



Chain of Title Considerations in the Advertising Industry

In Nigeria's vibrant intellectual property (IP) ecosystem, the concept of chain of title is a crucial cornerstone in protecting the rights of creators and innovators. This is more so as IP is generally transferable properties/assets. Similar to a historical record tracing lineage, the IP chain of title delineates the ownership history of IP assets, ensuring their legitimacy.



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Introduction

In Nigeria's vibrant intellectual property (IP) ecosystem, the concept of chain of title is a crucial cornerstone in protecting the rights of creators and innovators. This is more so as IP is generally transferable properties/assets. Similar to a historical record tracing lineage, the IP chain of title delineates the ownership history of IP assets, ensuring their legitimacy.

This article explores the importance of chain of title in advertising, its components, and best practices to ensure a legally sound and creatively effective advertising campaign.

Chain of Title in IP

Chain of title refers to the sequence of historical title transfers to a property. In advertising, it involves the documentation and verification of rights associated with the creative content used in advertisements, such as images, videos, music, scripts, and trademarks. It is a series of legal documentation that shows that all necessary rights and consents have been obtained to use creative content in advertising.



Elements of Chain of Title in Advertising

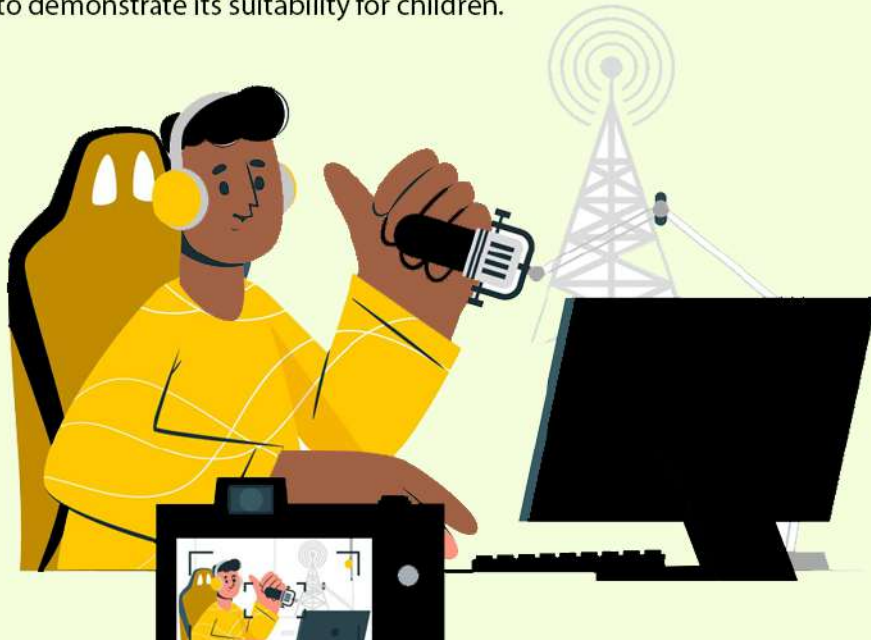
1. **Content Creation and Acquisition:** The chain of title begins with the creation or acquisition of content. This includes original content produced by in-house teams or third-party vendors, as well as purchased stock images, music, and videos. Proper documentation of contracts, licenses, and permissions is essential at this stage.
2. **Legal formalities for Title to IP assets:** The formalities established in the various IP laws for the creation, registration, and transfer of intellectual property rights must be considered. This includes registering or notifying IP rights with agencies like the Nigerian Copyright Commission or the Trademarks, Patents and Designs Registry. This step is crucial for original works and brand elements used in advertising campaigns.
3. **Licensing Agreements:** When using third-party content, advertisers must obtain the appropriate licenses. These agreements should specify the scope of use, duration, geographic coverage, and any restrictions or limitations.



4. **Talent Releases and Permissions:** Advertisements often feature models, actors, and voice-over artists. Obtaining signed releases and permissions from these individuals ensures that their likenesses and performances can be legally used in the campaign.
5. **Archiving and Documentation:** Maintaining a comprehensive archive of all documentation related to the chain of title is essential. This includes contracts, licenses, releases, and correspondence. Proper documentation ensures that all rights are traceable and verifiable.
6. **Consent for Minors:** Obtain duly executed consent from parents or guardians of children where minors are to be utilized in an advertising campaign.

Illustration

An advertising agency creates a campaign for a beverage brand, featuring a jingle (a short catchy song), photographs, and video footage including scenes of a child consuming the beverage to demonstrate its suitability for children.



Summary of the chain of title considerations

They must secure copyrights for the original jingle, purchase licenses for background music, and obtain signed talent release forms from actors and the consent of the guardian to use the image and likeness of the child. Contracts between the agency and the beverage brand should specify the scope of use of the creative works, and any limitations, warranties, indemnities, and other terms relevant to intellectual property ownership and usage, and all documentation meticulously archived. This ensures legal compliance, protects brand integrity, and prevents potential legal challenges.

Determining a Secure Chain of Title

In an IP transfer or license transaction, the basic method for determining secure chain of title is to conducting a chain of title review or IP audit whereby all documents relating to the title to the IP asset or rights are organised into a table in chronological order, listing the specific IP asset and rights, class of title (outright transfer or licensing) and whether any other restrictions are imposed. Where the IP rights or any portion have been licensed out, factors to consider include whether the rights are exclusive, the duration of the license period, the licensed territory, the ability to sublicense, etc. This can be undertaken by a legal professional who will be able to identify all legal defects in the chain of title.



Risk Indicators for Unsecure Chain of Title

An intending transferee or licensee of an IP transfer/licensing transaction would typically look out for the following risks that fetter the transferor's power to assign or grant a license to the IP right/asset:

- Where the IP is co-owned, necessitating obtaining licenses from all co-owners. For example, where a copyrightable work is the product of joint authors.
- Where the IP is a derivative work, requiring licenses from each level of upstream right holders.
- Inconsistencies in the rights transfers or licenses.
- Expired licenses/license Agreements.
- Revoked licenses.

Remedies for Defects in Chain of Title

After the chain of title review, addressing a defect in the chain of title for an intellectual property (IP) right or asset requires tailored remedies depending on the nature of the issue. This may entail completing registrations of IP assets and updating records at relevant registries following the completion of an IP transfer. Alternatively, if the defect stems from licensing-related issues, resolution may involve obtaining necessary consents and licenses from third parties who also hold title in the IP asset or amending existing licensing instruments. By pursuing these remedies, stakeholders can rectify defects in the chain of title and safeguard the integrity of their intellectual property holdings.



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Conclusion

In conclusion, the chain of title in advertising plays a vital role in protecting intellectual property rights, ensuring legal compliance, and safeguarding brand integrity. Advertisers must prioritize establishing and maintaining a clear and unbroken chain of title to protect themselves and advertised brand from legal challenges, ensuring that the campaign can be launched smoothly and effectively across all intended platforms.

