goods or description of goods or that so nearly resembles such a trademark as to be likely to deceive or cause confusion in the judgment of prospective customers.⁹ The right to the use of the trademark shall be deemed to be have been infringed upon by any person who, not being the proprietor of the trademark or a registered user thereof, uses a mark identical or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade. Trademark protection in Nigeria is effected both under the Trademarks Act and under the common law tort of Passing off.

The tort of passing off is a presentation to customers of one's products as that of another person whose reputation and goodwill one thereby enjoys. The tort embodies principles which frown at misrepresentation of business which is directed at its customers and calculated to damage the reputation and goodwill of the business. In *Alhaji M.T Elebute and Anor v Dr Olugbenga Ogunkua*,¹⁰ the plaintiff had brought an application for an interim injunction to restrain the defendant from using or claiming the plaintiff's unregistered trademark or the proprietorship of it until the final determination of the suit. The court, refusing the application held that a person can only institute proceedings to prevent or to recover damages for infringement of a trademark if the trademark is registered. Where the trademark is not registered, his remedy lies in the State High Court in an action for passing off.¹¹

Also in *Patkun Industries Limited v Niger Shoes Manufacturing Co. Ltd*,¹² the respondents claimed against the appellant and two others at the Federal High Court for a declaration that the appellant and the other defendants are not entitled to infringe the registered trade mark and pass-off goods not of the respondents' manufacture or merchandise as and for goods of the respondents' manufacture and merchandise and enabling others to do such an act. The Federal High Court ruled it had jurisdiction to hear the suit and dismissed the application. On further appeal to the Supreme Court, it was contended inter alia on behalf of the appellants that the action for infringement of a registered trade mark is a cause of action and "passing off" is also a cause of action. They further contended that the Federal High Court has no jurisdiction in an action founded in "passing off". This is because an action for infringement of a registered trade mark is a creation of statute while "passing off" action is a common law cause of action, not created by statute but by common law. The Supreme Court unanimously dismissed the appeal and stated that the true intendment and purpose of section 3 of the Trade Marks Act 1965 are that no person shall sue for the infringement of an unregistered trade mark. According to the court,

⁸ Trademark Act Now Cap T13 LFN 2004

⁹ section 13 *ibid*

¹⁰ (1990) F.H.C.L 201

¹¹ at p 2020

¹² (1988) 5N.W.LR 138

It is not correct to assume that a right of action enacted into statutory provision is ineffective merely because it has its origin in the common law. This is not so. The common law tort of passing off in respect of other matters still exists, but in respect of trade marks. In this country then right of action of passing off relating to the infringement of registered trademarks is statutory and can be found only in section 3 of the Trade Marks Act, 1955.¹³

In conclusion therefore, an action shall lie in the tort of “passing off” where there is infringement of registered trademark. It is clearly within the jurisdiction of the Federal High Court as a civil cause or matter.

Extent of the Right Conferred upon the Proprietor of a Trademark

The fact of registration of a trademark confers on the owner called the proprietor, exclusive right to the use of the trademark. The proprietor of a trademark is entitled to institute an action for infringement of his trademark.¹⁴ Apart from the exclusive right conferred, registration of a trademark has some other effects. The Act clearly provides that:

In all legal proceedings relating to registered trademark, the fact that a person is registered as a proprietor of the trademark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignment and transmission thereof.¹⁵

Undoubtedly, this statutory provision simplified an infringement action. The registered owner in any suit will not have to give evidence of use and reputation. He need merely produce the certificate or registration.¹⁶ Also, registration is a *sine qua non* to an action for infringement. Accordingly, if a mark is unregistered, its owner cannot bring an action for infringement. An action for passing off is however open to him. The latter action shall lie in tort to prevent a trader from acquiring for himself by means of a false and misleading device; the benefit of reputation, goodwill and proprietary right already achieved by the owner of an unregistered mark.¹⁷ The action in passing off is based on the injury done on the proprietary right of an owner of a product.

The Infringement of Trademarks

The clearly spelt out what constitutes an infringement of trademark. Section 5(2) of the Act provides thus: without prejudice to the generality of the right of the use of a trademark given by such registration as aforesaid, that right shall be deemed to be infringed by any person who, not being the proprietor of the trademark or a registered user thereof using it by way of the permitted use, uses a mark identical to deceive or cause confusion, in the course of trade in relation to goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either-

- (a) as being use as a trademark or
- (b) in a case in which the use is use upon the goods or in a physical relation thereto or in an advertising circulator or other advertisement issued to the public, as importing a reference to some person having the right either a reference to some person having the right either as proprietor or as registered user to use the trademark or to goods with which such a person as aforesaid is connected in the course of trade.¹⁸

The essence of trademark infringement action is proof that consumers are likely to be confused about the sources of products or services in the market place. In determining whether confusion between related goods is likely, some factors may be relevant. They include: the strength of the mark, the proximity of the

¹³ Karibi-Whyte J.S.C *ibid* at p.15

¹⁴ sections 4, 5 and 6 of the Act

¹⁵ section 49 *ibid*

¹⁶ *Cryster Light Overseas Agency Limited v Yugolex Drugs Co. Ltd* (1998) F.H.C.L 390

¹⁷ A.Omotosho *The Law of Tort in Nigeria*(Lagos: Malthouse Law Books,2009) p115

¹⁸ section 5(2) *ibid*

goods, similarity of the marks, and evidence of actual confusion. A civil action shall lie in virtually all infringement cases; the proprietor of a trademark can by action restrain the registration of a mark similar to or resembling his own registered mark by another. He can also maintain an action if the infringing mark has already been registered. The proprietor succeeds in an action for infringement where the two marks resemble or nearly resemble each other as to be likely to deceive or cause confusion.¹⁹ It is the proprietor who can sue or be sued.²⁰ An action cannot be commenced by or against a trade mark as it is not a juristic person. It is its proprietor that can sue or be sued.

In the case of *Beecham Group Limited v. Esdee Foods Nig. Ltd.*,²¹ the plaintiffs were the registered proprietors of the trade mark “lucozade” in respect of their chemical substance used for medicine and pharmacy. They were also registered proprietors of the trade mark “lucozade” in respect of substance used as food ingredient. The trade marks were registered in 1946 and have been used since then. In 1981, the defendants are marketing and did register a non-alcoholic beverage using the trademark “gluco-said drink”. The court held that the striking similarity in the sound of the names “lucozade” and ‘gluco-said’ is bound to affect persons with “imperfect recollections, the incautious, and the illiterate as well as those who may place an order by phone”.²²

On appeal to the Court of appeal, the court stated that the criterion for determining whether or not there is an infringement of a trademark is that the mark complained of must not, when compared with what is already registered, deceive the public or cause confusion. The justices unanimously agreed with the reasoning of the lower court and held that the word “gluco-said” in sound is confusing to ‘lucozade’ and will undoubtedly mislead the public. A possible conclusion to be made in the light of the above decisions is that to discern differences in trademarks is more a question of caution and carefulness than of literacy.

TRADEMARK REGULATION IN CHINA

The Chinese Trademark Law²³ was revised in 1993 and in 2001 to bring the law into closer compliance with (Trade Related Intellectual Property) Trips. TRIPS is the major driving force behind the harmonization of intellectual property laws around the world. It is the first international treaty to set forth minimal substantive standards for all of its members for seven major categories of rights; copyright, trademarks, geographical indications, industrial designs, patents, integrated circuit designs, and trade secrets. Consistent with the Paris Convention and TRIPS, the 2001 Trademark Law now directly protects well known trademarks. These are trademarks with an international fame.²⁴

Eligibility for trademark protection applies to any visible symbols that may differentiate commodities of natural persons, legal persons, or organizations from those of others, including words, figures, characters, graphics, three-dimensional symbols, and combinations of colours, and combinations of the aforesaid factors. Products trademarks, service trademarks, collective marks, and certification marks are also protected.²⁵

The 2001 revision has also lifted restrictions on who may obtain a trademark. Under the prior Trademark Law, Chinese individual had to register a privately owned company before they could obtain a trademark. The 2001 revision allows domestic, as well as foreign individuals to obtain a trademark. In addition, Article 5 now allows for joint ownership of trademarks, providing flexibility for applications and a method for resolving disputes where marks have been used by more than one person or entity and the history of the mark is difficult to trace.²⁶ Trademark application must specify the products to which it

¹⁹ *Goltschalk & Co Ltd v Spruce Manufacturing Co Ltd* (1956) 1 F.S.C 42 VOL. 1

²⁰ Supreme court in *Maersk Line & Anor v Addide Investments Limited & Another* (2002) 11 NWLR PT 312

²¹ (1980) F.H.C.L 17

²² *ibid* at p 184

²³ made in 1982,

²⁴ Article 13

²⁵ Article 3

²⁶ Article 18

applies and the protection of the trademark will thereafter be limited only to those products.²⁷ Once the application and copy of the trademark is filed with the Trademark Office, it will conduct preliminary approval, the trademark is published for public review and comment allowing those who oppose the trademark to raise objections before the trademark receives final approval. If there is no justifiable opposition to the trademark, the Trademark Review and Adjudication Board will issue its final approval and the Trademark Office will issue a certificate of registration. One of the most significant changes in the 2001 Trademark Law is the availability of judicial review for the relevant parties of all decisions of the Trademark Board on opposition petition, and the ruling of the Trademark Board on the maintenance or revocation of an existing registered mark.²⁸

Trademark Infringement

The owner of a registered trademark enjoys protection against infringement of the mark. Infringement is defined under the Trademark as using identical or similar mark on identical or similar goods; selling representations of a registered trademark without authorization; removing or changing a registered trademark from a product and replacing it with the infringer's own trademark and selling the product as the infringer's own (so-called "reverse counterfeiting"); or causing other harm to the exclusive rights of the trademark owner.²⁹

The revised Law has indeed clarified what constituted a trademark infringement. The owner of a registered trademark enjoys protection against infringement of the mark. The Administration of Industry and Commerce have power to investigate and handle infringement cases although parties also have the option of proceeding directly in a people's court.³⁰

Remedies available to trademark owners are an order requiring the cessation of infringing activity, fines, and compensation. The 2001 revision expressly confers power on the AICs to confiscate and destroy products and equipment.³¹ Trademark owners may seek a pre-trial injunction and statutory damages of RMB 500,000 (\$73,000) where the plaintiff's damages or the infringer's profits cannot be determined.³² Administrative authorities can transfer cases to judicial authorities for criminal prosecution where there is suspicion that a crime has occurred.³³

The standards for criminal liability for counterfeiting are set forth in the Criminal Law of 1997. For example, under Article 140, a producer or distributor who has sales of inferior quality counterfeit goods exceeding RMB 50,000 (\$7,300) but below RMB 200,000 (\$29,200) must be sentenced to a term of imprisonment of up to two years and must also pay fines. As the level of sales increases, so does the severity of the Criminal Law.³⁴ The jurisdiction to hear infringement cases is vested on both the Administration of Industry and Commerce and the People's Courts.³⁵ However, most trademark owners prefer using administrative authorities because of the simplicity and the speed of their response. Trademark owners are often able to obtain enforcement actions in the form of raids of suspected premises and seizures of suspected infringing goods. An application usually consists of a complaint, the trademark registration certificate, and proof of suspected illegal activity, which can consist of samples of infringing products, photograph, and written or oral statements. Provision is made for the availability of judicial review for the relevant parties of all decisions of the trademark Board.

THE PROTECTION OF CONSUMERS: NIGERIAN AND CHINESE TRADEMARK LAWS

The trademark laws of both Nigeria and China follow a first to file system for trademarks. Under the first to file system, the person or entity that first registers the trademark acquires exclusive rights to use the

²⁷ Article 13

²⁸ Arts 32-33

²⁹ Article 52

³⁰ Article 53

³¹ Art. 55

³² Article 56

³³ Article 54

³⁴ Art. 141-148 Criminal Law Punishment

³⁵ Article 55

trademark regardless of whether the person or entity first created and used the trademark. Once the trademark is approved by and registered with the trademark office of the State Administration of Industry and Commerce, (in case of China) or the Federal Ministry of Commerce (in case of Nigeria), the trademark will be entitled to protection.

In both countries, a six months priority is granted for any trademark that is subject to an application in a foreign country that is a participant with them in any bilateral or multilateral treaty.³⁶ Their similarities notwithstanding, the trademark laws of China and Nigeria differ in some respects. These differences have some implications in the protection of consumers. The Chinese Trademark Law, unlike the Nigerian Trade mark Law clearly defined the word “infringement” **in an all-encompassing manner or in a more elaborate manner**. The purpose of trademark protection is to check infringement. The fact of infringement must have deceived the consumers of that product into buying same instead of their preferred product. It is regrettable that this relevant word was not defined by the Nigerian Act.

The implication is that its meaning may be subjected to manipulation in the course of judicial construction and interpretation to the benefit of the infringer. Article 55 of the Chinese Law expressly confers power on the AICs to confiscate and destroy products and equipment. This is not possible in Nigeria. A trademark owner must start process in the court of law. It is only a court of law that can exercise such powers. Court proceedings take time and are costly. The implication is the trademarks owners in Nigeria are not well protected as in China.

The Chinese Trademark Revised Law now protects well known trademarks with an international fame. Article 13 expressly prohibits anyone one from registering or using a trademark I the marks are not already registered in China. The Law did not leave the parties in doubt or to go on a voyage of discovery to ascertain the criteria for determining *a well known mark* as this was clearly stipulated in the Law.³⁷The Chinese Law unlike that of Nigeria protects trademarks with international fame (though not registered in China) within China. It will be called that consumer goods are imported from outside Nigeria. When such international trademarks are not protected in Nigeria because of non registration in Nigeria, Nigerian consumers are at a high risk of danger, even to their lives in the case of food and drug products.

Nigeria should borrow a leaf from China in this regard. Service trademarks are protected under the Chinese trademark Law³⁸ unlike China, the Nigerian trademark Law is restricted to consumer products. The implication is that the consumers of services may not be adequately protected in Nigeria. The duration of Nigerian trademarks is seven years renewable after compliance with some conditions.³⁹This is unlike the position in China where a trademark is valid for ten years from the date of registration. The Nigerian seven years period is unreasonable considering the rigors and monetary commitments involved in registration. The period should be increased so as to encourage manufacturers of products. Trademark owners in China enjoy more rights than in Nigeria. Unlike the position in Nigeria, both administrations of Industry and Commerce and the People’s Courts have jurisdiction to hear infringement cases.⁴⁰ The implication is that trademark owners have right of choice. Most of them do prefer using administration authorities because of simplicity and the speed of their response. For instance trademarks owners are often able to obtain enforcement actions in the form of raids of suspected premises and seizures of suspected infringing goods on the same date that an application is made. This sharply contrasts with the Nigerian position where such enforcement actions can only be made possible vide an *antonpillar* order. This is an order within the exclusive judicial competence of the federal high court.⁴¹ In some jurisdictions of Nigerian Federal High Court, the court will always deny the issuance of the *anton pillar* order by insisting that the other part (ie the infringer) be put on notice. By this time, the infringer would have removed from his custody all the infringing products and destroyed all available evidence. It is suggested that upon the presentation of a final certificate of registration of a trademark issued by an appropriate

³⁶ section 44 of the Nigeria Trademark Law and Article 24 of Chinese Trademark Law

³⁷ Article 14

³⁸ Article 3.

³⁹ Section 23

⁴⁰ Article 55

⁴¹ Section 251 CFRN1999.

authority, to with the registrar of trademarks in the Federal Ministry of Commerce, a court of competent before which an *antonpillar* application is made should not hesitate to make such an order. This will ensure that infringers of a trademark are do not have the opportunity to destroy the *rex* before a final order can be made by a court of competent jurisdiction.

Nigeria is faced with some problems in the protection of trademark proprietary rights. Enforcement of trademark proprietary rights has been quite challenging. A major drawback in the effective enforcement of Nigerian trademark is the absence of evolving laws. The principal trademark legislation in Nigeria, the Trade Marks Act of 1967⁴² was re-printed in the current laws of the Federation.⁴³ The dates of enactment clearly depicts that the laws were made long time ago. The implication is that the current day developments were not in the contemplation of the legislators and cannot match the level of technological development. Chinese Trademark Law of 1982, was revised in 1993 and 2001 consecutively. This revision was to bring the law into closer compliance with TRIPS. Thus, trademark protection in Nigeria is substandard *vis avis* updated law operating in China. The Trademarks Act is modeled after the English Trademarks Act.

According *Mac Cardie in Pager v Claspel, Stamp and Hea Cock Ltd* ⁴⁴said:

The object of law is to solve difficulties and adjust relations in social and commercial life...It must grow with the changing or novel circumstances...and unless it can do that, it fails in its functions and declines in its dignity. Law is generally a very dynamic subject and practice of law is also dynamic. Like the changing social circumstances, the practice of law ought to change to reflect the changing nature of our society. This is based on the fact law is made for man and not man for law. It has also been said that without equal access to law, the system not only robs the poor of their only protection, but it also places it in the hands of their oppressors the most powerful and ruthless weapon ever created. It is expedient that the Nigerian trademark law be upgraded to meet with changing circumstances.

Unlike the Nigerian Act, the English Act has been amended by the English Trademarks Act of 1994. The English Amended Act updated classification of goods and services within Trademarks Act. It also made provision for online registration; deterrent provisions are enacted in the penalty provision to deter infringement and violation of trademark proprietary mark. The penalties for trademark infringements in Nigeria are still very much outdated.

The Nigerian Act made provisions for only two types of penalties; these include the offence of falsely representing a trademark as registered with a fine not exceeding two hundred naira⁴⁵ and the offence of using the arms of Nigeria or a state in any trade, business, calling or profession⁴⁶ with a fine not exceeding forty naira. In contrast with China, trademark owners enjoy the following remedies: an order requiring the cessation of infringing activity, fines, and compensation. Also the Chinese AICS have power to confiscate and destroy products and equipments.⁴⁷ Trademark owners may get a pre-trial injunction and statutory damages of RMB500,000 (\$73,000) where the damages or the infringers profits cannot be determined. The ends of justice will be better served if there is an upward review of these fines.

⁴² Cap 436 Laws of Federation of Nigeria 1990

⁴³ Cap T13, Laws of the Federation of Nigeria 2004

⁴⁴ [1924] 1 KB 566 at 570

⁴⁵ section 61

⁴⁶ *ibid*

⁴⁷ Article 55

CONCLUSIONS AND RECOMMENDATIONS

The Nigerian Trademarks Act is deficient and falls short of the standard of the laws in China. An amendment is necessary in relation to the following: inclusion of procedures for administrative seizures like Nigerian police or customs. Routine checks on the potency or otherwise of the chemical component of components of a product is needful in order to ensure continuation and maintenance of quality. This is to avoid a situation where a manufacturer begins with high quality product which is subsequently registered as trademark but subsequently reduces its quality after it has gained acceptability by consumers. In other words, it is important to ensure that registered trade mark *per se* without regular checks of chemical and nutritional content does not become a substitute for high quality product. This is especially so when it is remembered that passing off laws deals mainly with the external appearance of product.