

Latest developments in Trade Mark law

The emergence of internet as a tool for electronic communication & commerce has resulted in complex intellectual property issues. Chief among them are the assignment of domain names & attendant disputes over such domain names.

1. Assignment of domain names :-

To communicate on the internet businesses & individuals are assigned addresses called domain names for example :- "www.ford.com" these domain names act as trade mark on the internet. And help the customers to identify the source of goods & services.

Businesses desire domain names that are easy to remember & that are related to their names, products & services. Owners of famous trade mark like IBM, Nestle, etc typically register their trade mark as their domain names.

Domain names are registered on a first come first serve basis, thus allowing

any one to register a domain name such as food.com though it has no connection with foodmateos company. If a domain name is registered with a bad faith & to make profits from such registrations is called infringement of domain names.

Cyber Squatters, internet pirates usually register famous trademarks as domain names with an intention of reselling back to the original owner, this comes under infringement. This became a major challenge for IP practitioners.

2. ICANN (Internet corporation for assigned names & numbers): "1998"

To solve the domain problems & their registrations ICANN has been established in "1988" year. ICANN is governed by an International board of directors elected by the members of the internet community. Registration in ICANN will be for one year & they can be renewed (or) else it will be expired. Registration requires a person seeking to register

the domain name not for doing any unlawful things or for infringement
ICANN recently added new top level domains that is .BIZ (for business) .INFO (for information) .TRAVEL (for travel related uses)

3. Cyber squatters & the dilution doctrine :-

Cyber squatting means registering well known trademarks as domain names to divert the customers from the legitimate mark owners site. This practice is commonly call cyber squatting. The cybers squatters own site will be a pornography or gambling sites. These sites derive revenue from advertisements based on no. of hits (no. of visits). The cybers squatters offer to return the domain name to the true owner for exorbitant amounts (unreasonable amounts).

Victims are having remedies against cyber squatters

1. An action can be brought under the federal trademark dilution act.

2. ~~***~~ Civil case can be filed under Anticyber squatting consumer protection act (1999).

3. The lost profits & expenses can be recovered from the cyber squatters.

The trademark owner cannot bring an action for infringement if he cannot show confusion in the market & commercial use of the mark.

4. ACPA (Anticyber squatting consumer protection act) :- '1999'

This act is enacted in 1999. This act makes it illegal for a person to register or use domain names of other persons if they are identical and confusingly similar, & the person has a bad faith to make profits from the mark. It is the world's first law on domain names. There is no requirement for a party to have a registered mark to file a case.

The court may consider no. of factors which are as follows.

1. It takes into consideration whether the person wants to divert consumers from the actual owners site for a commercial gain.
 2. Whether he wants to disparage the famous trademark.
 3. Whether the person has offered to sell the domain name to the actual owner or others for financial gain.
 4. Whether the person has acquired multiple domain names that are identical (or) confusingly similar to those of others.
 5. If about mentioned bad faiths are not shown the recovery will be denied to the owner.
- To win the case the victim should prove

1. The mark is distinctive deserving protection.
2. The cyber squatter has used the domain name which is confusingly similar with his mark.
3. The cyber squatter has registered the name with a bad faith.

If the party wins actual damages & lost profits as well as attorney fees

will be reimbursed.

Hyper linking:-

Web page owners frequently provide symbols called hyper links that designate other web pages that may be of interest to the user. Trademark owner mark will be displayed on thousands of web sites allowing users to click on the symbol and be transported to different locations.

Most companies have no objection to hyper linking because more individuals visit their sites increasing the commercial use.

Trademark Misuse:- (Meta tags)

Keying - Phishing :-

The trademark abuse involves embedding a trademark into a web site which is not visible to the viewer the search engine however registers the presence of the hidden trademark & lures the viewers to another web site generally that of a competitor. This practice is accomplished by meta tags.

Meta-tags are special codes whose function is making the search engine to locate the web site.

Keying :- It is an advertising practice which will display the pop-up address of competitors when certain key-terms are used.

Trademark owners are allowed to sue the pop up ads if they appear on users' computer screen.

phishing :- It is an act of using sophisticated information to fish sensitive financial information by email websites. For example :- we may receive an email which purports to be a bank displaying an actual bank logo or trademark notifying you that your account has been hacked & asking you to send your account details.

If you bite the phisher will have your account number & other details & they steal your identity & money in the bank. It is difficult to identify phisher. So, the banks will try to educate the customers.

International Trade Mark law :-

- * Paris convention
- * European community trademark
- * Madrid protocol
- * NAFTA
- * INTA
- * WIPO
- * TRIPS agreement

New developments in copy right Act :-

Technological advances have created new forms of copy right authorship - that in turn have created new issues relating to its protection. There are so many developments & issues in copy right law. They are as follows:

- (i) Copy right protection for computer programs:- Since 1944 onwards computer programs have been accepted for copy right registration, according to sec. 101 computer program is a set of

statements or instructions - to be used directly or indirectly in a computer in order to bring out a certain result. Both source code & object code are copyrightable protection extends to screen displays as well. Copy right protection is not available for ideas methods - program logic & concepts etc.

(a) Deposit requirement :- For published or unpublished programs - first 25 & last 25 pages of source code with trade secrets blocked out.

- first 25 (or) last 25 pages of object code with no blocked-out portions.

- For programs less than 50 pages entire source code with trade secret blocked-out portion must be submitted.

Some applicants are reluctant to deposit even blocked-out portions - they can apply under "rule of doubt" to the copy right office.

(b) Notice of copyright (©) : The year of publication & name of the owner will be embedded in the copies in machine readable form

A notice will be displayed at the user terminal at sign-in.

A legal notice on a label affixed to the copies, cartridge, reel, cassette etc.

(iv) Revision of computer program :-

Only the author is having the right to revise or make modifications to the program. The author is having the right to reproduce the work, prepare derivative works etc.

(v) Licensing of computer programs :-

Due to the ease of copying computer programs (allowing numerous users to share purchased program). Under first sale doctrine the programmers became concerned over piracy & potential loss of revenues. To solve this problem they implemented licensing of programs. Software purchased over the counter is not typically sold but it is licensed to the purchaser. The license agreement contains warranties, terms & conditions, making it very clear

that violation of any condition such as loading it on ^{to} more than one computer or decompiling it comes under infringement. So the users will be asked to show assent by clicking "OK" or "I agree" before proceeding to further.

(a) piracy of software :- One of the most common piracy is "soft-lifting".

that means making an unauthorized copies of a licensed software programs the expected revenue loss due to piracy is 12 billion dollars per year & costing 1 lakh 10,000 jobs in the united states alone, consequently the software companies formed as an association (i.e) Software & industries information industry association (SIIA) to protect themselves from piracy.

¹¹
(ii) Digital millennium copyright ^{Act} (DMCA)
In 1998 congress enacted DMCA to move the nation's copyright law into the digital age. Because piracy of digital content is so easily accomplished congress sought to

expanded copyright protection for digital works. Some of the most significant ones are

1. prohibiting the circumventing (spoiling) technological protection measures.
2. prohibiting trafficking in products or technology that are used in circumventing copyright protection measures.
3. prohibiting removal or tampering with copyright management information.
4. Safe harbour provisions insulating online service providers from liability for acts such as transmitting or linking to unauthorized contents.

**** (iii) Semi conductor chip protection Act :-

Semi conductor chips are used in so many products including watches, televisions, computers, micro wave ovens etc. Development & engineering of the complex chips can cost millions of dollars. Once they are created chips can be copied very easily, copyright law does not provide protection to the chips, because they are useful products for every body.

the design drawings & other mask works created on the chips can be protected. This act is amended in 1984

(a) protectable matter :- The act protects mask works which are the ~~skills~~ encoded on electronic circuits on a semiconductor chip, to be protected the mask work must be fixed on a chip & it must be independently created a small variation from the existing design is not eligible for protection.

(b) Duration of protection :- protection will be extended from the date of registration upto 10 years. The mask work owner has the right to reproduce the work, to distribute the work & to make modifications.

(c) limitations of the rights :-

- (i) There is no protection if another mask work is independently created.
- (ii) It is not an infringement to reproduce a mask work for teaching, research, etc.
- (iii) protection does not extend to ideas, systems, processes etc.
- (iv) The first sale doctrine is applied even to mask works.

(d) - Infringement of Mask works

If any person violates the rule they can be sued for infringement, but the owner must register the mask book, action must be brought within 3 months actual damages & the infringers profit & other expenses can be avoided.

(e) Vessel hull protection :-

Vessel hull protection provides protection for original designs of both ves boat vessel hull's. It draws its concepts from both copy right act & patent act it is a new form of intellectual property protection. An application for registration of the design is made with the copy right office within 2 years. Registration is made using the form T-VH & the application fee is 200\$ the deposit material consists of either drawing or photograph of the design. Protection will not be extended to the coast itself because it is an useful article for every body. only designs will be protected under copy right law.

design must be attractive & distinctive
be protected. protection will be for 10
years & the hull must carry the notice
of registration. Omission of notice would
prevent the owner from receiving dama-
ges under ~~infringement~~ the symbol
"D" together with the name of owner &
the year in which it is registered must
be displayed.

(b) Other developments In copy right law:-

- The embroidery work two dimensional drawings & other graphic works affixed on clothes are copyrightable (but not clothes)
- Type fonts themselves are not protectable but software programs that generate creative type fonts are protectable.
- Stronger encryption technology is introduced to avoid unauthorized copying of materials posted on internet.
- President Clinton signed NEA (No electronic theft) act to enhance criminal penalties for copy right infringement. Criminal penalty increased from 3 to 5 years imprisonment.
- Clinton also signed electronic signature

od's, making digital execution of e-signatures
are legally binding in the pastures.

-> Toomart - the copyrighted works by the
educators for distance learning program
is not infringement.