



The Use of Similar Names by Church Denominations in Nigeria: Extending the Tort of Passing off

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Abstract

For any sector to thrive and excel, there must be somewhat a competition that drives and propels the players to put in their utmost best in order to become successful. This is what informs the development of Unfair Competition under the Common Law. Passing Off thus developed under the common law as a way of regulating the conduct of traders so as not to cause harm to rival traders. It is aimed at restricting a trader from the use (direct or implied) of trade/business names, marks, etc., belonging or similar to another in such a way as to lead the public to believe that his goods, services, etc., are that of the other trader. The essence is to protect successful traders from competitors who may want to use the name, reputation and goodwill which they have earned over the years to their own disadvantage. Goodwill is said to be the very sap and life of a business; the benefit and advantage of the good name, reputation and connection of a business which may have been built up by years of honest hard work or gained by lavish expenditure of money. Thus, goodwill though intangible in nature is what determines the degree of patronage or otherwise of a product or service. Church denominations though excluded from commercial transactions as non-profit organisations, they however, have goodwill and reputation which should be protected. With the increase in church denominations today in Nigeria, a number of these new churches either deliberately or otherwise, use the names or logos of the already established denominations in order to attract unsuspecting members of the public to their churches. This of course is one of the forms of passing off being the focus of this paper.

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Introduction

It is said that where there are no competition, monopoly, stagnation and lack of innovation may become the result. Thus, the benefits and advantages of competition cannot be overemphasised. Businesses and organisations are compelled to operate in their best when faced with competition ^[1]. It is however important that such competition must be done or carried out in such a way as not to cause damage to another ^[2]. This is the basis of Passing Off which is an aspect of the law of unfair competition. Passing off generally is considered as a commercial tort in which damage (s) is caused by a defendant to a plaintiff's business

¹ London King's College, Competition Law, available at <https://www.cl.ac.uk.abroad/module-options/module?id=87512cd9-b5cf-489f-9df3-e30174c9f851> accessed 16th June, 2025.

² MIPLG, Competition Law, available at <https://myiplawguide.com/library/competition-law/> accessed 16th June, 2025

interest by marketing his goods as if they were that of the plaintiff. It consists of acting deliberately or otherwise, in such a way as to mislead the public to believe that the defendant's goods/ services are those of the plaintiff thereby taking an unfair advantage of the reputation of the plaintiff which he has built, and thus infringing on his right of property in the goodwill of his trade or business^[3]. Thus, it was observed by the Supreme Court of India^[4] that the concept and principle on which passing off action is grounded is that a man is not to sell his own goods under the pretence that they are the goods of another man^[5]. No man therefore is permitted under any guise whatsoever, to pass off his goods or services as that of another.

What is sought to be protected in a passing off action is not necessarily the goods or services, but the goodwill of that business which has been built up over a reasonable period of time through hard work, commitment, dedication, etc.^[6] The term "goodwill" has been defined as "... the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which distinguishes an old established business from a new business at its first start"^[7]. According to the Black's Law Dictionary^[8], goodwill is A business reputation, patronage, and other intangible assets that are considered when appraising the business, especially for purchase; the ability to earn income in excess of the income that would be expected viewed as a more collection of assets^[9].

This means that the tort of passing off is not just about the commercial venture as it were, but also the name, goodwill, reputation, etc., that makes that venture what it is. In the case of *Trego v Hunt*^[10] goodwill was described by Lord Macnaghten as:

The very sap and life of the business without which the business would yield little or no fruit. It is the whole advantage, whatever it may be, of the reputation and connection of the firm which may have been built up by years of honest work or gained by lavish expenditure of money^[11]. Thus, it can be said that passing off though a commercial tort, it also concerns non-profit organisations and entities. This is because non-profit organisations though they are not commercial as it were, they however have goodwill and reputation that are required to be protected from undue exploitation. Passing off can therefore serve as a means of protecting these non-profit organisations and bodies from persons or group of persons who wants to use their already built and established name, goodwill, reputation or network to their personal and selfish advantage. And this is the focus of this paper.

Meaning of Passing Off

Passing off as it were, is a civil wrong or commercial tort that is concerned with the act of representing one's goods, services, or business as those of another, with the intention to deceive consumers and gain an unfair advantage^[12]. The tort of Passing off can be said to occur

When someone deliberately or unintentionally passes off their goods or services as those belonging to another party. This action of misrepresentation often damages the goodwill of a person or business, causing financial or reputational damage^[13].

In the words of his Lordship, Langdale LJ^[14]

The fundamental rule is, that one man has no right to put off his goods for sale as the goods of a rival trader, and he cannot be allowed to use names, marks, letters, or other indicia by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person^[15]. Passing off therefore, "is the act of false representation of one's products or services as belonging to another brand to secure patronage from potential customers. It entails the act of deception and misrepresentation to gain undue advantage using the goodwill of another business"^[16]. Apart from the key component of deception, in the Nigerian case of *The Boots Company Limited V United Niger Imports Limited*^[17], Justice Nnaemeka Agu, carefully listed what he considered to be the ingredients of a successful Passing off action as follows:

1. Proof that the name, mark, sign which the plaintiff claims ownership has become distinctive of his goods and is regarded by a substantial number of the public or persons involved in a trade in the relevant market as coming from a particular source;
2. That the defendants who are engaged in a common field have used a name, mark, sign so resembling to the plaintiff's that it is likely or calculated to deceive or cause confusion in the minds of the common customer; and
3. That the use of the name, mark, sign is likely to cause or has caused injury, actual or probable to the goodwill of the plaintiff's business^[18].

Thus, passing off as an aspect of intellectual property law that was developed as a way of regulating unfair competition with the aim of checking, regulating and restricting the conduct and actions of traders in the market place so as not to cause harm to others. It has therefore been opined that:

Any person, company or other organisation which carries on or proposes to carry on business under a name calculated to

3 A.N. Hercy and L.A. Atsegbua, *An Introduction to the Nigeria Law of Torts*, Union Press, Benin City, 1990, pg. 153.

4 *N.R. DONGRE AND ORS. v. WHIRLPOOL CORPORATION AND ANOR 1996 VIAD (SC) 710*

5 *DIKE GEO MOTORS LTD & ANOR v. ALLIED SIGNAL INC & ANOR (2024) LPELR-61780 (SC)*

6 W.R. Cornish, *Intellectual Property: Patents, Copyrights and Allied Rights* (4th Ed) Sweet & Maxwell, 1999, pg. 619.

7 Per Lord Macnaghten in *I.R.C. v Muller & Co. Margarine Ltd. (1910) A.C. 217*

8 Black's Law Dictionary, 7th Ed. 1999, West Group

9 Ibid

10 (1896) AC pg 7 @ 24.

11 Ibid

12 Ben Evans, 'Passing off Law: A Guide', Harper James, available at <https://harperjames.co.uk/article/passing-off/>

13 'Trade Marks, Passing Off: Definition, Remedies and Defences' available at <https://www.nibusinessinfo.co.uk/content/passing-definition-remedies-and-defences>. Accessed 17th June, 2025

14 Langdale LJ

15 Langdale LJ in the case of *Perry v Truefitt* 6Beer, 66.

16 Koko Asuquo, 'What is Passing Off? Definition, Defences and Remedies, Berkeley Legal, Available.' available at <https://berkeleylp.com/insights/what-is-passing-off/> accessed 17th June, 2025.

17 (1977) 1 A.N.S.L.R 144.

18 Ibid, per Justice Nnaemeka

deceive the public by confusion with the name of an existing concern, commits the civil wrong of passing off, and will be restrained by injunction from doing so ^[19].

It is clear therefore that passing off is not limited to business or goods, but includes names of organisations as have been statutorily provided for in Nigeria under Part G of the Company and Allied Matters Act ^[20]. The Act, with regard to registration of companies and other corporate bodies by the Corporate Affairs Commission provides that:

1. No company, limited liability, partnership, limited partnership, business name or incorporated trustee shall be registered under this Act by a name or trade mark which -
2. Is identical with that by which a company or limited liability partnership in existence is already registered, or resembles that name as to be calculated to deceive, except where the company or limited liability partnership in existence is in the course of being dissolved and signifies its consent in such a manner as the Commission requires;...
3. In the opinion of the Commission, would violate or conflict with any existing trade mark or business name registered in Nigeria or body corporate formed under this Act unless the consent of the trade mark, business name or trustees of the body corporate has been obtained.;^[21].

The import of this statutory provision is that any name or trade mark that is similar or identical to that which is already in existence cannot be registered by the CAC as such is capable to deceive or mislead the public. This implication of this is that churches and non-profit organisations are not permitted by law to use a name that is similar or identical to that of another church or organisation as such could be considered as a calculated attempt to deceive. This is the import of passing off and the focus of this paper.

Elements of Passing Off

Passing Off as a commercial tort deals with damages caused by a defendant to a plaintiff's business interest by marketing his goods or services as if they are the plaintiff's. It consists of deliberately acting so as to mislead the general public into believing that the defendant's goods or services are those of the plaintiff's, and thus infringing the plaintiff's right of property in the goodwill of his trade or business ^[22].

In the case of *Reckitt & Colman Products v Borden* ^[23] Lord Oliver laid down the three elements that must be proved in order to succeed in a Passing-off action. According to his lordship, the three elements are goodwill or reputation, misrepresentation, and damage. His lordship held:

First, he must establish a goodwill or reputation attached to the goods or services which he supplied, in the minds of the purchasing public by association with the identifying get-up

(whether it consists simply of a brand name, or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public such that the get-up is recognised by the public as distinctive, specifically of the plaintiff's goods or services.

Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff..

Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff.

Goodwill can be said to be the acceptance or popularity which a particular product or service has gained from the public and those characteristics that makes the product or services to be so accepted by the public. Goodwill and reputation therefore is the acceptance which a particular product or service enjoys from the purchasing public – those characteristics that engenders such acceptance that will invariably make the public to purchase or patronise such products or services whenever it is available. Thus in a passing off action, the plaintiff's complain is that the defendant is using his goodwill or reputation to pass off his goods to the public who are willing to go for it anytime and whenever it is presented ^[24].

The question therefore is, 'can we say that a non-profit organisation has goodwill and reputation which can be used by a rival to pass off their organisation to the public?' In fact, goodwill can be said or likened to a non-profit's social currency having the capacity to inspire greater support, open new funding opportunities, and deepen community involvement. It is the trust the organisation has built after several years of dedicated and committed service to the public.

Misrepresentation is another element of passing off that requires proof in order to succeed in an action for passing off. Thus, in a passing off action, the plaintiff "must prove a misrepresentation by the defendant to the public, which has led or is likely to lead the public, into believing that the goods or services offered by the defendant are the goods or services of the claimant" ^[25]. It was the observation of the court in *Warnink v Townend* ^[26] that making the purchasing public believe that what you are offering for sale is the product of the plaintiff or has the same quality as that of the plaintiff ^[27]. In the observation of Lord Parker, ^[28] misrepresentation can be made expressly through words (though very rare) or implied as in the use or imitation of a mark, trade name or a get-up with which the goods, product or services of the plaintiff are

19 Denis Keenan, *Smith and Keenan's English Law*, 8th Ed. Pitman Publishing, London, 1986, pg. 397

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21 Section 852(1)(a) and (d) Company and Allied Matters Act, 2020.

22 A.N. Hercy and L.A. Atsegbua, *An Introduction to the Nigerian Law of Torts*, (Benin City: Union Press, 1990), 153.

23 (1990) 1 All E.R. 871 at 880.

24 Innocent Onohomhen Ebbih, 'A Critical Approach to the Tort of Passing Off under the Nigerian Law' Faculty of Law, Ambrose Alli University, Ekpoma, 2005 (Unpublished LL.B Project).

25 Lawdit Stay Legal, 'What is Misrepresentation in Passing Off' (October, 2020) available at <https://staylegal.co.uk/what-is-misrepresentation-in-passing-off/#:~:text=In%20a%20claim%20of%20passing%20off%20the%20claimant,are%20the%20goods%20or%20services%20of%20the%20claimant.>

26 [1979] A.C. 731

27 Ibid

28 *Spalding & Bros v Gamage (1914-15) All E.R. Rep. 147 @ 149*

associated in the minds of the purchasing public ^[29]. This however happens to be the most common form of misrepresentation. We are however in this paper concerned with the use of similar names as means of passing off.

Misrepresentation happens when there is a false representation by the defendant aimed at deceiving the public or cause confusion in the minds of the public as to think that what they are getting is the product or services of the plaintiff. This was the case of INCORPORATED TRUSTEES OF UNITED AFRICAN METHODIST CHURCH (ELEJA) ORGANISATION v. DIYA & ORS ^[30] when the plaintiff at the lower court contended that the name given to the 9th defendant (THE INCORPORATED TRUSTEES OF UNITED AFRICAN METHODIST (EVANGELICAL CHURCH)) is the same name or one similar to that of the plaintiff with the intention to deceive and mislead the public. It was however contended on behalf of the defendants that the names were not similar and therefore cannot be said to mislead the public to think that the 9th defendant is the same as the plaintiff. It was the same contention in *Niger Chemists v Nigeria Chemists* ^[31] where it was contended by the plaintiff that the use of similar name by the defendant is likely to deceive the public to think that it is the same with the plaintiff. The court held that the use of the name 'Nigeria Chemists' is capable of deceiving the public to think that it is the same with name of the plaintiff's business.

The third element that must be proved by a plaintiff in an action for passing off is damage. This damage does not necessarily have to be actual but that the defendant's misrepresentation is likely to cause damage to the plaintiff's business or goodwill/ reputation ^[32]. The implication of this is that a plaintiff does not have to wait until his business or reputation has suffered damage as a result of the defendant's action before instituting a passing off action. However, where there is an actual damage, passing off is much easier to prove than where it is just at the level of likelihood.

Use of Similar Names as Passing Off

Use of similar name as a form of Passing off connotes that the defendant trades or does business with a name that is the same with that of the plaintiff or that closely resembles the name as to be likely to mislead the public into believing that the defendant's business or organisation and that of the plaintiff are one and the same. A classical case was that of *Hendricks v Montagu* ^[33] where the plaintiff company 'Universal Life Assurance Society' sought an injunction to restrain the defendant company 'Universe Life Assurance Association' which sought to be registered from carrying on business under such name. In the words of James LJ, Now it appears to me that it is made out beyond all possibility of doubt and beyond all possibility of argument, I think substantially, that the Defendant company is threatening and intending as soon as it is registered to transact all the ordinary descriptions of life assurance business, the head office being in London under the name and style of the Universe Life Assurance Association, Limited. That is clearly what it

intends and threatens to do, unless it is restrained by injunction, and with the view of doing this, and as the first step in doing it, it threatens and intends to get itself registered upon the Joint Stock Companies Register under that name. The Plaintiffs' name is the Universal Life Assurance Society. Now, is there such a similarity between those names as that the one is in the ordinary course of human affairs likely to be confounded with the other? Are persons likely who have heard of the Universal to be misled into going to the Universe? I should think, speaking for myself, very likely indeed. Many people do not care to bear in mind exactly the very letters of everything they have heard of, and we have had a great body of evidence before us of persons, whose business it is to be acquainted with these life assurance companies, all of whom concur in deposing in the strongest possible terms that nothing is more calculated to injure an old society of this kind than having a new society established which has got a name so similar to that of the other as that it is likely to be mistaken for it.

This was also the case of the plaintiff in *Niger Chemists v Nigeria Chemists* ^[34] where the plaintiff had carried on business as druggist and chemist for many years with branches in Onitsha and other parts of Eastern Nigeria. The defendant subsequently, started the same business at Onitsha with the name Nigeria Chemists. The plaintiff in a passing off action sought an injunction restraining the defendant from further use of the name 'Nigeria Chemists' as it was calculated to deceive the public who know of and intends to do business with the Plaintiff. The court in granting the injunction held:

It seems to me as a matter of common sense that when two firms trade in the same town, in the same street and in the same line of business; one calling itself "Niger Chemists" and the other "Nigeria Chemists" there must be a grave risk of confusion and deception ^[35].

It is clear from the holding of this case that even though the names are not the same but where they are similar or closely resembles and is capable of misleading the public, an injunction would be granted.

It may however be argued that churches are non-profit organisations and therefore cannot be covered by passing off which is mainly concerned with commercial and business transactions. However, it is provided under Part G of the Company and Allied Matters Act ^[36] with regard to registration of companies and other corporate bodies by the Corporate Affairs Commission that:

- No company, limited liability, partnership, limited partnership, business name or incorporated trustee shall be registered under this Act by a name or trade mark which -
- Is identical with that by which a company or limited liability partnership in existence is already registered, or resembles that name as to be calculated to deceive, except where the company or limited liability partnership in existence is in the course of being dissolved and signifies its consent in such a manner as

29 Ibid

30 (2019) LPELR-47285(CA)

31 [1961] All N.L.R. 171

32 Per Lord Oliver in *Reckitt & Colman Products v Borden* (1990) 1 All E.R. 871 at 880.

33 (1881) 3 L.J. Ch. 456

34 [1961] All N.L.R. 171 Supra

35 Ibid per Palmer J.

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the Commission requires;...

- In the opinion of the Commission, would violate or conflict with any existing trade mark or business name registered in Nigeria or body corporate formed under this Act unless the consent of the trade mark, business name or trustees of the body corporate has been obtained;^[37]

This is the reason why in practice, before the registration of incorporated trustee by the Corporate Affairs Commission^[38], an application is first made to check whether the proposed name of the new association is available and when it is available, it is reserved for the prescribed number of days before it is processed for registration. Of course, the essence of this is to ensure that the proposed name complies with the requirement of not conflicting with other names that are already in existence. However, what we find today on our streets and in our cities is that several churches and denominations particularly those of the Pentecostal leaning with names and marks that are similar to that of existing denominations and church groups. In Nigeria, churches and denominations spring up every day with all kinds and manner of names under the cover 'the Lord told me to start a church'. Very many of these new churches and denominations coin and adopt names either which are already in use by a very popular denomination or those that are very similar to such names^[39, 40]. Some of these new churches or "breakaways"^[41] as they are fondly called usually bear a name that is similar or almost the same with the denominations where they are coming from in order to make the unsuspecting worshipers think that it is the same with the main denomination. This of course, is the import of passing off.

In the case of INCORPORATED TRUSTEES OF UNITED AFRICAN METHODIST CHURCH (ELEJA) ORGANISATION V. DIYA & ORS^[42] The Plaintiff Sued The Defendant For Using A Name That Is Similar And Closely Resembles That Of The Plaintiff And Therefore capable of misleading the public. The court in disallowing the appeal, held:

The acid or litmus test is for an average or reasonable person to look at the first word or the last word of the name to see whether he is deceived, confused, or misled by the name of the 9th respondent and would take the 9th respondent's name for the name of the appellant. The first word of the 9th respondent's name is "The", while the last word is "Methodist" and then "Church" in bracket. In the case of the appellant, the first word of its name is "Incorporated", while the last word is "Organisation". There is therefore no resemblance between the two names thus removing the tendency to confuse or to mislead/deceive reasonable members of the public both in consonance or sound (ears) and visibility or sight (eyes) vide the case of Ferodo Limited and

Another v. Ibeto Industries Ltd. (2004) 5 NWLR (pt. 866) 317, where the Supreme Court held inter alia that the two human senses of ears and eyes have to be used to arrive at a conclusion on the average memory arising from general recollection whether both names are identical or bear close resemblance from the first or last syllable where such word is used; and, whether a reasonable person of average intelligence will be confused, deceived, or misled into taking the 9th respondent's name for the appellant's name in the absence of seeing the appellant's name and relying on his general recollection of the appellant's name; and/or he would be liable to be deceived or confused to think the 9th respondent's name he had seen before or heard its sound is the same as the appellant's name of which he had a general recollection. I am, accordingly, of the considered opinion that a person of average intelligence who sees the name of the 9th respondent or hears the sound of it without seeing or hearing the name of the appellant will not, relying on the general recollection, mistake the latter for the former or vice versa when he subsequently sees the latter because both are different.

A thorough consideration of *Hendricks v Montagu*^[43] where the similarities in names - Universe Life Assurance Association, Limited and Universal Life Assurance Society was in issue, the court held granted an injunction. In this case, the first and last word in the defendant's business name were different from that of the plaintiff, but the court held that it was capable of misleading the public. However, in the above case^[44] where every other word were the same except the article "the" at the beginning and the last words "Methodist Church" in brackets, every other appears to be the same with that of the plaintiff. Whereas the reasoning of the court in *Hendricks* case was that the word Universal is similar to Universe and "one in the ordinary course of human affairs is likely to be confounded with the other..." and there is a high possibility that one could hear of "the Universal to be misled into going to the Universe."

However, from the provisions of the CAMA^[45] "No company, limited liability, partnership, limited partnership, business name or incorporated trustee shall be registered ... by a name or ... which (a) is identical ... or resembles that name...^[46]" otherwise, such names will be considered as calculated to deceive the public. From this provision, it is clear that the names does not necessarily have to be identical, but if there is any form of resemblance at all, it is enough for a passing off action. One therefore wonders why the courts in Nigeria have not been forward in holding such defendants liable for passing off as in the above case.

Another challenge with similar names is that many of these churches and denominations are yet to be registered with the Corporate Affairs Commission. Many of the breakaway churches that are using the names or that which is similar/

37 Section 852(1)(a) and (d) Company and Allied Matters Act, 2020.

38 Corporate Affairs Commission is the body saddled with the responsibility of registering companies, businesses and organizations in Nigeria.

39 Ogunbade Adewale Olusegun, Proliferation of churches in Nigeria: Causes, Impacts and likely Solutions, *Journal of African Studies and Development*, Vol. 12(3), pp. 61-76, July-September 2020.

40 John Oluwatomisin Akinselure, Legal Consequences of the Companies and Allied Matters Act, 2020 on Incorporated Trustees in Nigeria, *Ajayi Crowder University Law Journal (ACULJ)* Vol 4, No 1 (2021)

41 The word 'Breakaway' is a term used in the Pentecostal circle in Nigeria to denote a group of persons or believers who left their main denomination as a result of grievance or other reasons, to form another church or denomination different from the one they left and under a different name or leadership.

42 (2019) LPELR-47285(CA)

43 Supra

44 *INCORPORATED TRUSTEES OF UNITED AFRICAN METHODIST CHURCH (ELEJA) ORGANISATION v. DIYA & ORS* supra

45 Company and Allied Matters Act, 2020

46 Ibid section 852(1)(a) and (d).

resembles that of the mother church/ denomination or another well-established church are unregistered with the CAC. Quite often, they use these names and the likes to deceive, mislead or make the unsuspecting public to think or believe that they are the same with the original owner of the name. This is why in some cities in Nigeria, the names of a good number of Pentecostal churches/ denominations in that area are usually similar or resembles the name of the leading Pentecostal denomination in that area. However, the fact that an organisation is not registered does not give such the liberty to infringe on the rights of another. In the case of *In Ogunlende v. Babayemi* ^[47] the plaintiffs were building and civil engineering contractors carrying on business as ‘Mercury Builders’. The defendant who was a partner of the plaintiff decided to pull out and start his own building company and registered same under the name and style of Mercury Builders Nigeria Limited unknown to the plaintiff who was still operating Mercury Builders. The Plaintiff received a letter from the University of Ife to the defendant’s Mercury Builders Nigeria Limited complaining of their attitude to the building/ construction contract he had entered into with the University. The Plaintiff thereafter brought an action for passing off restraining the defendant from using the name Mercury Builders Nigeria Limited. The court granted an injunction restraining the defendants from carrying out a similar business as that of the plaintiff under the name ‘Mercury Builders Nigeria Ltd.

There however appears to be a dearth of cases in this area of law particularly as it concerns church denominations/ ministries. This is due to the general belief among the Christian folks that God is the judge and every man will give account of himself to God ^[48]. An example is, “The Apostolic Church” founded in 1918 by Joseph Shadare ^[49] and “Christ Apostolic Church” founded in 1941 by Joseph Ayo Babalola ^[50]. The latter was a split from the former which process shelled a good number of their members including the new founder to become the first Pentecostal church in Nigeria ^[51]. A third similarity, however done in ignorance of the existing variations, was the “Apostolic Faith Church” founded in 1949 by Florence L. Crawford ^[52]. All three churches operate in Nigeria till date.

The Effect of Use of Similar Names by Church Denominations

There is no doubt that the use of similar names by either commercial ventures or non-profit organisations like church denominations can have a number of effects. Whereas for commercial and business ventures it will lead to a decline in patronage and revenue aside other effects can it be so also for the non-profits like church denominations? A detail consideration of all the cases of passing off particularly as it

bothers on use of similar names, reveals that the effect ranges from deception/ confusion to other forms of damages. We shall therefore, consider some of these effects below.

Confusion/ Deception – One of the definitions of confusion is ‘the act of mistaking one thing for another’ ^[53]. It can be described as a state of uncertainty of mind often resulting from unclear or ambiguous information ^[54]. Deception on the other hand is “the act of causing someone to accept as true or valid what is false” ^[55]. This was one of the issues that was raised in *Niger Chemists v Nigeria Chemists* ^[56], where the defendant was trading in a name similar to that of the plaintiff, the court held: ^[57].

It seems to me as a matter of common sense that when two firms trade in the same town, in the same street, and in the same line of business; one calling itself “Niger Chemists” and the other “Nigeria Chemists” there must be a grave risk of confusion and deception.

It is obvious therefore that there is bound to be confusion when two different organisations operating in the same area and involved in the same business or activity and are using the same or similar names. If for instance, church A ‘Holy Ghost Revival Ministry’ is located in a particular street and another church B ‘Holy Ghost Renewal Ministry’ is located on the same street, there is a very high tendency for B to be mistaken for A. This is because whoever is going to church A and sees church B will easily come to the conclusion that it is church A.

❖ **Damage to Goodwill and Reputation** – Goodwill as it were has been described as the “The very sap and life of the business without which the business would yield little or no fruit. It is the whole advantage, whatever it may be, of the reputation and connection of the firm which may have been built up by years of honest work or gained by lavish expenditure of money” ^[58]. The implication of this is that once the goodwill and reputation of an organisation is dented or tampered with it will definitely affect the stability and flourishing of that organisation. Non-profit organisations thrives and survives based on the trust, confidence and reliability the public has had for the organisation and anything that affects such goes to the root of the organisation. Take for instance a church denomination A which the public have come to know and associated with integrity and philanthropy. Where fraud is committed by another denomination operating with the same name or one similar to the name of that organisation, the conclusion in the minds of the public is that the fraud was committed by the organisation. The implication of this is that donor agencies will become sceptical and scared in donating to such organisations since in the non-profit world,

47 (1971) U.I.L.R. 417 at 419

48 Romans chapter 14 verses 4 – 12 KJV

49 Bp-Relate, ‘History of the Apostolic Church in Nigeria’, Believers Portal, 2016 available at <https://believersportal.com/history-of-the-apostolic-church-nigeria/> accessed 19th June 2025

50 CAC, ‘Christ Apostolic Church’, Available at <https://www.cac-worldwide.org/home/>

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56 Supra

57 Supra, Per Palmer J at pg. 457

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credibility is paramount^[59].

- ❖ Misrepresentation – Unsuspecting and undiscerning members of the public might be mistaken to think that since the names of the organizations are the same, their beliefs and practices will likely also be the same. But often times, this is usually not the case. It has been observed that “Donors want to support organizations that align with their values and beliefs. A non-profit name can greatly influence how potential donors perceive the organization”^[60].
- ❖ Brand confusion – When two non-profits have similar names, donors, volunteers, and beneficiaries may struggle to distinguish between them. This can dilute brand identity and reduce the effectiveness of outreach efforts.
- ❖ Loss of credibility – If one organization with a similar name engages in unethical behaviour or poor management, it can tarnish the reputation of the other—even if they’re completely unrelated.

Use of Similar Names by Church Denominations and Non-profits in other Jurisdiction

In Indian one notable case involving the use of similar names by nonprofit organizations is *International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) v. G. Bassi Reddy* (2003)^[61]. In this case, the Supreme Court of India examined the legal status and privileges of ICRISAT, a nonprofit international research organization, and addressed issues related to its recognition and operations in India.

While the case itself didn’t revolve solely around name similarity, it highlighted how nonprofit entities—especially those with international affiliations—must navigate Indian legal frameworks to avoid confusion or misrepresentation. The court emphasized the importance of clear legal identity and proper registration, which are crucial when multiple organizations operate in similar domains or with overlapping names.

Unfortunately, there’s limited precedent in Indian courts specifically about two nonprofits clashing over similar names. However, Indian trademark law does apply to nonprofits, and Section 11 of the Trade Marks Act, 1999, prohibits registration of marks that are deceptively similar to existing ones—regardless of whether the entity is for-profit or not.

However, in the United States of America, cases abound bordering on the use of similar names by church denominations and other non-profit organisations. Of interest is the American Lanham Act that governs trademarks, service marks and unfair competition^[62]. By the provision of this Act, non-profits can seek remedies for trademark infringements and thereby protecting their brand identity and reputation against unauthorised use. By the Act, non-profits though not involved in commercial ventures, are able to safeguard their unique names and logos aims at using their already established names and reputation. Based on this Act,

a number of Church denominations have successfully challenged the use of a name similar or identical to theirs. In the case of *GENERAL CONFERENCE CORP. v. MCGILL*^[63] the plaintiff contended that the defendant who broke away from their church is operating with the church’s name and it can lead to confusion. The defendant on the other hand contended that the enforcement of the plaintiffs’ trademarks would violate his ‘Free Exercise Clause rights’ because his religion mandates him to call his church "Creation Seventh Day Adventist." The Appeal Court while agreeing with the District court, held that “no reasonable jury could find other than that McGill’s use of the mark is likely to cause confusion among the public.” The court in its considered judgement, puts it thus:

While it may indeed be hard to envision a person mistakenly joining the wrong church, it is not at all difficult to imagine a person consuming McGill’s published materials and ascribing his teachings to the General Conference, especially in light of the relatedness of the parties’ services and similarity of the marks. Accordingly, we agree that the plaintiffs were entitled to summary judgment on the likelihood of confusion....”

Flowing from the above, it is clear that the use of similar names by church denominations could have adverse effects on the original owner of the name. It therefore behoves governments to make adequate protections for non-profit organisation that are operating within their national space.

Conclusions and Recommendations

It may be argued that churches are non-profit organisations and therefore cannot be covered by passing off which is concerned basically with commercial and business transactions. However, it is provided under Part G of the Company and Allied Matters Act^[64] with regard to registration of companies and other corporate bodies by the Corporate Affairs Commission that no organisation including incorporated trustee is allowed to register a name or a mark that is identical or resembles the name of one that is already registered. This implies that though non-profit organisations are not commercial entities, they however have a goodwill and reputation which must be protected. This is the reason why in practice, before the registration of incorporated trustee by the Corporate Affairs Commission^[65], an application is first made to check whether the proposed name of the association is available and when it is available, it is reserved for the prescribed number of days before it is processed for registration. Of course, the essence of this is to ensure that the proposed name complies with the requirement of not conflicting with other names that are already in existence.

Besides, it should be noted however that passing off is meant to protect the goodwill and reputation which a particular product, goods, services or name have acquired over a long period of time through hard work, doggedness and consistency. It will not be correct to allow such to be destroyed and eroded by the careless and inconsiderate behaviour of another.

59 Tsani Gramatikova, ‘Naming the Change: A Study of Non-Profit Organisations and their Domain Names’ Smart Branding, Available at <https://smartbranding.com/naming-the-change-a-study-of-nonprofit-organisations-and-their-domain-names/> accessed 20th June, 2025.

60 Givecloud, ‘Non-profit names and Things to Consider’ available at <https://givecloud.com/trustraising/blog-posts/nonprofit-names-and-things-to-consider/> accessed 20th June, 2025.

61 Available at <https://www.casemine.com/judgement/in/5609ade5e4b01497114127b3>

62 Trademark Act, 1946

63 *General Conference Corp. of Seventh-day Adventists v. McGill*, 617 F.3d 402 (6th Cir. 2010)

64 2020

65 Corporate Affairs Commission is the body saddled with the responsibility of registering companies, businesses and organizations in Nigeria.

It is also recommended that a detailed legal framework be put in place by every country for the protection of non-profit organisations which are operating within their legal space as can be seen in the United States of America.

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