

# PEARLS OF LAW

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## Chanel, Instagram and Intellectual Property Rights

Instagram is one of the most popular social media platforms, it has been described as a video and photograph sharing application. In December 2014, the application reached a record of about 300 million monthly active users.

Some reasons given for its popularity are: it allows users hashtag their photographs with general and particular words, this brings similarly minded Instagram users together, also the use of photograph filters make photos appear more professional.

Imagine being sued for using the name of a well-known brand as your username on Instagram. This situation would seem farfetched now, as many Instagram users regularly adopt the names of well-known brands such as Mercedes, Apple, Gucci, and Prada without giving it a second thought. But this will soon become a thing of the past, as brands are becoming more conscious of preserving their identity on social media. The main concern is that users might actually mistake these users as official representatives of the brand, which could be a form of misrepresentation. However, some could argue that allowing users use the name of well-known brands will increase brand awareness. The former view seems to have informed a recent action filed by Chanel against an unsuspecting Instagram user.

After successfully prosecuting an action against a saloon owner in Indiana for using the word "Chanel" in connection with her business. Chanel proceeded to express grave concern over the use of the account name "@Chanel by a 20-year old girl from Vancouver called Chanel Bonin. The account which had been opened since 2011, was shut down for a couple of weeks to address the issue of the account name. Chanel was reported to have filed an intellectual property infringement action with Instagram directly. According to Instagram's Intellectual property policy, Instagram prohibits "posting content that violates someone else's intellectual property rights, including copyright and trademark." Additionally, if an individual or company discovers infringement of its trademark by Instagram users, the individual or company may file an IP report on Instagram's website, which its in-house attorneys will review. If the account complained of is guilty of violating trademark or copyright laws, Instagram may remove it. Instagram describes a trademark violation as "using a company or business name, logo or other trademark-protected materials in a manner that may mislead or confuse others with regard to its brand or business affiliation."

The main issue arising from the scenario narrated above is whether the use of the word "Chanel" by Bonin resulted in other users



confusing it with the registered trademark belonging to Chanel. Due to the similarity in names Chanel alleged that consumers might think it is "sponsoring, endorsing, or somehow affiliated with the defendant or its products." When in fact the parties are not connected in anyway.

According to a report a number of Bonin's posts were suggestive of an association with Chanel. For example she posted a photograph of a hairclip on her page with the word "CHANEL" and a drawing of a girl wearing a shirt with Chanel's double "C's" logo on it. There were also comments on a number of photos, with some identifying Bonin's account as "the Chanel account," these facts seem to prove that there was at least some confusion regarding the ownership of the account or that some people believed that Bonin's account was connected with Chanel.

After Bonin's account was shut down for a couple of weeks, it was restored with slight differences. The photographs containing Chanel's trademarks had been removed.

These issues seem to be quite advanced for our own legal system at the moment but things are progressing at record pace so individuals and businesses have to learn how to protect their content on social media platforms such as Instagram for the future. Basically,

according to Instagram's terms of service although individuals maintain the right to their content when they publish it on Instagram, they also give Instagram the right to utilise such content. Users can protect their published content by copyrighting and trademarking their material, however if they do not do so, Instagram can use their published content without any legal consequences. More importantly, Instagram can only remove content connected to an infringement if an individual or company complains that its copyright or trademark has been infringed. Interestingly, an infringement can only occur if the unaltered version of a photograph is used, if the photograph has been slightly altered it becomes the work of another user and this cannot be regarded as an infringement.

Other jurisdictions such as the UK have begun to address the legal issues arising from the use of social media platforms through legislation. The UK enacted a new copyright law which has been nicknamed the "Instagram Act" because of the unfettered rights it grants Instagram over its users' content. The new law defines "orphan works" as works whose authors are unknown and are therefore not subject to any copyright law. Consequently, this law allows social media users use any content with unknown authors freely, making it difficult

for original users to protect their works from intellectual property theft. Going forward, it has been suggested that the only way to prove ownership of a particular photograph on social media might be to embed metadata and personal information into the photo before uploading it.

### Conclusion

The use of social media platforms is very popular in Nigeria. However, it seems that the intellectual property law issues highlighted above are not being considered by most users of social media. Our outdated laws which provide minimal protection for intellectual property works and a low awareness of intellectual property rights are not helping matters either. Notwithstanding these setbacks, Individuals and businesses should strive to protect their identity on social media, more importantly, there should be an increased awareness of intellectual property rights. This can only be achieved by public enlightenment campaigns on the intellectual property rights available to users of social media platforms. Finally, following the Chanel example businesses should be weary of sharing their brand names with other users on social media as consumers might think there is a connection between their brands and none might actually exist.