



Balancing Innovation and Inheritance: A Legal Critique of Trade Secret Protection in Family-Owned Nigerian Monopolies

Ademiloye Ojo Fasiku

PhD Student, College of Law, Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria.

Email: fasikuademiloyejo@gmail.com

ABSTRACT: Trade secret protection plays a pivotal role in safeguarding confidential business information and stimulating innovation. However, in Nigeria, a growing number of family-owned enterprises have transformed this legal mechanism into a tool for perpetuating monopolistic control across generations. The close intertwining of inheritance practices and trade secret protection has created an imbalance between private family interests and public innovation needs. This paper critically examines the legal implications of such monopolistic tendencies, assessing how inherited trade secrets influence market entry, competition, and innovation within Nigeria's economic landscape. It explores the inadequacies of existing legal frameworks—particularly the absence of a comprehensive trade secret statute and weak enforcement mechanisms under the Nigerian Industrial Property regime. The study employs a doctrinal and comparative methodology, drawing insights from jurisdictions such as the United States and the European Union where trade secret protection is balanced with fair competition principles. It argues for legal reforms that ensure equitable knowledge diffusion, promote fair competition, and prevent the abuse of trade secret laws by family-controlled monopolies. Ultimately, the paper proposes a policy-oriented model that integrates intellectual property, competition, and inheritance laws to achieve a balance between business confidentiality and national innovation goals.

KEYWORDS: Trade Secrets, Innovation, Inheritance, Intellectual Property, Family-Owned Business, Business Confidentiality.

INTRODUCTION

The concept of trade secret protection occupies a delicate position in intellectual property (IP) law. It provides enterprises with the legal right to safeguard confidential business information that grants them a competitive advantage, such as manufacturing processes, formulas, designs, or marketing strategies. While the protection of trade secrets encourages innovation and investment, it also has the potential to create economic imbalances when abused—particularly in economies dominated by family-owned businesses. In Nigeria, family-owned enterprises constitute a significant segment of the private sector and contribute substantially to national development. However, the concentration of trade secrets within these entities has led to the emergence of monopolistic structures that hinder fair competition and technological diffusion. In many cases, trade secrets are passed down through generations as part of familial

inheritance, thereby entrenching economic power within select family lineages. This phenomenon raises critical legal questions about the compatibility of inherited trade secrets with the principles of open competition, innovation, and equitable access to knowledge. The Nigerian legal system, which draws from both common law and statutory provisions, lacks a clear and comprehensive legal framework for the protection and regulation of trade secrets. The existing provisions under the common law of confidence, the Contracts Act, and certain sections of the Industrial Property Act do not adequately address the misuse of trade secret protection in monopolistic contexts. Consequently, family enterprises are often able to use secrecy not only to protect legitimate business interests but also to restrict innovation and exclude competitors.

This study seeks to examine how the intersection of inheritance law, trade secret protection, and monopoly control affects innovation and competition in Nigeria. It interrogates whether the current legal regime sufficiently balances the rights of family enterprises to protect their confidential information with the broader societal need for innovation and market fairness. Furthermore, it proposes legal and policy reforms aimed at ensuring that trade secret protection serves its true purpose—encouraging creativity and technological progress—rather than entrenching hereditary economic dominance. The research adopts a doctrinal and comparative methodology, examining both Nigerian and foreign legal frameworks, judicial decisions, and policy documents. By comparing Nigeria's experience with jurisdictions such as the United States (which implements the Defend Trade Secrets Act) and the European Union (through its Trade Secrets Directive), the study highlights global best practices and draws lessons for reform. The overarching goal is to develop a balanced approach that preserves legitimate trade secret protection while preventing its misuse as a tool of perpetual monopoly.

CONCEPTUAL CLARIFICATIONS

To enhance conceptual clarity, the following terms are defined as used in this paper.

Trade Secret: Any confidential business information that provides a competitive advantage to its holder, including formulas, practices, designs, instruments, or patterns, provided it is not publicly known and reasonable steps are taken to maintain its secrecy.

Family-Owned Business: A commercial enterprise in which decision-making is influenced by multiple generations of a family related by blood, marriage, or adoption, who hold significant ownership and control.

Monopoly: A market structure characterized by the exclusive control of the supply or trade of a commodity or service by a single entity or a closely related group, thereby restricting market entry for competitors.

Inheritance: The legal process by which property, business interests, or trade secrets are transmitted from one generation to another upon the death or retirement of a family member.

Innovation: The process of translating creative ideas, technologies, or knowledge into new products, services, or processes that create value and advance societal or industrial development.

Intellectual Property (IP): Legal rights granted to creators or owners of intellectual works, including inventions, literary and artistic works, symbols, names, and designs used in commerce.

Competition Law: A body of laws designed to promote fair competition and prevent anti-competitive practices such as monopolies, cartels, and abuse of market dominance.

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

This section reviews the literature on trade secrets, family-owned business monopolies, inheritance of confidential know-how, and the effect of these practices on innovation and competition. The review organizes the literature into (a) the legal and policy literature on trade secrets in Nigeria and comparative jurisdictions, (b) empirical and sectoral studies on family businesses and innovation, and (c) scholarship on the interaction between trade secrecy, succession/inheritance, and market power. The section concludes by setting out the theoretical frameworks that inform the analysis in this study and identifies the empirical and doctrinal gaps this research will address.

Legal and Policy Literature on Trade Secrets (Nigeria and Comparative Jurisdictions)

A growing body of recent scholarship documents Nigeria's lack of a comprehensive statutory regime expressly regulating trade secrets, and scholars argue this legal vacuum leaves courts to rely on fragmented common-law doctrines (breach of confidence), contract law, and piecemeal statutory provisions. This approach is ill-suited to contemporary challenges of knowledge economy governance. Recent doctrinal reviews and working papers highlight the need for dedicated legislation or clearer statutory guidance on trade secret protection and misuse in Nigeria.

At the international and comparative level, policy texts and guides published by WIPO and major jurisdictions provide a contrast: WIPO's Guide to Trade Secrets and Innovation (and related WIPO materials) and the post-2016 literature on the U.S. Defend Trade Secrets Act (DTSA) and the EU Trade Secrets Directive show how expressly framed statutory protections can be balanced with competition concerns and procedural remedies for misappropriation. These comparative sources are frequently cited as templates for countries considering trade-secret reform.

Recent comparative articles and reform commentaries from 2022 to 2024 emphasize three policy lessons for Nigeria and similar jurisdictions: (1) trade secret protection must be paired with competition-law safeguards to prevent anti-competitive use; (2) confidentiality protections should include clear standards for "reasonable steps" to maintain secrecy; and (3) rules are needed for cross-border enforcement and digital data protection.

Empirical and Sectoral Studies on Family Businesses, Secrecy and Innovation

Family businesses remain a dominant feature of the Nigerian private sector. Surveys and sector reports from the early 2020s (e.g., PwC Nigeria's Family Business Survey 2021) document the resilience and scale of family firms, but also identify governance, succession, and innovation challenges that may be exacerbated by closed family control of key knowledge assets. These reports point to a tension: family control often supports long-term investment decisions, yet the same control can constrain external partnerships and technology diffusion.

Sectoral studies focused on food processing and small-medium enterprises from 2022 to 2024 empirically examine how firms treat trade secrets in practice and reveal that, in the absence of clear statutory protections, firms frequently rely on internal policies and NDAs. These approaches create uneven protection and may permit family elites to consolidate advantages across generations. A 2023 case study of the Nigerian food sector concluded that policy

absence contributes to inconsistent handling of confidential information and potential anti-competitive outcomes.

Scholarship on Trade Secrets, Inheritance, and Monopoly Power

Recent legal commentary from 2020 to 2024 has begun exploring the intersection of trade secrecy with family succession and market dominance. Authors argue that inherited trade secrets when shielded by weak regulation can function like a non-statutory hereditary intellectual asset, concentrating economic power and raising barriers to market entry. Several comparative articles recommend integrating IP, inheritance/succession law, and competition policy to address this cross-cutting problem.

At the same time, literature from 2020 to 2024 on post-pandemic business models and digitalization highlights new threats and opportunities: digital trade secrets (algorithms, datasets) increase the stakes of secrecy in family firms, but also create potential for wider diffusion if governance reforms encourage licensing and collaboration rather than cloistered inheritance. Recent reports and analyses stress the need to consider data and employee mobility rules when reforming trade secret law.

Key Themes Emerging from Recent Literature

Five areas of key themes emerging from recent literatures in Nigeria hinge on legal Fragmentation in Nigeria; Family Succession as an Understudied Vector of Market Power; Comparative Lessons (DTSA & EU Directive); Innovation vs. Exclusivity Trade-Offs; Digital and Employee Mobility Challenges.

Multiple recent studies from 2023 to 2024 consistently identify Nigeria's fragmented approach to trade secret protection and call for a dedicated statutory framework or clearer judicial standards to provide predictability and balance. Scholarship since 2020 has only recently begun to interrogate how inheritance channels can convert trade secrets into hereditary monopoly assets — a gap this study addresses by connecting succession law with IP/competition impacts. Comparative policy literature indicates viable reform models (federal civil remedies, clear definitions of misappropriation, and competition safeguards) that can be adapted to Nigeria's institutional context.

Empirical and policy sources from 2021 to 2024 emphasize that while secrecy can foster investment, over-seclusion especially when entrenched via familial control can suppress competition, limit start-up entry, and slow diffusion. Post-2020 literature highlights modern enforcement challenges (remote work, digital assets, non-compete trends) that make statutory clarity and enforcement mechanisms more urgent.

Theoretical Framework

This study is guided by an interdisciplinary theoretical framework that draws on the following theories such as Property-Rights and Incentives Theory (Law & Economics); Innovation Diffusion Theory; Market Power and Competition Theory; Socio-Legal/Succession Theory Together, these frameworks allow the study to link doctrinal legal analysis with economic effects and social practices providing a multidisciplinary basis for recommending legal and policy reforms.

Property-Rights and Incentives Theory (Law & Economics) views trade secrets as exclusionary property-like rights that create incentives for investment by internalizing returns. The theory helps explain why owners including family firms choose secrecy and how this affects

investment and innovation incentives. It also provides a normative baseline for when exclusive control is socially optimal.

Innovation Diffusion Theory emphasizes how innovations spread across a market and the institutional conditions that facilitate diffusion (e.g., licensing, partnerships). This theory is used to evaluate how hereditary secrecy can impede diffusion and thereby slow aggregate innovation.

Market Power and Competition Theory informs the analysis of how concentrated control over critical information increases barriers to entry and allows family firms to sustain market power. It also frames the competition-law perspective on remedies and safeguards.

Socio-Legal/Succession Theory draws from socio-legal scholarship on family firms and inheritance practices to explain the cultural and institutional drivers of keeping knowledge within family lines. This helps situate legal reform recommendations within Nigeria's real governance and social context.

Response to the obvious gaps in Nigeria

The recent literature from 2020 to 2025 provides useful diagnostics: Nigeria lacks explicit trade secret legislation; family businesses are powerful actors whose governance choices affect innovation; and comparative models exist that balance secrecy and competition. However, three important gaps remain as mentioned below.

Integrated Analysis of Inheritance and Trade Secrets: Few works systematically analyze how inheritance law and family succession practices interact with trade secret protection to produce durable monopolistic advantage in Nigeria.

Policy Proposals Tailored to Nigerian Institutional Realities: While comparative models exist, there is limited scholarship translating those models into concrete, politically feasible reforms for Nigeria's legal institutions (courts, FCCPC, IPO).

Contemporary Data on Digital Trade Secrets and Employee Mobility in Family Firms: Emerging digital assets and changes in employee mobility (post-pandemic) have not been fully analyzed in relation to family firm secrecy in Nigeria.

This study addresses these gaps by (a) providing a doctrinal and comparative review that explicitly links succession law to trade secret outcomes; (b) proposing tailored legal reforms that integrate IP, competition, and inheritance law; and (c) accounting for digital and post-pandemic enforcement challenges in its recommendations. The literature from 2020 to date offers compelling reasons to revisit Nigeria's approach to trade secret protection, especially where family succession can convert secrecy into hereditary market power. Comparative materials and policy guides (WIPO, DTSA, EU) provide workable models, while empirical sector studies and family business surveys document the real-world stakes. Yet the intersecting problem — how inheritance channels trade secrets into persistent monopolies — remains underexplored. The theoretical framework adopted in this study equips the researcher to analyze legal doctrine, economic incentives, and socio-cultural practices together and to formulate reform proposals that are both legally sound and contextually realistic.

DISCUSSION

This section analyses key legal doctrines and statutes governing trade secrets in Nigeria, and then compares those with two developed jurisdictions: the United States (via the Defend Trade

Secrets Act, 2016 – “DTSA”) and the European Union (via Directive 2016/943 on Trade Secrets). The aim is to identify best practices and gaps which Nigeria might adopt to curb the monopolistic misuse of trade secrets by family-owned businesses. Based on that, this section outlines model legal provisions tailored to Nigeria's institutional, socio-economical, and legal contexts.

The Legal Regime on Trade Secrets in Nigeria

Doctrinal Status: No Statute, Reliance on Common Law:

Nigeria currently does not have a comprehensive statute exclusively devoted to trade secrets. Protection comes mainly through contractual mechanisms (non-disclosure agreements, confidentiality agreements), tort (misuse, breach of confidence), and the common law equitable doctrine of breach of confidence. Saredau et al (2020), in their work, show how Nigeria relies on breach of confidence (common law) due to absence of specific trade secret statute. Some statutory references exist, but they are weak or undefined. For example, the Freedom of Information Act (2011) mentions trade secrets (“commercial or financial information obtained from a person or business ... proprietary, privileged or confidential ...”) in denying disclosure, but it does not define trade secret or provide remedies for misappropriation.

Jurisdiction and Enforceability:

There is uncertainty as to which court (Federal or State) properly has jurisdiction for trade secret cases. Okpalaobi and Georgewill (2024) conclude that, given no special law, State High Courts are the ones that enforce trade secret actions in Nigeria. There is also a gap in judicial practice on recognizing trade secret misappropriation outside of contract or breach of confidence, especially when dealing with inherited or family-controlled secrets.

Sample Case:

Sterling Bank vs Comfort Stevens Nigeria Ltd & CEO (2024) is a useful example: the Bank was held liable (damages N75 million) for breach of a confidentiality/non-disclosure and non-circumvention agreement by engaging in the same project without disclosing to the original party. This shows how contract and non-disclosure agreements are being used in practice to protect secrets.

Weaknesses and Gaps:

A lot of weakness gaps and space for improvement and intervention to make Nigeria enforce trade secret in consonance with international best practices are still obvious.

- Lack of statutory definition and clarity of what constitutes a trade secret under Nigerian law.
- No express statutory remedies for misappropriation, no specific provision for injunctive relief, civil seizure, or damages tied to willful misappropriation in a uniform way.
- No express protection for whistleblowers, no clear protection in cases of disclosure for public interest.

Issues of inheritance/Succession remain unaddressed: no legal guidance on how trade secrets are treated when passed down family lines; how old trade secrets or confidential know-how survive, or whether they can be challenged on competition grounds.

The aspect of Digital and cross-border issues are also poorly addressed: no express regulation on digital misappropriation, employee mobility, or cross-border enforcement.

Comparative Jurisdictions: Best Practices

Evaluation of The European Union – Directive 2016/943 and The United States – Defend Trade Secrets Act (DTSA) 2016:

The two notable jurisdictions of European Union and the United States of America were compared. This from a very good premise to sieve lessons for youths in Nigeria. Osunyikanmi, P. scholarly delved into this issue in his work. Under European Union directives, trade secret is defined, unlawful acquisition use and disclosure is clearly defined with notable exemptions. It also has clear provisions on remedies and procedures. The instruments state that information qualifies as a trade secret if it is secret, has commercial value because secret, and has been subject to reasonable steps to keep it secret. Unlawful acquisition refers to unauthorized access, breach of confidentiality or contractual duty, or knowing derivation from another who acquired unlawfully and exceptions include, transparency for public interest, whistle-blowing, worker representation, disclosure required by law while remedies and procedures brought to the fore that, Member States must provide civil law redress (damages, injunctions, recall of infringing goods), preserve confidentiality during litigation, fair, equitable, dissuasive remedies.

Also limitation periods (not exceeding 6 years). Under the United States Defend Trade Secrets Act (DTSA) 2016, owners are given the ability to sue in federal courts for misappropriation of trade secrets. It also has copious provisions on remedies, seizures and whistle-blowers. Remedies such as injunctive relief, compensatory damages, exemplary (or punitive) damages if misappropriation is willful or malicious; courts may award attorney's fees in bad faith are clearly stated. Its seizure provisions include, ex parte civil seizure of property necessary to prevent further dissemination, in "extraordinary circumstances." Procedural safeguards for seizure: the owner must show likelihood of success, irreparable injury, and that the defendant has possession of the trade secret, etc. Whistle-blowers enjoy immunity for disclosures made in confidence to governmental authorities or in court filings under seal. Employers required to notify employees of this immunity in contracts dealing with trade secrets.

CONCLUSION

Nigeria still relies on breach of confidence to navigate relief for litigants due to absence of specific trade secret statutes without specifically given jurisdiction to any of the courts thereby making the issue of enforcement so different and complicated. These gaps have been addressed in this paper and hence forming premises for proposal by way of recommendation. This should come by way of a formal recognition of trade secrets in a statute. Based on the comparative analysis of the instruments on the enforcement of trade secrets by European Union and United States, Nigeria could adopt a statutory regime incorporating several features adapted to local conditions. First, there is a need for a dedicated statutes. Second, there should be a trade secret tribunal or designated Intellectual Property court. Third, there should be best practices for digital trade secret and AI driven business.

REFERENCES

- [1] Aina-Pelemo, D. A. (2023). "Incorporated Companies' and the Need for Privacy and Confidentiality of Information." NOLEGEIN Journal of Corporate and Business Laws. Available at: <https://journals.stmjournals.com/article/article%3D2023/view%3D91191>.
- [2] Ajibade, S. P. A. (2023). "An Appraisal of Trade Secrets as an Intellectual Property Right." Mondaq Legal Insight Series. Available at: <https://www.mondaq.com/nigeria/trade-secrets/1304824/an-appraisal-of-trade-secrets-as-an-intellectual-property-right>.

- [3] BusinessDay Nigeria. (2023). "Preserving Trade Secrets and Confidential Information: Best Safeguards & Practices." BusinessDay Legal Business Column. Available at: <https://businessday.ng/news/legal-business/article/preserving-trade-secrets-and-confidential-information-best-safeguards-practices>.
- [4] Desaunettes-Barbero, L. (2023). Trade Secrets Legal Protection: From a Comparative Analysis of US and EU Law to a New Model of Understanding. Cham: Springer. Available at: <https://link.springer.com/book/10.1007/978-3-031-26786-4>.
- [5] Gaido, C. (2022). "The Trade Secrets Protection in U.S. and in Europe: A Comparative Study." Revista La Propiedad Inmaterial, Universidad Externado de Colombia. Available at: <https://revistas.uexternado.edu.co/index.php/propin/article/view/5200>.
- [6] Lawclan Editorial. (2024). "Protection of Trade Secrets as an Intellectual Property Right in Nigeria." Lawclan.ng, 21 July. Available at: <https://www.lawclan.ng/2024/07/21/protection-of-trade-secrets-as-an-intellectual-property-right-in-nigeria>.
- [7] Madagwa, U.P., Trade Secrets in Nigeria: A Case for Legal Regulation (ResearchGate, Nov 2024).
- [8] Ndukwe, C., Legal Status of Trade Secrets in Nigeria (SSRN, 2024).
- [9] Okpalaobi, B. N.; Georgewill, B. W. (2024). "Jurisdiction of Court and the Enforceability of Trade Secrets in Nigeria." International Journal of Comparative Law and Legal Philosophy (IJOCLLEP), 6(1). Available at: <https://www.nigerianjournalonline.com/index.php/IJOCLLEP/article/view/5476>.
- [10] Osunyikanmi, P. (2024). "Developing a Robust Legislation for Trade Secrets and Unfair Competition in Nigeria: A Comparative Approach with U.S.A." Nnamdi Azikiwe University Journal of Public Law, 1(1). Available at: <https://journals.ezenwaohaetorc.org/index.php/Naujopl/article/view/2971>.
- [11] PwC Nigeria, 10th Family Business Survey — From Trust to Impact (May 2021).
- [12] Saredau, D. P.; Gupar, W.; Chalawa, B. M. (2020). "The Legal Regime for Protection of Trade Secrets in Nigeria: Breach of Confidence Claim as Gap-Filler." NAU Journal of Commercial & Property Law, 7(1). Available at: <https://journals.unizik.edu.ng/jcpl/article/download/355/330/764>.
- [13] Trends in Intellectual Property Research (2024). "Evolving Paradigms of Trade Secret Protection: A Comparative Study of the US, EU, and India." TIPR Journal, 2(2). Available at: <https://iprtrends.com/TIPR/article/view/32>.
- [14] WIPO, Guide to Trade Secrets and Innovation (WIPO, 2022/2024).



This is an open access article distributed under the terms of the Creative Commons NC-SA 4.0 License Attribution—unrestricted use, sharing, adaptation, distribution and reproduction in any medium or format, for any purpose non-commercially. This allows others to remix, tweak, and build upon the work non-commercially, as long as the author is credited and the new creations are licensed under the identical terms. For any query contact: research@ciir.in