

ADAMS

 **N AFRICA**

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Adams & Adams

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THE PENDING PLANT BREEDERS' BILL
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FROM THE EDITOR

At the recent *Singularity University Summit* in Johannesburg, South Africa, Jason Silva, the Emmy-nominated host from *National Geographic*, pointed out during his address that, "What I have noticed about Africa is that it is not waiting for some magical cookie cutter to come and save the continent. No, rather using ideas such as Ubuntu, Africans have become some of the most forward-thinking people as innovation comes out of necessity".

As a leading African law firm, with an expanding network on the continent, we are witnessing, first-hand, the duality of various exponential technologies impacting the future of the region's economies – technologies such as Artificial Intelligence, robotics, cyber security, BlockChain, Fintech and Medtech – while governments deal with pressing development challenges through laws that can meaningfully influence economic growth and the protection of rights such as intellectual property. We endeavour to report on these and other developments, along with expert insight, through this publication, in the hope that it will assist you with your own brand and investment decisions in Africa.

In this issue of *Adams on Africa*, we turn our attention to current economic and legislative developments in Nigeria and Ghana, as well as Senegal and Côte d'Ivoire, two of the fastest-growing markets on Africa's west coast.

Also in this issue, Victor Kgomoewana, author of *Africa is Open for Business*, explores the tacit rivalry between Nigeria and South Africa in 'Is Nigeria stealing the march on SA?', while Adams & Adams Associates, Tayyiba Nalla and Lisa van Zuydam, highlight the severe consequences of counterfeiting – especially FMCG counterfeiting – in Africa.

We trust that you will enjoy reading this issue and we look forward to your feedback and suggestions.

Adams on Africa | EDITORIAL TEAM

SIDE NOTES | PRIDE OF AFRICA

According to *Forbes Africa*, the current Top 10 list of the most 'bankable' musicians is dominated by southern and West African artists:

1. **Akon** | Senegalese-American
2. **Black Coffee** | South African
3. **Hugh Masekela** | South African
4. **Don Jazzy** | Nigerian
5. **Tinashe** | Zimbabwe-American
6. **Jidenna** | Nigerian-American
7. **WizKid** | Nigerian
8. **Davido** | Nigerian
9. **Sarkodie** | Ghanaian
10. **Oliver Mtukudzi** | Zimbabwean



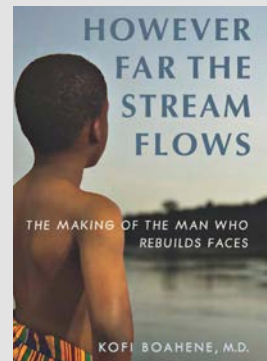
GHANAIAN-BORN EDWARD ENNINFUL WAS RECENTLY APPOINTED AS EDITOR-IN-CHIEF FOR BRITISH VOGUE.

The stylist's previous positions include Fashion Director at i-D, which garnered him the title of youngest fashion director ever for an

international publication. He holds an OBE (Officer of the Most Excellent Order of the British Empire), which was awarded in 2016 for his services to the fashion industry.

Associate Professor of Otolaryngology at Johns Hopkins, KOFI BOAHENE M.D., has published his

fascinating story in his new memoir, **However Far the Stream Flows** (Platform Press). It tells the story of how, at age 10, the Ghanaian-born Boahene stumbled upon an encyclopedia entry about the founders of the Mayo Clinic in the 'very-far-away' United



States. This chance encounter sparked a desire in him to become a doctor. However, the road to fulfilling his dreams of studying and practising medicine was littered with challenges and heartache. It's a powerful, inspirational read.

IS NIGERIA STEALING THE MARCH ON SA?



On the international football stage, no victory is rarer or sweeter than when Bafana Bafana beat the Super Eagles. Somehow, this rivalry extends even further and, although South Africa has maintained the edge over its West African counterpart, its place on Africa's centre stage is certainly under scrutiny.

Nigeria has often lagged behind South Africa when it comes to infrastructure, security of power supply, internet penetration, soundness of the financial services sector, protection of minorities, rule of law and corruption perception. However, since 1999, with South Africa riding the crest of "Madiba Magic", Nigeria has maintained its upward trajectory. Conversely, South Africa has been losing some of its lustre and seems to be continuing to do so. In fact, the last time South Africa's credit rating was sub-investment grade (known as "junk status"), Mr Mandela was president. It has now come full circle in 2017, as Nigeria, though still plagued by Boko Haram and sluggish economic growth, has managed to hoist itself to the position of Africa's largest economy – with a much more respectable banking sector.

The West African giant smoothly managed the first change of political power from ruling party to opposition, when President Muhammadu Buhari's APC won at the 2015 polls. It has put a firm lid on 419 scams, with nearly 20 Nigerian banks ranking in the world's Top 1 000 Banks for the first time, according to *Financial Times'* The Banker. Africa's richest man, Aliko Dangote, is also Nigerian, and Nollywood is challenging both Bollywood and Hollywood. It's far from perfect, but Nigeria has even started reversing its oil curse. The Nigerian National Petroleum Corporation is less tolerant of impropriety and has issued financial statements for the first time since 2009. In short, things are looking up.

South Africa, in the meantime, has slid from its heyday of sovereign stability and, although still attracting a large chunk of foreign direct investment because of its protection of investors, sophisticated financial markets, a robust democracy and a strong judiciary, the cracks in the ruling party are continuously weakening the centre. Unless this downward trend is reversed, Nigeria will further entrench its position as the gateway to West and Central Africa at least, while South Africa barely clings to some slivers of the Southern African Development Corporation.

**AFRO-OPTIMIST,
VICTOR KGOMOEWSANA, EXPLORES
THE DIFFERENCES BETWEEN AFRICA'S
POWERHOUSES.**

Victor Kgomoeswana is the author of *Africa is Open for Business*, a radio and TV commentator and a weekly columnist for the *African Independent* and *Sunday Independent* newspapers in South Africa.



BY THE NUMBERS | Nigeria vs South Africa

In terms of **sheer size**, there's no contest.

Nigeria's population of

186 million

dwarfs South Africa's 55 million.

NIGERIA'S GDP AT

US\$481 billion

surpassed that of South Africa,
which now stands at US\$315 billion.

Nigeria dominates in other stakes, too.
It has a **better economic growth rate**
and a much **healthier measure**
of inequality, with its **Gini Co-efficient** at

42,95

versus South Africa's 63,38.



REGIONAL NEWS

GALLO IMAGES/CITY IMAGES/ISTOCKPHOTO/ALAMY

NIGERIA'S OIL AND GAS DOMINATION ADDS TO GROWTH PROSPECTS

A recent PricewaterhouseCoopers (PwC) report suggests that by end-2019 Nigeria could assume the status of the largest producer of refined petroleum products in Africa. The projection sees Nigerian exports exceed 300 000 bpd by 2019 – up 350% from 2016 production of 65 000 bpd. In this scenario, Nigeria would become an international trading hub similar to Australia, Russia, Europe, and the US Gulf Coast, while the entire West Africa region becomes energy self-sufficient by 2019, thus eliminating the need to source refined oil products from the US and Europe.

Despite dwindling crude oil sales to the west, West African demand for Nigeria's crude oil is set to rise dramatically. The region annually consumes 22 billion litres of petrol, and Nigeria's domestic market accounts for 17 billion of those litres, yet the country still imports around 80% of this energy.

NIGERIA MOVES TO IMPLEMENT PRODUCT AUTHENTICATION SCHEME

The Standards Organisation of Nigeria (SON) has engaged the services of the Nigerian affiliate of an international security printing outfit, MSP Secure Technologies Nigeria Ltd to introduce a product authentication scheme in the country.

The scheme is aimed at assisting consumers to determine the authenticity of products before purchase. Speaking at the signing of the agreement with the company in Abuja, newly appointed SON Director General, Osita Aboloma, stated that his management team was motivated to introduce the scheme to ensure consumers get value for their money, while also protecting genuine manufacturers and importers from faking, cloning and product counterfeiting.

Under the stewardship of the former DG, Paul Angya, the agency had doubled its efforts against sub-standard products on the market and made substantial progress in the implementation of its programmes.

EXPANDING INTO NIGERIA

André Visser, Partner at Adams & Adams, says that despite penalties incurred by companies such as MTN, who operate in Nigeria, many South African and international companies continue to recognise the value of expanding their operations to the West African state.

The primary forms of companies for foreign investors are:

- Public companies limited by shares
- Public unlimited companies
- Private companies limited by shares
- Private unlimited companies
- Guarantee (not-for-profit) companies

There is a minimum of two shareholders needed for a private company limited by shares, and a maximum of 50. For foreign entities to trade in Nigeria, they need to incorporate a company, which is done by the Corporate Affairs Commission (CAC). Unlimited liability companies are formed for certain professions which are not permitted to have limited liability.

The minimum share capital to incorporate a private limited liability company is about US\$55. However, where foreigners will hold shares in the company, there is a minimum investment for a company to be eligible to apply for a business permit and expatriate quota approval, which is approximately US\$55 000. Foreigners are allowed to wholly own companies, but certain legislation stipulates participation in sectors, such as oil, gas and inland water trading.

For assistance in setting up companies in Nigeria, e-mail andre.visser@adamsadams.com



GHANA PLANT BREEDERS' BILL STILL TO BE PASSED



Although there have been developments in several jurisdictions with regard to plant breeders' rights, the 2013 Act for the Protection of Plant Breeders' rights in Ghana remains pending. Meanwhile, the Director of the Crops Research Institute of The Council for Scientific and Industrial Research has bemoaned the continued delay in passing the Plant Breeders' law. Dr Stella Aba Enning says a number of crop varieties developed in the country, such as maize, are being used by more than 15 African countries free of charge because of the absence of the bill. The bill, which seeks to empower crop breeders to earn royalties, has been in Parliament for four years.

For information on Plant Breeders' Rights in any African country, e-mail Patents@adamsadams.com



MADRID PROTOCOL SEMINAR HELD IN GHANA

The Registrar-General's Department organised a seminar at which officials from WIPO were invited to provide greater clarity on the operation of trademark applications under the Madrid Protocol. We continue to advise clients to exercise caution in using the Madrid Protocol in certain African countries until their national laws recognise Madrid registrations and until the national IP offices are enabled to deal with new applications, in line with the framework of the Madrid Protocol.

[Click here for the updated Madrid Report by A&A](#)



PATENT EXAMINATION SYSTEMS UNDER SPOTLIGHT AT SUMMIT

Many African countries do not currently conduct any form of examination of patent applications, but are considering the options in this regard. To this end, the European Patent Office (EPO) recently announced its co-sponsorship of the continent's first Summit on Patent Examination Systems in Africa, in partnership with Adams & Adams. The meeting will take place on 13 September 2017 in Pretoria, South Africa.

IP Officials, Registrars and Director-Generals from national and regional patent offices across Africa have been invited to attend and discuss the various approaches to patent examination available and to gain insights into developments in this regard around the world.

The Summit is followed by the 5th Annual Adams & Adams Network Meeting, a two-day seminar that brings together IP professionals and officials from across the continent to discuss topical IP issues in an African context.

Summit & Network Meeting queries may be directed to Africa Practice Manager at Adams & Adams, Mr Menzi Maboyi [menzi.maboyi@adamsadams.com]

EXPANDING INTO GHANA

There are three forms of companies commonly used by foreign investors, namely; Company limited by shares, Company limited by guarantee, and Unlimited liability company.

FOREIGN INVESTMENT

Foreigners intending to invest in Ghana are required to register with the Ghana Investment Promotion Centre (GIPC). Registration ensures that the company has complied with various mandatory legal requirements in respect of laws pertaining to foreign investment in Ghana.

SHARE CAPITAL

If the company is wholly foreign-owned, the minimum equity capital investment required is US\$300 000. A non-trading company which is wholly foreign-owned requires a minimum equity capital investment of US\$50 000. A joint venture with a Ghanaian national requires a minimum equity capital of US\$10 000.

For assistance in setting up companies in Ghana, andre.visser@adamsadams.com

REAPING REWARDS IN AFRICA

CÔTE D'IVOIRE AND SENEGAL

Stephen Hollis [Partner] and Lebohang Mosala [Associate] offer insight into two of the fastest-growing economies on the African west coast.



Following a decade of political turmoil and incidents of civil conflict and war, business has been booming in this West African country in recent years. The International Monetary Fund found that the Côte d'Ivoire was the **fastest-growing African economy in 2016 (with a growth rate of 8.7%**, versus the average growth rate of around 3% of sub-Saharan countries).

The headquarters of the African Development Bank relocated from Tunisia to Abidjan in 2014, in recognition of business opportunities. **The outlook remains positive for the Côte d'Ivoire to have another good financial year** as far as continued economic growth is concerned, especially in its established agricultural and rapidly developing energy sectors.

The Côte d'Ivoire is a member country of the **African Intellectual Property Organisation (OAPI)**.

CHALLENGES TO GROWTH

More than half of the country's population still lives in poverty, according to the World Bank, and there remains large-scale civil unrest and concerns about stability and security in the country. These concerning developments could have a negative impact on the country's economic growth outlook as new incidents of civil unrest and violent conflict would certainly stem the influx of direct foreign investment that's been a result of the recent years of peace and stability.

The selling of fake FMCG goods and counterfeit medicines, which is a violation of Intellectual Property laws, is also an ongoing problem.

Senegal is considered to be one of the most politically stable countries in Africa, with three peaceful political transitions and four presidents since its independence from France in 1960. Senegal has **experienced a 6.6% economic growth rate** over the past two years, due mainly to thriving fishing and agricultural sectors. The country is the second-fastest-growing economy in West Africa behind Côte d'Ivoire, and the fourth-fastest in sub-Saharan Africa.

In April 2017 an Appeals Court in Senegal upheld a life imprisonment sentence handed down by "The Extraordinary African Chamber". This is a tribunal established under an agreement between the African Union and Senegal to adjudicate international criminal cases for human rights violations committed in Chad by Hissene Habre, the former head of state.

CHALLENGES TO GROWTH

The implementation of the PSE (Plan Senegal Emergent), a reforms and public investment programme remains the main challenge. Its structural impact might be lower than expected, or delayed by technical restrictions or other evolving priorities. Volatility in agriculture, dependent on climate, may affect growth too. Global oil and food prices could recover more rapidly, putting pressure on Senegal's external balance sheet. FMCG counterfeits are also having a significant and negative impact on economic growth and public health in Senegal.



For more info on Senegal and Côte d'Ivoire, contact Africaip@adamsadams.com



CONSUMER PROTECTION FOR NIGERIA'S MIDDLE CLASS

EXPORTING TO NIGERIA? NOT WITHOUT NAFDAC APPROVAL, SAYS PARTNER LINDIE SERRURIER.

Nigeria is Africa's largest economy. With a population of almost 190 million people, and a middle class that grew 600% between 2000 and 2014, it is predicted that, by 2030, the West African nation will be home to around 12 million middle-class households.

The ever-increasing demand for 'luxury' goods, together with the country's economic strategy to diversify its economy from purely an oil-driven one to developing alternative sectors including agriculture, infrastructure and manufacturing, has made the country an appealing market for international businesses, as well as criminal organisations.

As consumer exposure to global brands has increased, the increase in imports has brought with it a plague of illicit and counterfeit products. In an attempt to stem the flow of fakes, the Nigerian government created the National Agency for Food and Drug Administration and Control (NAFDAC) to tackle the problem and to safeguard consumer interests and welfare.

The agency is tasked with controlling and regulating the quality of certain products prior to them being sold or manufactured in Nigeria. Its mandate covers food and food products, drugs and drug products, cosmetics, medical devices and chemicals, amongst others. In order for importers and manufacturers to sell their wares in the country they must have NAFDAC approval.

Any party interested in seeking to import or manufacture and sell products falling within the ambit of NAFDAC, must ensure that they acquire the necessary trade mark protection and register their products with the agency. The application process is very stringent and can only be carried out by a Nigeria-registered company. No less than three different trade and product certificates are required, including documentation relating to registered trade marks, powers of attorney and business registration.

This application process varies from product to product. Although arduous and time consuming (it can take up to 12 months), the Nigerian government regards this process as vital if companies want to operate in the most populous nation on the continent and create a foothold in this rapidly-evolving economy.

In a recent show of the government's drive to clamp down on counterfeiters, the acting Director-General for NAFDAC issued a statement confirming the submission of a new Bill to the National Assembly which seeks to introduce a punishment in the form of a life sentence for anyone found guilty of drug counterfeiting.

“In order for importers and manufacturers to sell their wares in the country, they must have NAFDAC approval.”

The following products cannot be sold without NAFDAC approval:

- Food and food products
- Drugs and drug products
- Cosmetics
- Medical devices
- Chemicals
- Veterinary products
- Biological products
- Herbal products, including herbal medicines.



For more information on these regulations please visit www.nafdac.gov.ng or contact Nigeria@adamsadams.com for help with trade mark applications and NAFDAC approval in Nigeria.

WHEN COUNTERFEITING

Counterfeiting generally affects luxury goods; but now a new and worrying trend of counterfeiting in 'fast moving consumer goods' (FMCG) is gripping markets in almost every African jurisdiction. Adams & Adams Associates, Lisa van Zuydam and Tayyiba Nalla, investigate the scourge in West Africa.

FMCGs are goods that are sold quickly and at a relatively low wholesale or retail price. Some 20% of the most counterfeited brands in the world are FMCG brands. However they are distributed, FMCG fakes follow the same sales channels as legitimate FMCGs and so they move quickly.

Generally, by the time a raid or visit is arranged, the goods have been sold or dispatched. The abundance of counterfeiters ranges from large wholesalers and retailers to street vendors.

"The emergence of FMCG counterfeiting leaves our clients with a legal conundrum," explains Tayyiba Nalla, Associate at Adams & Adams. "We've had to help authorities develop new approaches to our traditional anti-counterfeiting methods – including a tiered approach that requires a combination of 'soft' measures before we carry out raids."

Other strategies would include the facilitation of customs education, regular amendments to packaging, as well as innovative packaging solutions such as QR codes and holograms.

THE NIGERIAN RESPONSE

Among the countries worst hit by counterfeit goods is Nigeria. Africa's largest consumer market is home to 745 000 small and informal traders, according to Nielsen ratings.

This counterfeiting menace came to the fore again recently when the Standards Organisation of Nigeria (SON), through a whistleblower, discovered a warehouse in Satellite Town Lagos where two Chinese citizens were in the process of re-branding used or sub-standard tyres. With the help of local Nigerians, the criminals succeeded in bringing the tyres into Nigeria, and also secured a 'safe place' where



COSTS LIVES



they were carrying out their nefarious activities. This practice puts lives at risk. Innocent customers would have purchased the tyres in the hope that they were good for use as brand new products.

In Nigeria, the National Agency for Food and Drug Administration and Control Act (NAFDAC) was created to regulate and control, inter alia, the manufacture, importation, exportation, advertisement and sale of, among others, food, drugs, cosmetics, chemicals and packaged water. These products must be registered with NAFDAC before being traded. In Nigeria, NAFDAC routinely issues directives and warnings regarding products which may be harmful, are not registered or do not meet the specific product guidelines.

In focus at present is salt and specifically the practice, against regulations, of packaging industrial salt in sizes such as 5kg, 10kg, 15kg and 20kg packs when it is only permitted to be sold in packages of 50kg. This is to avoid confusion among consumers between industrial salt and iodised table salt.

Another concern in Nigeria is the volume and number of counterfeit food and drugs. In this regard, NAFDAC is involved in conducting raids on a regular basis, including recent raids on several shops at Ogbaru Relief Market in Onitsha which found that shops were producing, selling and distributing fake alcoholic and non-alcoholic drinks.



DANGER SIGNS

The United Nations Office on Drugs and Crime (UNODC) estimates that globally the counterfeit business is in excess of **\$250 billion a year and hundreds of billions** more if pirated digital products and domestic counterfeit sales are included.

MADE IN CHINA

A massive 63.2% of knockoffs originate from China, and American brands are the most counterfeited.



FIGHTING BACK

In South Africa alone, **an average of three raids are carried out per day** in the fight against counterfeiting.

SYNDICATES

Counterfeiting has become as **profitable as trading drugs and illegal narcotics** and is a lot less risky.

DEADLY FAKES

A report by the World Health Organisation (WHO) indicates that nearly a **quarter of pharmaceuticals in circulation** in developing countries – including **HIV/Aids, TB and malaria treatments** – are of a poor and unacceptable quality. Such medication is at best **ineffective and at worst deadly**.



For more info on Adams & Adams' Anti-counterfeiting unit, contact Godfrey.Budeli@adamsadams.com

GHANA IN DISTRESS

The **Ghana Employers Association (GEA)** says **counterfeit goods are destroying indigenous Ghanaian companies**. For instance, the **textile industry, which used to employ more than 30 000 people, now employs about 3 000**, according to **Alex Frimpong, CEO of GEA in an interview with the Daily Graphic**.

In Ghana, the Food and Drugs Authority (FDA) is tasked with regulating and creating guidelines on the advertising and labelling of, inter alia, all processed food packaged for sale, medicines and medical devices, tobacco, herbal products and food supplements, cosmetics and household chemicals. It also develops guidelines for and regulates premises such as restaurants. Products and premises must be registered with the FDA.

“We've had to help authorities develop new approaches to our traditional anti-counterfeiting methods – including a tiered approach that requires a combination of 'soft' measures before we carry out raids.”

Last year, a video on social media showing an energy drink that had seemingly been labelled as the special Christmas edition of the 250ml Blue Jeans Energy Drink – but the label for which could easily be pulled off to reveal another product – went viral in Ghana. Following the release of the video, the FDA launched investigations into the seemingly fake products and issued a directive ordering: “The cessation of the distribution and sale of all Blue Jeans Energy Drinks; total recall from trade of the special Christmas consignment of Blue Jeans Energy Drinks with labels bearing Santa Claus (Father Christmas), and submission of all relevant documents for its examination.”

The FDA also conducted market investigations last year and released statements to the public warning about fake olive oils, the dangers of use of certain skin lightening creams, LDC (a claimed medicinal preparation for oral hygiene) and fake tomato powders found in the market.



PROOF | THE LION'S SHARE

Nobody files more patents, trade marks and designs in Africa than us

While bigger isn't always better, in the case of filing and portfolio management, our economies of scale in different territories across the continent ensure that we build excellent and beneficial relationships with Registrars – but we never let scale compromise the quality of our service offering.

**Managing
Intellectual
Property**

AFRICA FIRM OF THE YEAR
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