



**PURSUING CLAIMANTS' RIGHTS  
AGAINST WRONGDOERS IN NIGERIA:  
EXPLORING THE POTENCY OF NORWICH  
PHARMACAL ORDERS IN CROSS-BORDER  
COMMERCIAL DISPUTES**



## INTRODUCTION

The business community faces a range of systemic challenges in sophisticated fraud that affect their productivity and conceal the identities of the perpetrators of such fraud. Moreover, the law, protecting privacy and data, usually prohibits disclosure of personal/private information until required by the Order of a competent Court. In this situation, aggrieved business owners may be left without remedies where the identities of perpetrators of fraud or breach may not be accessible to them. Therefore, in dispensing justice, the Courts have developed innovative remedies to

address complex legal issues. One of these remedies is **the Norwich Pharmacal Order (NPO)**. Since its inception in 1974, NPOs have proven to be a potent tool for uncovering wrongdoers and holding them accountable, particularly in cross-border commercial disputes. This article discusses the NPO, exploring its significance in resolving cross-border commercial disputes, and how a claimant's right of action can be enforced through disclosure made by third-party custodians of information.

# SCOPE AND APPLICATION OF NORWICH PHARMACAL ORDER

The Rules of Court lay down the principles for discoveries and interrogatories. As a matter of general rule, discoveries and interrogatories may only be made during the pendency of a Suit.<sup>1</sup> Discoveries may also be issued to a party to the subsisting suit. Conversely, where a third party is required to provide documents or testify during Trial, a party is allowed to apply to the Court for a subpoena.<sup>2</sup> In both situations, the Defendants' identities would have been ascertained against whom a suit has been commenced.

Therefore, the domain of NPO is unique. NPO is applied for where the identity of a prospective defendant is unknown to the Claimant and where the Claimant has a reasonable ground to believe that a third party has the information or has access to records that may lead to the information about the identity of the prospective defendant. It is a constructive remedy to protect the third party from any possible Suit for giving up the information and providing an avenue for a remedy to the intending Claimant.<sup>3</sup>

NPOs originated in the 1974 UK case of **Norwich Pharmacal Co. v Customs and Excise Commissioners**.<sup>4</sup> In this landmark case, the Court granted an Order requiring the Customs and Excise Commissioners to disclose the names of importers of counterfeit goods. This decision has since been recognized as a crucial tool for combating intellectual property infringement and uncovering wrongdoing.

A NPO is a Court Order that requires a third party to disclose information or documents that can help identify wrongdoer(s) or uncover wrongdoing. This Order is typically granted in cases where:

- A wrong has been committed
- The wrongdoer's identity is unknown
- The third party has information or documents that can help identify the wrongdoer or is reasonably believed to have access to information or identity of the Wrongdoer.

However, NPOs should not be confused with special procedures like the commencement of an action against persons unknown. This is because some provisions under the Rules of Court empower a Claimant to institute an action against unknown persons. A perfect example is Order 53 of the High Court of Lagos State (Civil Procedure Rules) 2019 through which a Claimant, usually a land owner may commence an action to recover possession from an unknown trespasser, the Defendant, expressed as "Persons Unknown" on the face of the originating process. Under this special procedure, the Claimant commences an action through an originating summons without any requirement of acknowledgment of service of the summons by the person unlawfully occupying the land, and thereafter deposes to an Affidavit stating his interest in the land, the circumstances

<sup>1</sup> See Order 43 of the Federal High Court (Civil Procedure) Rules, 2019 ('the FHC Rules') for instance.

<sup>2</sup> See **Onor & Anor v. INEC & Ors (2023) LPELR-61354(CA)**.

<sup>3</sup> A perfect example is a fraud committed on a person's account in the custody of a Bank and the funds have moved to several accounts, the Bank may be reluctant to give up the particulars of the account holders in possession of the money. A Norwich Pharmacal Order will aid the litigant to get justice and protect the Bank from any resulting Suits.

<sup>4</sup> [1974] AC 133.

in which the land has been occupied without license or consent and in which his claim to possession arises, and that he does not know the name of the person occupying the land.<sup>5</sup> In this case, the appropriate Order the Court will give after considering the merits of the case is an immediate vacation of the premises by the unknown persons, if they are yet to disclose themselves. It is important to mention that this special procedure only apply to matters on recovery of possession of land.

Unlike the procedure explained above, a NPO is not a special procedure, rather it is a variation of Mandatory Injunction compelling a third-party custodian of information in respect of a Defendant not yet known by the Claimant to give up such information. Thereafter, the Claimant

would, upon an Order of disclosure by the Court bring the action against the Defendant in the Defendant's name. It is not a statutory exception to the concept of legal personality unlike the procedure against "unknown persons". Hence, the purpose of a NPO is to discover the identity of an unknown defendant rather than to bring an action against the Unknown Person.

Furthermore, NPOs may apply to a wide spectrum of disputes arising from commercial activities and may have an unexhaustive reach depending on the circumstances of the case, unlike actions against "Persons Unknown" which only apply to recovery of possession of land disputes.

## SIGNIFICANCE OF NORWICH PHARMACAL ORDERS IN CROSS-BORDER COMMERCIAL DISPUTES

It is no gainsaying that NPOs are fast becoming an innovative tool used in resolving commercial disputes arising from intellectual property infringement, cybercrime and data breaches, unfair competition, and trade secret misappropriation among others. Through NPOs, legal actions that would have otherwise been statute-barred due to the length of time spent by the Claimant in identifying the unknown Defendant or abandoned due to a Claimant's inability to identify the Defendant can now be pursued. The potency of NPO extends to cross-border commercial transactions especially, where transactions include the

use of the internet to bring together various business interests. The viability of the internet in enhancing anonymity makes NPO is very useful commercial injunction to compel a third-party custodian of information to give up the identity of any defendant who involves in any injurious activities to the commercial interest of a Claimant. For instance, in 2014, Cartier International AG<sup>6</sup>, a Swiss luxury goods company obtained a NPO against British Sky Broadcasting Limited ("**BSkyB**") after discovering that several websites hosted

<sup>5</sup> See the case of *Hasson v Liman* [2022] LPELR-58120(CA).

<sup>6</sup> *Cartier International AG V. British Sky Broadcasting Limited* [2014] EWHC 3354 (Ch)

by BSKyB were selling counterfeit Cartier products, although, the infringers' identities were unknown. The UK High Court by granting the NPO compelled BSKyB to reveal the details of the website operators who were likely located outside

the UK. . NPOs serve as a veritable tool to identify anonymous wrongdoers, reduce time and cost that would have been spent on lengthy investigations, and facilitate service of Court Processes.

## MODE OF APPLICATION AND CONDITIONS FOR THE GRANT OF A NORWICH PHARMACAL ORDER

A NPO is a variant of equitable relief. Generally, under Nigerian Law, any application to the Court is expected to be made by a Motion.<sup>7</sup> An Affidavit and a Written Address in compliance with the Rules of the Court will support the Motion.

The question as to whether the Motion should be on Notice or Ex parte depends on the circumstances of each case. However, where it is probable that if notice of the application for an NPO is given to the third party, the third party may alert the person whose identity is required, the most appropriate mode of making the application to the Court would be via a Motion Ex parte.

Furthermore, being an equitable relief, the grant of a NPO is largely dependent upon the discretion of the Court.<sup>8</sup> Hence, an applicant must supply facts to satisfy the conditions to persuade the Court to exercise the Court's discretion in favour of the Applicant. The English Court decisions, being a persuasive authority for the Nigerian Court, highlighted the conditions to be satisfied via facts deposed to in the affidavit to persuade the Court in a recent decision by the UK Court of Appeal in

**Blythe v. The Commissioner of An Garda Siochana.**<sup>9</sup> In this case, the Court noted that an applicant seeking to obtain an NPO must satisfy the following conditions:

1. The Applicant has a "strong case" against the challenged wrongdoer i.e. the Applicant must show that he is likely to succeed at trial.
2. The information sought is likely to be in possession of the party against whom the Order is sought.
3. The information sought is necessary to bring the contemplated proceedings before the Court.
4. The Plaintiff/Applicant has no other practicable means of obtaining the information sought.

Generally, the Applicant must establish a cause of action and a substantial case against the person whose identity is sought to be disclosed. It must also be shown that the Applicant intends to bring an action to seek remedy. Otherwise, the Court will deny exercising its discretion in favour of the Applicant.

<sup>7</sup> See for instance Order 26 Rule 2(1) of the FHC Rules, 2019 which states that: "Where by these Rules an application is authorized to be made to the Court or to a Judge in Chambers, the application shall be made by motion which may set the grounds on which the party intends to rely". A similar provision is contained in the Order 43 Rule 1(1) of the High Court of Lagos (Civil Procedure) Rules, 2019 which provides: "Where by these Rules, any application is authorized to be made to a Judge, such application shall be made by motion which may be supported by affidavit and shall state the Rule of Court or law under which the application is brought."

<sup>8</sup> **ODUTOLA & ANOR v. FIDIPOTE & ORS** [2024] LPELR-61593(CA) where the Court comments that "It is an equitable relief that will be granted or denied subject to the discretion of the Court. It is granted only in the circumstances in which the Court is of the opinion that the party seeking it is fully entitled to an exercise of the Court's discretion in his favour."

<sup>9</sup> [2023] IECA 255.

# IS A NORWICH PHARMACAL ORDER AVAILABLE UNDER THE NIGERIAN LEGAL SYSTEM?

Having established the significance of NPOs in resolving commercial disputes, it is important to state that a Nigerian Litigant where it considers it necessary, can apply to the Court for a NPO.

First, a Superior Court in Nigeria<sup>10</sup> is inherently conferred with judicial powers to ensure that justice appropriate to a Litigant's circumstance is availed to the Litigant. **See section 6(6)(a) & (b) of the CFRN,1999 (as amended)** which provides that:

**(6) The judicial powers vested in accordance with the foregoing provisions of this section – (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law**

**(b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.**

Hence, so long as an Applicant can establish the conditions for the grant of a NPO and demonstrates to the Court that his rights can only be properly determined when the Order is granted, a Nigerian Court has a constitutional duty to provide remedy and sanctions necessary to ensure that the rights are accentuated.

Sequel to the above, section 36 of the Constitution entrenches the rights of a Nigerian to necessary assistance to establish its case. In this instance, the Order for disclosure of the identity of an infringer by a third party in custody of such information may fall within the assistance required to establish his right to remedy.

Finally, every Court under their enabling Statute is constituted to make orders and injunctions which they think just and fair. For instance, **section 13 of the Federal High Court Act, 2004** provides that:

**(1) The Court may grant an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.**

**(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.**

The Nigerian Court, where it considers just may grant a NPO for the disclosure of the identity of an infringer in order to commence a Suit against such an infringer. The Courts have the necessary statutory and constitutional backing to make the Order, what remains is a trigger to launch a stunning jurisprudential adventure.

<sup>10</sup> Contained under the provisions of Section 6(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).



## CONCLUSION

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The NPO is a powerful tool for uncovering wrongdoers and holding them accountable. By embracing this remedy, Nigerian courts can enhance the dispute resolution landscape, combat counterfeiting and corruption, and facilitate justice. As Nigeria continues evolving its legal framework, adopting NPOs can be a significant step towards a more just and equitable digital society for commercial activities.

The business community must persist in the pursuit of remedies. The mere fact that a wrongdoer is not known is not enough to justify that such a breach may be left without a remedy. Reaching out to a lawyer for a strategy on the steps to take on any legal development in a business may be crucial despite the forms and nature of the business arrangement.

# ABOUT STREN & BLAN PARTNERS

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Stren & Blan Partners is an innovative and dynamic Law Firm with a compelling blend of experienced lawyers and energetic talents. We are focused on providing solutions to our client's business problems and adding value to their businesses and commercial endeavours. This underpins our ethos as everything we do flows from these underlying principles.

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our client's business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

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