

**A REVIEW OF THE JUDGMENT DELIVERED IN CITILINK
ACCESSCORP LIMITED VS. MTN NIGERIA
COMMUNICATIONS LIMITED & THE REGISTRAR OF
TRADEMARKS, PATENT & DESIGNS**

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On 20th March 2025, **Honourable Justice Daniel Osiagor** of the Federal High Court, Lagos ordered MTN Nigeria Communications Limited (“**MTN**” or the “**Defendant**”) to pay ₦840,000,000.00 (Eight Hundred and Forty Million Naira) in damages to Citilink Accesscorp Limited (“**Citilink**” or the “**Plaintiff**”) for infringing on its registered trademark, “**WEBPLUS**.”

Brief Facts

Citilink registered the mark “**WEBPLUS**” in 2001 under Class 9 of the (9th edition of the Nice classification); scientific and technological apparatus, computer software and related goods, and subsequently renewed the mark in 2014. Sometime in 2014, Citilink by its Writ of Summons and accompanying processes¹ all dated July 16th 2014 and filed on July 17th 2014, initiated legal proceedings against MTN, alleging unauthorized use of the **WEBPLUS** mark through MTN’s services branded as “**MTN WEBPLUS**” or “**WEB+**.”

Citilink contended that this unauthorized usage constituted trademark infringement, leading to brand dilution and loss of business, and by its Amended Claim dated 18th May 2023, claimed against MTN reliefs including:

- a. *A Declaration that the Plaintiff is the only rightful and legal owner, proprietor and user of the trademark WEBPLUS in Class 9 covered by the Certificate of Registration RTM No 65162 and the Certificate of Renewal of Registration of Trademark No RTM 65162 respectively dated 28th January 2015 and 12 June 2014 issued by the Registrar of Trademarks to the Plaintiff;*
- b. *A Declaration that the 1st Defendant by advertising, marketing, trading, selling and offering for sale products and services in any form whatsoever, known as **MTN WEBPLUS** or **MTNWEB+** or **WEBPLUS** or **WEB+** infringes the Plaintiff’s trademark covered by the Certificate of Registration of Trademark RTM 65162 and Certificate of Renewal of Trademark for WEBPLUS in Class 9 which belongs to the Plaintiff;*
- c. *An Order of perpetual injunction restraining the 2nd Defendant whether acting by himself or acting by any person or group of persons claiming through him from issuing any Certificate of Registration of the Trademark **WEBPLUS** or **WEB+** or **WEBPLUS** or **MTN WEBPLUS** or **MTNWEB+** in any other guise in classes 9,16 and 38 or any other class for that matter to the 1st Defendant and or to any other person;*
- d. *An Order of perpetual injunction restraining the 1st Defendant whether acting by itself or by any person or group of person claiming through it from doing any further acts of infringement of the Plaintiff’s trademark **WEBPLUS** in Class 9 through the use of **MTN WEBPLUS** or **MTNWEB+** or **WEBPLUS**;*
- e. *General damages against the 1st Defendant in the sum of **₦1,500,000,000.00 (One Billion, Five Hundred Million Naira)**;*
- f. *An order for interest on the judgment sum at the rate of 15% per annum to be paid by the 1st Defendant to the Plaintiff from the date of Judgment until final liquidation thereof.*



MTN's Defence

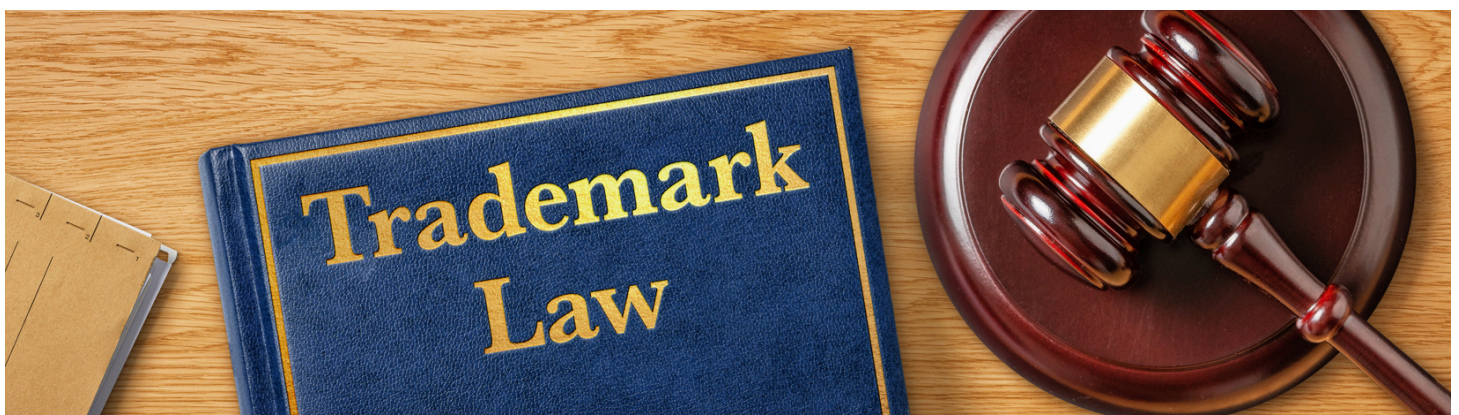
MTN invoked the defence of honest concurrent use and distilled various issues for determination including:

- a. *whether the Honorable Court has jurisdiction to entertain the suit in view of the pending action at the Trademark Tribunal;*
- b. *whether the rights in the Plaintiff's Mark continued to inure in Favour of the Plaintiff as the proprietor of the trademark even after the expiration of the registration of the trademark;*
- c. *whether the Plaintiff successfully established the elements of trademark infringement to render the 1st Defendant liable; and*
- d. *whether the defence of honest concurrent use avails the 1st Defendant in the circumstances of the case.*

To summarise the above issues, Learned Counsel to MTN argued that the Court lacked jurisdiction to entertain the suit on the ground that there was a pending opposition proceedings before the Trademark Tribunal. Thus, the Plaintiff should have received a determination of the proceedings before instituting the action in Court, and in the event the Plaintiff was dissatisfied with such determination, it should have appealed to the Federal High Court.

It was also argued that the Plaintiffs rights in the trademark did not continue to inure after the expiration of the registration. MTN contended that at the time of its application for the registration of the said mark in 2014, Citilink's registration had expired since 2008 and not renewed. Thus, the exclusive rights granted by registration had lapsed and there was no legal basis for an infringement claim. Learned Counsel also cited the relevant provisions of the Trademark Act, Cap. T13, Laws of the Federation of Nigeria, 2004 which provides that a trademark must be registered for specific goods or classes of goods to be **enforceable**. He stated that a trademark registration is valid for a period of 7 **(seven) years** and may be renewed for an additional period of 14 **(fourteen) years**.

MTN also submitted that the burden of proving trademark infringement rests on the Plaintiff and Citilink had failed to satisfy the necessary elements laid down in **Procter & Gamble Co. vs. G.S.D IND Ltd**¹ Learned Counsel also referenced Section 5(2) of the Trademark Act that states that a trademark is infringed where a person, not being the proprietor or a registered user, uses a mark identical to or so resembling it as to be likely to deceive or cause confusion in the course of trade. It argued that Citilink failed to show how MTN used its mark in relation to the goods for which Citilink's mark is registered.



It was also reiterated that Nigeria's trademark classification system is based on the 9th edition of the Nice classification under which classes 1-34 relate to goods and classes 35-45 relate to services, and its mark was registered under Classes 9, 16 and 38 with primary usage in Class 38, which covers telecommunications services, whilst Citilink's mark is registered under Class 9 which covers scientific and technological apparatus, computer software and related goods. Thus, since MTN's web hosting and domain name registration and such services fall within Class 38 and not Class 9, there is no claim of infringement on its part. Lastly on this point, MTN argued that Citilink failed to provide cogent evidence of consumer confusion.

On the defence of honest concurrent use, MTN reiterated the factors to consider in determining honest concurrent use as laid down in the English case of **Alex Pirie & Sons Ltd's**² Application where the House of Lords set out five factors in determining honest concurrent use:

- a. the degree of likelihood of confusion;
- b. the honesty behind the choice of the mark;
- c. the length of time the mark has been used;
- d. evidence of actual confusion from concurrent use; and
- e. which party has a longer and greater trade presence.

Counsel to MTN submitted that:

- there was no likelihood of confusion between Citilink's mark and its mark, and highlighted that one of their marks has the prefix "**MTN**" before the **WEBPLUS**, which is well known and unlikely to cause confusion.
- its second mark **WEB+** is distinguishable from **WEBPLUS**. Counsel also argued that the selection of its mark was completely honest as it went through due process; conducted a comprehensive search, which revealed no conflicting marks, received an acceptance notice from the Trademark Registry, emphasizing the due process followed.
- its market presence exceeds the Plaintiff's, thus, there is no likelihood of deception to consumers.
- Citilink failed to provide evidence of confusion and as well as evidence of its claim of goodwill, while MTN provided documentary proof of its adherence to due process and established market presence.
- Citilink were not entitled to the claims sought and urged the Court to dismiss said claims.

¹ (2013) 1 NWLR (Pt. 1336) 409

² (1933) 50 RPC 147

Citilink argued that:

- it is the rightful owner of the WEBPLUS trademark having duly registered it under RTM 65162 in Class 9 since 2001. It relied on the provisions of Section 5(1) of the Trademark Act which states that registration confers the exclusive right to use the trademark in relation to the goods for which it is registered.
- the mark was successfully renewed in 2014 and noted that the Registrar of Trademarks never removed WEBPLUS from the register. Thus, since the renewal was done before the removal, it retained all rights in the mark.
- MTN's marks are deceptive and likely to cause confusion among consumers. Citilink submitted sufficient evidence to establish visual and phonetic similarity, same Class of Goods and Services and actual confusion in the market.

Decision of the Court

The Court adopted the five issues raised by MTN:

- **Jurisdiction:** the Court held succinctly that the Federal High Court has exclusive jurisdiction over trademark infringement matters by virtue of Section 251 (f) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The Court also clarified that the issues pending before the Trademark Tribunal and the instant action were different subject matters, thus, the issue of jurisdiction may have been considered if the Suit was predicated or founded on seeking substance of objection to registration or removal/revocation, which was the subject matter of the dispute pending at the Tribunal. The issue was resolved in favour of Citilink.
- On the issue of whether Citilink could continue to enjoy rights over the mark during the non-renewal phase, the Court reiterated the provisions of the Trademark Act and held that the certificate, being the irrefutable evidence of registration confers a right on the owner to use the mark exclusively, and where the registration expires, the statute does not declare late renewal as illegal. This issue was also resolved in favour of Citilink. The Court also held that indeed both marks were similar and liable to deceive and cause confusion to consumers, and resolved this issue in favour of Citilink.
- On the issue of honest concurrent use, the Court held that Citilink had established ownership of the WEBPLUS mark under Class 9 with valid registration and renewal. Thus, MTN's use creates a likelihood of confusion. As such, the defence of honest concurrent use is misplaced in the circumstance.
- The Court held that Citilink was entitled to the reliefs sought since a case of infringement was established, and considered that a perpetual injunction was necessary to restrain MTN from further unauthorised use of the mark. General damages in the sum of ₦840,000,000.00 (Eight Hundred and Forty Million Naira) assessed at ₦70,000,000.00 (Seventy Million Naira) per year from renewal date to 2025 for loss of business and brand dilution. MTN was also directed to pay 15% per annum until judgment is liquidated.

Commentary

From the facts distilled, one can conclude that Citilink’s case rested on classical trademark law principles: ownership, exclusivity, and the right to prevent confusingly similar use. From their perspective, MTN’s use of **WEBPLUS** or any variation thereof amounted to a clear infringement. Their claim was further strengthened by their insistence that the use of the mark by MTN diluted their brand and caused tangible commercial loss.

MTN on the other hand, had a defence grounded on a claim of **honest concurrent use**, a doctrine that, under certain circumstances, permits multiple entities to use similar or even identical marks provided the use was in good faith and did not cause actual confusion.

This case also raises an important question that remains largely unsettled in Nigerian trademark jurisprudence: what constitutes a **“reasonable time frame”** before the inaction or dormancy of a trademark proprietor may be taken as an abandonment or waiver of its rights? If a mark lies unrenewed for several years, as in the instant case, should the third party be deterred from adopting or registering a similar mark?

For businesses, the lesson is clear; reliance on presumed abandonment is risky. Comprehensive trademark due diligence and legal compliance are essential, especially for high-profile brand rollouts.

For IP owners, vigilance in maintaining and enforcing rights is crucial. Even a minor lapse in renewal can create room for an infringement action.

Ultimately, the judgment reinforces the statutory scheme of trademark protection in Nigeria!

Babalakin & Co is a Firm with broad experience on the subject of Intellectual Property and all matters encompassing it. If you have any questions or would like information on the issues discussed, please contact:



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