

INTELLECTUAL PROPERTY RIGHTS

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“Your ideas are your property and you have every right to benefit from it”

It is this 200gm brain that has given birth to variety of material objects ranging from a nail cutter to a submarine. There is no end to this. It is this agricultural land of mind that has yielded in numerous unthinkable, incredible and unimaginable material products. Therefore to allow the person to enjoy the benefits of its creation and equip him with legal protection a right is attached with it known as Intellectual property rights. Intellectual properties provide the innovator ownership over that property and prevent anybody else to have access to his innovation or have access with reasonable conditions imposed on them. With globalisation knocking at the door of India the intellectual property rights gained worldwide recognition. It acts as a catalyst to steer up economic development. This paper focuses on tools of IPR and protection given to them. Promotion of intellectual property increases the human capacity to create and innovate. Innovation is the foundation of IPR which enables an economy to stand in global competitive market. The author also highlights the role of WIPO in promotion of intellectual property rights universally.

INTRODUCTION

The first step is to know what intellectual property means creation of mind it may be an invention, literary work or artistic work and the term Intellectual property right means the legal rights granted with intent to guard the creations of the intellect.

The importance of intellectual property rights was first recognised in *Paris convention for the protection of Industrial property (1883)*. It is administered by World Intellectual Property Organisation (WIPO).

Another convention that recognised IPR was Berne Convention Adopted in 1886, the convention sets out to harmonize copyright protection at an international level India became a member in 1928 The Berne Convention requires member countries to offer the same level of copyright protection to authors from other member countries that it provides to its own nationals Sets out a common framework of protection, and specifies minimum protection levels required All works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death

THE LEGAL BLANKCET

The Trade and Merchandise Marks Act, 1958 (“TM Act, 1958”) has been replaced by the Trade Marks Act, 1999, The Copyright Act, 1957 has been amended to guard computer

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programs as “literary work”; The Patent Act, 1970 has been amended by the Amendment Acts of 1999 and 2002 and 2005. The Designs Act of 1911 has been entirely replaced by the Designs Act of 2000.

The following laws have been enacted to shield newly recognized species of intellectual property in India:

The Geographical Indications of Goods (Registration and protection) Act, 1999;

- The Semiconductor Integrated Circuits Layout-Design Act, 2000;
- The Protection of Plants & Varieties and Farmers Rights Act, 2001; and
- The Biological Diversity Act, 2002

TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

It is the ideas and knowledge that have become a major part of the trade. Explaining this many of the movies have shined on the screen and have proved a major success not only because of the presence of a super Hollywood or bollywood actor but with the essential presence of innovation, creativity and the core concept that took to the movie to the next level. Films, music books computer software are bought and sold because of the information and creativity they contain, not usually the plastic, metal or paper used to make them.

Creators are given the rights to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are INTELLECTUAL PROPERTY RIGHTS.

The extent of protection and enforcement of these rights varied widely round the world and as IPR became more important in trade these difference became a source of tension in international economic relations. New internationally agreed trade rules for IPR were seen as a way to introduce more order and predictability and for disputed to be settled systematically.

The world trade organisation’s TRIPS agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the Intellectual property of fellow WTO members. In doing so it strikes a balance between the long term benefits and short term costs to society¹. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and the inventions enter the public domain.

TYPES OF IPR COVERED BY TRIPS AGREEMENT

¹ http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm



a. Patent

Generally speaking, Patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products. Underlying economic and commercial justification for the patent system is that it acts as a stimulus to investment in the Industrial innovation. Innovative technology leads to the maintenance and increase in nations stock of valuable, tradable and industrial assets

It provides safeguard for the invention to the owner of the patent. The protection is granted for a limited period, i.e. 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may -or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others². All patent owners are gratified, in return for patent protection, to publicly unveil information on their invention in order to enhance the total body of technical knowledge in the whole world.

b. Trademarks:

A Trade Mark distinguishes the goods of one manufacturer or trader from similar goods of others and therefore, it seeks to protect the interest of the consumer as well as the trader. A trade mark may consist of a device depicting the picture of animals, human beings etc., words, letters, numerals, signatures or any combination thereof. Since a trade mark indicates relationship in the course of trade, between trader and goods, it serves as a useful medium of advertisement for the goods and their quality.

² <http://www.ipriindia.org/patent.html>

The current law of Trade Marks contained in the Trade Marks Act, 1999 is in harmony with two major international treaties on the subject, namely The Paris Convention for Protection of Industrial Property and TRIPS Agreement to both of which India is a signatory. The Trade Marks Act, 1999 and the Trade Marks Rules, 2002 govern the law relating to Trade Marks in India. Object of trademark law is to permit an enterprise by registering its trademark to obtain an exclusive right to use, share, or assign a mark. Closely related to trademarks are service marks which distinguish the services of an enterprise from the services of other enterprise³.

It helps customers identify and purchase a product or service for the reason that its unique trademark, meets their needs of required nature and quality. A registered trademark is prima facie evidence of its ownership giving statutory right to the owner. Trademark rights may be held in perpetuity. The preliminary term of registration is for 10 years; after that it may be renewed from time to time.

The Coca-Cola Company vs. Bisleri International Pvt. Ltd⁴

In this case Delhi High Court held that if the threat of infringement exists, then this court would certainly have jurisdiction to entertain the suit.

It was also held that the exporting of goods from a country is to be considered as sale within the country from where the goods are exported and the same amounts to infringement of trade mark.

In the present matter, the defendant, by a master agreement, had sold and assigned the trade mark MAAZA including formulation rights, know-how, intellectual property rights, goodwill etc for India only with respect to a mango fruit drink known as MAAZA.

In 2008, the defendant filed an application for registration of the trade mark MAAZA in Turkey and started exporting fruit drink under the trade mark MAAZA. The defendant sent a legal notice repudiating the agreement between the plaintiff and the defendant, leading to the present case. The plaintiff, the Coca Cola Company also claimed permanent injunction and damages for infringement of trade mark and passing off.

It was held by the court that the intention to use the trade mark besides direct or indirect use of the trade mark was sufficient to give jurisdiction to the court to decide on the issue. The court finally granted an interim injunction against the defendant (Bisleri) from using the trade mark MAAZA in India as well as for export market, which was held to be infringement of trade mark.

Functions performed by trademark

- It identifies the goods / or services and its origin.
- It guarantees its unchanged quality.

³ http://iprsi.blogspot.in/2012_05_01_archive.html

⁴ The Coca-Cola Company Vs. Bisleri International Pvt. Ltd Manu/DE/2698/2009

- It advertises the goods/services.
- It creates an image for the goods/ services

c. Copyrights and related rights:

Copyright is a legal term which describes rights given to its creators for their literary and artistic works. The various kinds of works covered by copyright take account of: literary works such as reference works, novels, poems, newspapers, plays, and computer programs; databases like musical compositions, films, and choreography; artistic works for instance , photographs, paintings, drawings and sculpture; architecture; and maps and technical drawings advertisements. Copyright subsists in a work by virtue of creation; consequently it's not obligatory to register. However, a registered copyright provides evidence that copyright subsists in the work & creator is the owner of the work. These Creators often sell the rights to their creation to individuals or companies who are best able to market their works in return for payment. The payments received are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a limited time period, (except photographs) is for life of author plus sixty years after creator's death⁵.

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. TRIPS agreement expressly specifies that, copyright protects the expressions and not the ideas. There is no copyright protection for ideas, procedures, and methods of operation or mathematical concepts as such.

Horlicks Limited and Ors. v. Kartick Sadhukan This case relates to the principle of infringement of trademark and copyright laws. HORLICKS Limited is a foreign company engaged in manufacturing of a wide range of food products, which includes foods for infants, children and invalids, malted milk, biscuits, toffees, etc. under the trademark HORLICKS, of which it claims to be the original registered owner. The trademark 'HORLICKS' was registered in India in relation to foods and milks for infants, children as early as 1943, for biscuits in 1961 and in relation to toffees in 1966. It is also the original owner of copyright of HORLICKS label and has exclusive right to reproduce and alter the character of the HORLICKS label in any material form as it deems fit.

Kartick Confectionery started manufacturing a replica of product, specifically, toffees under the trademark 'HORLIKS' violating the trademark rights enjoyed by 'HORLICKS'. Kartick also reproduced the label of Horlicks company in so doing amounting to the infringement of the copyright of its original owner i.e. Horlicks company.

Horlicks company contended that since the consumers of the product under the trademark HORLICKS made products for infants, children and adults and hence it was duty-bound to make sure that the quality and standard of the product met the agreed requirements under the law. They further argued that they ensured that the products made under the trademark

⁵ <http://copyright.gov.in/frmFAQ.aspx>

HORLICKS were prepared under strict hygienic conditions. so, if Kartick is allowed to use the trademark HORLIKS, the right of which was neither granted nor permitted by original Horlicks company. Hence they filed a suit for permanently restraining Kartick from infringing the Horlicks's trademark HORLICKS and also its copyrights which it only had the right to enjoy over the product.

A Single Judge Bench of the Delhi High Court comprising of Justice B Chaturvedi found out that Horlicks company was definitely the original registered owner of the trademark HORLICKS in relation to food for children, toffees , biscuits , malted milk, and all other products due to earlier marketing and registration. With regards to toffees it was duly registered in India in the year 1966. And the company carried out a range of advertisements of its products under the trademark HORLICKS and thereby enjoyed plenty goodwill and reputation for its products in India. The court observed that use of the label and trademark HORLIKS by Kartick in relation to toffees will cause confusion in the minds of general people. as a consequence will lead to deception, majorly due to act of kartick company of copying the trademark HORLICKS and its label as and how it appears on the products manufactured and marketed by horlicks company.

As a result the court restrained Kartick from manufacturing and selling toffees or other related goods under the trademark HORLIKS or under any other name that is similar in expression to H's trademark HORLICKS. Further the court barred Kartick confectionery from reproducing, printing or publishing any label which was a mere reproduction or imitation of original HORLICKS label, thereby protecting the latter's copyright to the label.⁶

d. Geographical Indications (GI):

Every region has its claim to fame. Each fame and reputation was carefully built up and maintained by the masters of that region, combining the best of man, nature, and traditionally handed over from one generation to the next for centuries. Geographical indication in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be⁷

Typically, such a name indicates an assurance of quality and uniqueness which is in essence attributable to the fact of its origin in that defined geographical region, area locality, or country. GI are signs used on goods that have a particular geographical origin and enjoy qualities or a reputation that are because of that place of origin. The best example is Agricultural products that have qualities which they derive from their place of production and

⁶ Horlicks Limited And Ors. vs Kartick Sadhukan, Delhi High Court 2002 (25) PTC 126 Del

⁷ Geographical indication Of Goods (registration and Protection) act, 1999

are influenced by specific factors, such as climate and soil. They may also draw attention to specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as definite manufacturing skills and traditions. These geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is imperative that the product derives its reputation and qualities from that place. Place of origin can be a village city or town, a region or a country. Since it is an exclusive right given to a particular community hence the benefits of its registration are shared by the all members of the community. To make it more clear the example of GIs of goods are Kullu Shawls Chanderi Sarees, etc that have been recently registered. Taking into consideration the large diversity of traditional products stretching all over the country, the registration under GI will play an important role in future growth of the tribes /communities / skilled artisans connected in developing such products.

e. Industrial Designs:

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries⁸. The active legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will fulfil its objective well with the rapid changes in technology and international developments. India has also attained a mature status in the field of industrial designs and taking into consideration the globalization factor in the economy, the present legislation is in accordance with the changed technical and commercial state of affairs and made to conform to international trends in design administration. This replacement Act is also meant to perform a more in depth classification of design in order to conform to the international system and to take care of the production of design related activities in various fields.

f. Trade Secrets:

A trade secret can be best described as confidential business information that gives an enterprise a competitive edge. Generally these include manufacturing, industrial secrets or commercial secrets. These consist of sales methods, consumer profiles, distribution methods, lists of suppliers and clients, manufacturing processes and advertising strategies. The difference between patents and trade secrets is that they are protected without registration. Unlike other IPR trade secret can be protected for an unlimited period of time but the condition is that significant element of secrecy must exist, so that, by using proper means, there would be trouble in acquiring the confidential information..

⁸ <http://ipindia.nic.in/ipr/design/designs.htm>

g. Layout Design for Integrated Circuits:

Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto⁹. The main attention of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it. The SICLD Act gives power to the registered owner of the layout-design an inherent right to use the layout-design, commercially make the most of it and acquire relief in case of any violation. Initially the term of registration is for 10 years; subsequently it may be renewed from time to time. To look after matters relating to this act Department of Information Technology Ministry of Communications and Information Technology is made the administrative ministry of this act.

h. Protection of New Plant Variety:

The Plant Variety Protection and Farmers Rights act 2001 was enacted in India to protect the New Plant Variety. The purpose of this act is to identify the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution and to stimulate investment for Research & Development for the development new plant varieties in order to facilitate the development of the seed industry. In the beginning 12 crop species have been identified for registration. i.e. Rice, Wheat, Maize, Sorghum, Pearl millet, Chickpea, Green gram, Black gram, Lentil, Kidney bean etc. India has opted for sui- generic system instead of patents for protecting new plant variety. The term sui generic was used in TRIPS agreement, there is no particular definition of this Latin word but if read in context of TRIPS agreement it can be clearly inferred that it is a special type of protection given which cover only plant varieties. Department of Agriculture and Cooperation is regarded as the administrative ministry which look after its matters.

CONCLUSION

The importance of IPR and their protection is acknowledged the world over as essential to business. In tune with the world set-up, India too has realised the importance of IP, this recognition has been time and again upheld by courts, legislators, and the industry. India is now a party to various IP treaties and conventions. This has helped India become more attuned to the world's approaches and attitudes towards IP protection. India has already taken steps to comply with its obligations under TRIPS, and the Indian IP law regime is almost at par with the regimes of many developed nations. Historically, the enforcement of IPRs in India was not so effective. However, latest judicial rulings and steps taken by various enforcement agencies demonstrate that India is gearing up for effective protection and

⁹ Semiconductor Integrated Circuit layout design act, 2000

enforcement of IPRs. The Indian police has established special IP cells where specially trained police officers have been appointed to monitor IP infringement and cyber crimes. Various Indian industries have also become more proactive in protecting their IPRs. For example, the Indian Music Industry, an association of music companies, which headed by a retired senior police official, has taken similar proactive steps to combat music piracy. All in all, India has taken many positive steps toward improving its IPR regime and is expected to do much more in the coming years to streamline itself with the best practices in the field of intellectual property rights.

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