Springboard for Increased Advocacy Against Counterfeiting and Piracy in Africa

By:

Obafemi Agaba

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In **Enforcement of Intellectual Property Rights in Africa** (Oxford University Press, 2020), Marius Schneider and Vanessa Ferguson have not only given good exposition on the IP regime in all 54 African countries but have also taught us social studies on the nations of Africa. Some of this information seems far in history but one can blame the authors, as sourcing information and statistics on African countries can be a herculean task. They have done very well in this regard!

The thrust of the book is the provision of information relating to the administration, protection and enforcement of intellectual property [IP] in African countries (preface). However, in the humble view of the reviewer, the book is more of an excellent insight into the administration, protection, and enforcement of IP rights in Africa rather than being textual analysis of the subject that could be of effective benefit to local practitioners and Judges

dealing with day-to-day real IP issues within relevant jurisdictions.

The book is 1079 pages long and divided into 57 chapters. Chapter 1 contains a comprehensive discourse on counterfeiting and piracy, which the authors say discourage foreign direct investment and growth in African markets. The authors identify porous borders, corruption, inefficient customs and policing mechanisms, near obsolete IP legislations, and lightly regulated Free Trade Zones, etc. as some of the major factors enabling counterfeiting and piracy activities in Africa and crippling the protection systems on the continent with attendant debilitating effects on the economy, health and security in these countries.

It is, however, the opinion of the authors that there exist structures within many African countries for the protection of IPRs notwithstanding the challenges in these countries. In support of their position, the authors provide a highlight of the protection frameworks in regional bodies like the African Regional Intellectual Property Organization (ARIPO) and *Organisation Africaine de la Propriete Intellectuelle* (OAPI) in chapters 2 and 3. There is also a country-by-country analysis of the local IP law and practice in each of the 54 African States revealing some positive developments in many countries.

In the body of existing literature on intellectual property rights protection, *Enforcement of Intellectual Property Rights in Africa* is unique and important in that its authors focus on the protection of IP in African markets. In a generally simple and engaging language, the authors argue that IP rights-holders should consider expanding into local and regional African markets undeterred by the weak IPRs protection systems in local and regional jurisdictions. They posit that early registration obtained in these localities would drastically reduce the impact of the inefficiencies in the system.

The authors agree that the deliberate patronage of counterfeit products by many Africans because of their cheap price offerings threatens the investments of rights-holders. They argue, however, that there is a fast-growing middle and upper class in many African countries with the means and desire to buy genuine goods and services. According to the authors, this segment of the market is behind the increased household consumption rate in Africa, which has exceeded the continent’s gross domestic product (GDP) at a compound rate of

3.9 per cent annually since 2010 and this commercial opportunity attracts counterfeiters and pirates. Therefore, owners of IP rights must seek early registration for their IPRs not only in major African economies like Nigeria, South Africa and Egypt, but also in those remote locations where they do not currently sell their products or have physical or substantial economic presence.

The examination of the system of protection in each African country (including the ARIPO and OAPI systems) is robust and it distinguishes this book from others of similar subjects. It acquaints rights-holders with a basic knowledge of the realities of the local or regional markets of their interest and further reveals some gaps in the systems setting the tone for policy makers to fine-tune.

However, many of the discussions in the work revolved around registration as the underlying theme that there was less time to consider other relevant issues which would have greatly enriched the work. While early registration of trademarks and patents might be vital for protection, the delay in domesticating global and regional treaties like the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) and the Banjul Protocol by African countries is also a serious problem militating against protection and enforcement in Africa. For instance, many contracting parties to ARIPO are yet to domesticate the Banjul Protocol as local laws leaving rights-holders open to cases of infringement without remedy and raising serious questions on the essence of that regional bloc in the first place. These issues, as discussed by Marius Schneider & Nora Ho Tu Nam in the article *Registering Your Trademark in Africa? Not As Simple As It Seems*, should also have been considered in the work.

A few factual errors are observed in the chapter focusing on Nigeria. For instance, the Nigerian Copyright Commission sits within the Federal Ministry of Justice and not the Ministry of Information and Culture as suggested. Also, actions in which the facts are disputed (including actions for infringement of a registered trademark) are commenced by Writ of Summons and not Originating Motion as suggested at page 618.

Again, the book is without a concluding chapter. Such a chapter, no matter how brief, would have called to mind the core issues discussed and summarized them so that they register in the mind of the reader from the authors' point of

view.

It also appears that the authors intended this seminal work as a guide for an audience with more than a rudimentary understanding of IP law and practice, hence they delved right into considering the challenges of protection in Africa without a basic evaluation of the meaning and nature of IP or what it entails for the interest of newcomers in the area. Some of the issues treated are also expressed in esoteric IP language that the ideas shared may become lost on laymen. Finally, subsequent editions of this work may be opportunities to correct a few typographical and grammatical errors, inconsistent text formatting, and inelegant expressions in some of the passages in the book (pp. 217, 241, 515, 525, 718, 842 & 850).

In the end, the work does not lose its initial lustre as the authors offer useful tips that rights-holders and other market players may adopt in formulating IPRs strategies needed to curb the economic impact of piracy and counterfeiting. This is a springboard for increased advocacy against counterfeiting and piracy towards better IPRs protection and enforcement in Africa. The book should be read by IP practitioners, judges, customs and other law enforcement agencies and policy makers.

There is no doubt that the book is voluminous. However, the structure of work makes for easy study. Each of chapters 4 to 57 focuses on the protection system in a particular African country. Each chapter is a stand-alone material that can effectively be read in isolation or together with the other chapters without peril to the reader. A short reading of the book will most likely be a study of the first three chapters and one or more of the country-focused chapters depending on the interest of the reader.

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