

Chapter VIII: Intellectual Property

Trademarks & Patents

Intellectual Property Concept

- **Intellectual property** is any property that results from intellectual, creative processes = **the products of an individual's mind.**
- **Laws** protecting patents, trademarks, and copyrights are explicitly **designed to protect and reward inventive and artistic creativity.**
- **IPR = Trademarks , Patents , Copyrights & Trade Secrets.**

Trademarks

Trademarks Protection

- **Concept:** is a **distinctive** mark, motto, device, or implement that a manufacturer stamps, prints, or otherwise **affixes** to the **goods** it produces so that they can be **identified** on the market and their origins made known = **source indicator**
- **Protection of Trademarks:**
 - from **the unauthorized use** that would likely **confuse** consumers as to the **origin** of those goods and service
 - **Trademark dilution:** A famous mark may be diluted by the use of an
 1. **identical mark**
 - and by the use of a 2. **similar mark**

Trademarks: Registration

- Registration is with The **Commercial Registration Department** = the **trademark belongs exclusively to the registrant**
- The registrant is allowed to use **the symbol R in circle[®]** to indicate that **the mark** has been **registered**

Trademarks: Owner Rights

- **ownership** : The person who has **registered** a trademark and has made **use** of it for a period of **five (5) years** **from** the date of its **registration**, shall be deemed **the owner** of the trademark **unless** a **prior user** of the mark challenges the validity of its registration **within the said five (5) years**, and **proves precedence of use**.
- **protection for (10) years** from the date of application, **renewable for an identical period upon the request of its owner**.

Trademarks: Owner Rights

- **Transfer** : The ownership of a mark may **be transferred, pledged or placed under attachment independently from the commercial enterprise related thereto**
- previous acts of **transfer** are **registered in the trademark registry** with the **Commercial Registration Department**.
- The trademark owner may further **license** one or more natural persons or legal entities **to use his mark on all or some of the products registered**.

Trademarks: Infringements

- **Infringements = using or copying trademarks without authorization**
- Whenever that trademark is **copied** to a **substantial degree** Or **used** in its **entirety** by another, **intentionally or unintentionally**, the trademark has been infringed
- To **succeed** in a trademark infringement action, the **owner** must **show** that the defendant's use of the mark created a likelihood of confusion about the **origin** of the defendant's goods or services
- **Remedies** : recover 1.actual damages, plus the 2.profits that the infringer wrongfully **received** from the **unauthorized use** of the mark. A court can also order the 3.destruction of any goods bearing the unauthorized trademark and 4.attorneys' fees. 5.An injunction to prevent further infringement.

Trademarks: Distinctiveness of Mark

1. STRONG MARKS

- Fanciful Trademarks: inherently **distinctive** and include invented words **ex : Xerox**
- Arbitrary Trademarks: use **common(real) words** in an **uncommon way** that is non descriptive **ex: APPLE for computers**
- Suggestive Trademarks: **suggest** something about a **product's nature, quality, or characteristics, without describing** the product directly **ex: HABITAT for home furniture.**

Trademarks: Distinctiveness of Mark

2. SECONDARY MEANING:

Descriptive terms, **geographic** terms, and **personal names** are not inherently distinctive and do **not** receive **protection** under the law **until** they acquire a **secondary meaning**. **A secondary meaning may arise when customers begin to associate a specific term or phrase with specific trademarked items ex: Apple, Walt Disney..**

Trademarks: Distinctiveness of Mark

3. GENERIC TERMS that refer to an entire class of products, such as *bicycle* and *computer* , receive no protection.

4. service mark used to distinguish the services rather than the products **ex: airline symbol**

5. collective mark: owned by an **organization**, used by its **members** to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organization **ex: alliance**

Trademarks: Distinctiveness of Mark

6. Trade Dress: refers to the image and overall appearance of a product **ex: G-shaped design of a Gucci watch**

7. Trade Names: used to indicate part or all of a business's name. A trade name may be protected as a trademark if the trade name is also the name of the company's trademarked product— **ex : Coca-Cola**

Case

- Carla makes blouses, dresses, and other clothes and sells them in her small shop. She advertises some of the outfits as Guest items, hoping that customers might mistakenly assume that they were made by Guess, the well-known clothing manufacturer. Advise Carla.

Answer

- My advice to stop this kind of advertisement because she may be sued by Guess for an infringement of trademark by copying intentionally a substantial part of Guess trademark and she will be liable to pay actual damages, all the profits that she wrongfully received from the unauthorized use of the mark. The court can also order the destruction of any goods bearing the unauthorized trademark and to pay the attorneys' fees. Finally an injunction will be issued by the court to prevent further infringement.

Patents

Patents Concept

- **Patents for inventions:** is a grant from the government that gives an **inventor** the **right** to exclude others from making, using, or selling his or her **invention** for a **period of twenty years** from the date of filing the application for a patent.
- **Patents for designs:** are given for a **fourteen-years period**.
- After the patent **period ends** (either fourteen or twenty years later), the product or process enters **the public domain**, and **anyone can make, sell, or use the invention without paying the patent holder**

What Is Patentable?

- to be patentable, the item must be **novel and not obvious in light of current technology**.
- anything is patentable, **except** (1) the laws of nature, (2) natural phenomena, and (3) abstract idea
- **business processes are patentable** ex: Amazon.com patented its “one-click” online payment system.

Patent Infringement

- If a firm **makes, uses, or sells** another's **patented design, product, or process** without the **patent owner's permission** = the tort of patent infringement.
- Patent infringement **may occur** even if:
 - the patent owner has **not put the patented product into commerce**.
 - **not all** features or **parts** of a product are **copied**.
- **Remedies: 1. injunction / 2. damages** for royalties and lost profits/ **3.attorneys' fees and costs**.