

# A REVIEW OF ZAP AFRICA & PAYSTACK; AN INTELLECTUAL PROPERTY CONTROVERSY

Kolade T. Olawuni, Omobola Bakare, Oluwatobi Ogo-oluwa Akinola





# 1.0 Introduction

On 24 March 2025, Paystack, a prominent Nigerian fintech company, unveiled a new application named “Zap” designated to facilitate bank transfers and other financial services.<sup>1</sup> The announcement generated widespread attention, not merely for the product’s innovation, but for the controversy it sparked.

Just hours after the launch, Zap Africa, a cryptocurrency start-up that has been active in Nigeria and across Africa for the past three years issued a strongly worded statement on social media:

*There is only one Zap in Nigeria and Africa<sup>2</sup>*

This tweet ignited a dispute between the two companies, centering on the ownership and legal protection of the name or mark “Zap”. Paystack maintained that Zap Africa had not registered the trademark “Zap” under Class 36, the class specifically covering financial service with the trademark registry and therefore lacked the legal basis to claim exclusivity to use of the name in that category. Zap Africa, however, maintained that a valid application or registration had either been made or was pending, and that it enjoyed prior use and market recognition.

Both parties have since issued cease and desist letters, alleging trademark infringement and misappropriation of brand identity. The situation has crystalized into a wider legal discussion on the nature of trademark rights in Nigeria, particularly the importance of registration, questions of ownership, originality, and the scope of permissible use within the relevant commercial and digital contexts<sup>3</sup>.



<sup>1</sup> Insight Radio, ‘Trademark Clash Zap Africa vs Paystack’ (Insight Radio, 4 April 2025) <https://insightradio.net/trademark-clash-zap-africa-vs-paystack/>. Accessed 21 April 2025.  
<sup>2</sup> @getzapnow, “There is only one Zap in Nigeria and Africa”, Twitter, March 24th 2025.  
<sup>3</sup> Oladunmade Muktar & Bamgbose Towobola (2025, April 18) ‘Trademark dispute between Paystack and Zap Africa tests Nigeria’s IP Law’ <<https://techcabal.com/2025/04/18/zap-africa-paystack/>> accessed 21 April 2025.





## 2.0. The Provision of the Trademark Acts; What does the Law Says?

Under Nigerian law, trademark rights are primarily governed by the Trademarks Act, Cap T13, Laws of the Federation of Nigeria 2004 (the “Act”). Unlike Copyright, which vests automatically upon creation, trademark protection is predicated on registration. Trademark as a right is not conferred on an individual merely upon the creation of the mark, name, logo, or any other identifying symbol. There is an express requirement provided for under the law with respect to registration, and a person cannot claim that a mark has been infringed where such trademark has not been registered in accordance with the provisions of the relevant legislation<sup>4</sup>.

This requirement is provided for under Section 3 of the Trademark Act, which states;

*No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trademark; but nothing in this Act shall be taken to affect rights of action against any person for passing off goods as the goods of another person or other remedies in respect thereof.*

However, the same provision preserved common law rights by stating that the Act does not affect the right to bring an action for passing off - a critical fallback for parties. Relying on unregistered marks. Additionally, Section 4 of the Trademark Act also provides that;

*A trademark must be registered in respect of particular goods or classes of goods, and any question arising as to the class within which any goods fall shall be determined by the Registrar, whose decision shall be final.*

In other words, the protection granted by registration is class-specific, and any question about the appropriate class is resolved by the Registrar of Trademarks.

This classification system drawn from the Nice Agreement to which Nigeria is a signatory, serves to organize trademarks across 45 classes: Classes 1–34 for goods and Classes 35–45 for services. Financial and cryptocurrency services fall under Class 36, which includes banking, insurance, and related sectors.

## 3.0. Trademark Conflicts and Class Overlap: Legal Consideration

The significance of registration in the correct class cannot be overstated. Where a party fails to register a trademark under the appropriate class, its ability to enforce exclusivity is substantially weakened. However, even where marks are registered in different classes, the courts have sometimes found likelihood of confusion sufficient to support a claim of infringement or misrepresentation.

<sup>4</sup> Section 3 of the Trademarks Act 1965,





A landmark decision is the case of *Ferris George v John Walden* (1917-1976 1 I.P.L.R page 28), wherein the Court determined that the likelihood of confusion between trademarks would not necessarily be avoided merely because the marks were registered under different classes in the trademark registry.

More recently, in *Fan Milk International A/S v. Mandarin Oriental Services BV.* and The Registrar of Trademarks (FHC/ABJ/CS/791/2020), the Federal High Court affirmed that the real test in determining whether trademark infringement is deemed to have occurred is the question of whether a person who sees the proposed trademark, in the absence of the other trademark, would be deceived and led to think that the trademark before him is the same as the other, of which he has only a general recollection.

Additionally, the Court of Appeal in *Ferodo Ltd. v. Ibeto Ind. Ltd.* (1999) 2 NWLR (Pt. 592) 509, highlighted that;

*Infringement of trademark consists of the unauthorised use or colourable imitation of a trademark on substituted goods of the same class as those for which the mark has been appropriated*

*Infringement of a trademark occurs when there is a deliberate or even chance occurrence by the defendant to make its own product almost similar to the plaintiff's product to such an extent that intending customers would readily confuse one product for the other. In that case, the deception or chance occurrence would have done damage to the business of the other party. That is, the prospective buyer when buying the defendant's product must have thought that he was buying the plaintiffs product, the latter being what he intended to purchase. In other words, the trademark of the defendant must have deceived the prospective buyer to mistake one for the other, and it does not matter whether such a prospective buyer is literate or not.*

The position of the Court in the above matter highlights further consideration on what constitutes trademark infringement, particularly in relation to the likelihood of confusion within the marketplace, where the existence of brands or names that are deemed confusingly similar may give rise to legal dispute. In the case *Alban Pharmacy v Sterling Products International* [1968] NCLR 151 (1917-1976) 1 I.P.L.R. 163, the Court of Appeal also elucidated in terms of names, that where both the look and the sound of a mark are confusingly similar, the mark is deemed to be likely to deceive.



It is pertinent to consider the decision of the Federal High Court, Lagos Judicial Division, delivered by Honourable Justice Osiagor in Suit No. FHC/L/CS/1124/2014; Citilink Accesscorp Limited v. MTN Nigeria Communications Limited and the Registrar of Trademark, Patent Designs, a case closely similar to the instant suit. In this case, Citilink Accesscorp Limited (“Citilink”) commenced an action against MTN Nigeria Communications Limited (“MTN”) and the Registrar of Trademark, Patent Designs (the “Registrar”) alleging trademark infringement. The allegation was premised on MTN’s use of the marks “MTN WEBPLUS” or “WEB +”

being a similar mark to its existing “WEBPLUS” mark duly registered under Class 9 and subsequently renewed. MTN, in its defense, contended honest concurrent use, that although the marks bore similarity, it had adopted and used its mark without deceptive intent and in good faith. MTN also noted that it had submitted an application for the registration of “MTN WEBPLUS” and “WEB+” in 2012, without knowledge of the Plaintiff’s mark. Additionally, it argued that the Citilink’s trademark’s registration had lapsed between 2008 and 2014, a period during which its application and use of its mark commenced.



In its judgment, the Court found merit in Citilink’s case and held that MTN’s use of the mark constituted an infringement, and dismissed the defence of honest concurrent use and amongst other things awarded damages against MTN in the sum of N840,000,000 (Eight Hundred and Forty Million Naira), granted a perpetual injunction restraining Registrar from issuing certificate of registration of the trademark “WEBPLUS” or “WEB+” or “MTN WEBPLUS” or “MTNWEB+”.

The legal issues arising from the dispute between Zap Africa and Paystack underscore the nuanced and often contentious nature of trademark protection in Nigeria, especially within the fast-evolving fintech and digital services landscape. While statutory registration offers a clear path to exclusivity, prior use, brand recognition, and the potential for consumer confusion continue to play significant roles in determining rights. As the parties maintain their respective positions, the unfolding developments will no doubt offer further insight into how existing legal frameworks are interpreted and applied to emerging market realities.





#### 4.0. Reflections and the Way Forward

The Zap Africa v. Paystack saga underscores several critical lessons in trademark law and brand protection in Nigeria:

- i. **Register First and in the Right Class:** Entities must be proactive in protecting their intellectual assets by registering their marks in all relevant classes – especially where expansion into adjacent sectors is foreseeable.
- ii. **Goodwill Matters:** Even in the absence of formal registration, consistent and visible use of a mark may confer enforceable rights under the doctrine of passing off.
- iii. **Avoiding Confusion Is Key:** Legal protections exist not only to reward formalities but to preserve consumer trust and market order. Courts are increasingly sensitive to the potential for confusion in the digital marketplace.

Ultimately, whether this matter escalates into full-blown litigation or is settled through alternative mechanisms, it serves as a potent reminder to start-ups and tech firms alike that trademark strategy is not an afterthought, it is a foundational element of business architecture.

**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:



**Kolade Olawuni**  
Partner  
kolawuni@babalakinandco.com



**Omobola Bakare**  
Associate  
obakare@babalakinandco.com



**Oluwatobi Akinola**  
Trainee Associate  
oakinola@babalakinandco.com

- OFFICE LOCATIONS -

**LAGOS OFFICE**

1261A Adeola Hopewell Street,  
Victoria Island,  
Lagos State.  
+234-2702802, 2718806, 2718808,  
2718711, 2718800-4, 2718700-9

**ABUJA OFFICE**

4, River Benue Street,  
Off Ibrahim Babangida Boulevard,  
Maitama District,  
Abuja.  
+234-9-2780930, 2780933-9

**PORT HARCOURT OFFICE**

3, Williams Jumbo Street,  
Old GRA, Port Harcourt,  
Rivers State  
+234-703506876