

# **U19ADS919-INTELLECTUAL PROPERTY RIGHTS**

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## UNIT - I: Introduction

9

- Introduction to Intellectual property: Introduction, types of intellectual property, international organizations, agencies and treaties, importance of intellectual property rights.

## UNIT - II: Trade Marks

9

- Purpose and function of trade marks, acquisition of trade mark rights, protectable matter, selecting and evaluating trade mark, trade mark registration processes.

## UNIT - III: Law of copy rights

9

- Fundamental of copy right law, originality of material, rights of reproduction, rights to perform the work publicly, copy right ownership issues, copy right registration, notice of copy right, international copy right law.
- Law of patents: Foundation of patent law, patent searching process, ownership rights and transfer

## UNIT - IV: Trade Secrets

9

- Trade secrete law, determination of trade secrete status, liability for misappropriations of trade secrets, protection for submission, trade secret litigation.
- Unfair competition: Misappropriation right of publicity, false advertising.

## UNIT - V: New developments

9

- New development of intellectual property: new developments in trade mark law; copy right law, patent law, intellectual property audits.
- International overview on intellectual property, international - trade mark law, copy right law, international patent law, international development in trade secrets law.

## TEXT BOOKS

1. Deborah E. Bouchoux, “Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets”, Delmar Cengage Learning, 4th Edition, 2012.
2. Prabuddha Ganguli, “Intellectual Property Rights: Unleashing the Knowledge Economy”, Tata Mc Graw Hill Education, 1st Edition, 2008.

## REFERENCES

1. D Llewelyn & T Aplin W Cornish, “Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights”, Sweet and Maxwell, 1st Edition, 2016.
2. Ananth Padmanabhan, “Intellectual Property Rights-Infringement And Remedies”, Lexis Nexis, 1st Edition, 2012.
3. Ramakrishna B and Anil Kumar H.S, “Fundamentals of Intellectual Property Rights: For Students, Industrialist and Patent Lawyers”, Notion Press, 1st Edition, 2017.

## UNIT 4

### Trade Secrets

Trade secret law, determination of trade secret status, liability for misappropriations of trade secrets, protection for submission, trade secret litigation.

Unfair competition: Misappropriation right of publicity, false advertising.

## Definition of Trade Secret

A trade secret is any information that can be used in the operation of a business or other enterprise that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.

Generally, to qualify for trade secret protection, information must:

- Be valuable
- Not be publicly known
- Be the subject of reasonable efforts to maintain its secrecy

- While trademarks, copyrights, and patents are all subject to extensive federal statutory schemes for their protection, there is **no equivalent federal system relating to trade secrets**, and **no registration is required to obtain trade secret protection**.

Trade secret means information, including a **formula, pattern, compilation, program, device, method, technique, or process** that:

- (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- **Trade secret law in the U.S.** is a dual system of state and federal laws that protect confidential business information providing a competitive edge. State law is largely unified by the [Uniform Trade Secrets Act \(UTSA\)](#), adopted by most states, while the [Defend Trade Secrets Act \(DTSA\)](#) of 2016 provides a federal civil cause of action. Additionally, the [Economic Espionage Act \(EEA\)](#) makes trade secret theft a federal crime.
- To be protected, information must be commercially valuable due to its secrecy, and owners must take reasonable steps to maintain its confidentiality.

# Trade secret law(In India)

- India lacks a specific trade secret law but provides protection through contract law (such as confidentiality agreements), common law principles of equity, and certain provisions in the [Information Technology \(IT\) Act](#) for electronic records.
- A proposed [Protection of Trade Secrets Bill, 2024](#), based on the [Law Commission of India's](#) 2024 report, aims to establish a comprehensive framework for trade secret protection against misappropriation, including remedies like injunctions and damages.
- Protection hinges on information being secret, possessing commercial value, and reasonable efforts to keep it confidential.



# Determination of trade secret status

There are several factors to be considered in determining whether information qualifies as a trade secret.

- The extent to which the **information is known outside** the company.
- The extent to which the **information is known within** the company.
- The extent of the **measures taken by the company to maintain the secrecy** of the information.
- The extent of the **value of the information** to the company and its competitors.
- The extent of the **expenditure of time, effort, and money** by the company in developing the information.
- The extent of the **ease or difficulty** with which the information could be **acquired or duplicated by others**.

# Liability for misappropriation of trade secrets

Misappropriation of a trade secret occurs when a person possesses, discloses, or uses a trade secret owned by another without express or implied consent and when the person:

- Used improper means to gain knowledge of the trade secret
- Knew or should have known that the trade secret was acquired by improper means; or
- Knew or should have known that the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy.

## **Submission to Private Parties:**

In many instances individuals wish to submit an idea for an invention, process, game, or entertainment show to a company or business in the hope that the company or business in the hope that the company will market and develop the idea and the individual will be compensated for the idea?

## **Submission to Government Agencies:**

Private companies that present bids to government agencies in the hope of obtaining a government contract are often required to disclose confidential or trade secret information to the agency.❓

## Remedies for Misappropriation:

If a trade secret is misused, the holder can seek remedies such as:

- **Injunctions:** Court orders to prevent further disclosure or use of the secret information.
- **Damages:** Monetary compensation for losses incurred due to the misappropriation.
- **Destruction of Materials:** Court orders for the destruction of any items containing the trade secret.

# Unfair Competition

- The law of **Unfair Competition** is to safeguard the interest of the customers from unfair / misleading trade practices.
- **Unfair Competition** is a broad term covering a wide variety of deceptive practices in the marketplace.
- The law of unfair competition continues to evolve with changes in the marketplace so that deceptive infomercials and false advertising on the Internet can be prohibited.

**Unfair competition** refers to deceptive, dishonest, fraudulent, or unethical business practices that give one entity an illegal competitive advantage over others, harming consumers or other businesses.

# Cont...

The most commonly alleged forms of unfair competition are:

- **Passing off** (selling one's goods as those of another)
- **Misappropriation** (the taking of another's intangible commercial property right)
- **Infringement of the right of publicity** (appropriating another's identity or persona for commercial purposes)
- **False advertising** (making false or deceptive representations about the nature of one's own goods or services)
- **Product disparagement** (making false or deceptive representations about another's goods or services)
- **Dilution** (use of a mark that is likely to cause blurring or tarnishment of another's famous trademark or service mark)
- **Infringement of trade dress** (causing likelihood of confusion with the distinctive product image or overall design or appearance of another's product or service)

# Misappropriations

- **Misappropriations** means where someone acquires, uses and/or discloses company trade secret without taking any permission from company in an improper manner.
- **Violations of non disclosure agreement** takes place when a party in the contract from the breach to the agreement.
- Misappropriation in violation of a state trade secret law.

# Right of Publicity

- A person's name, identity, voice, likeness, and persona are protected against unauthorized commercial exploitation through the right of publicity.
- The right of publicity gives individuals, not to use celebrities name and images for the commercial use.
- The right of publicity protects a commercial interest, the vast majority of cases involve celebrities inasmuch as they can readily show economic harm when their names, photographs, or identities are used to sell products.
- Publicity rights are governed by state law.
- In sum, however, there is no nationwide or federal right of publicity and there is a patchwork of laws across the nation relating to this right.



# False Advertising

- Advertising good or products with false information's to get economic benefits.
- In our daily life of we observe, even though some products are not good for health advertising it as a good for health.

## Cont...

- In 1946, the federal trademark law, the Lanham Act, was passed.
- Section 43(a) of the act prohibited false designations of origin, namely descriptions or representations tending falsely to describe or represent goods or services.
- Until the passage of the Lanham Act, actions involving unfair competition tended to allege passing off or trade disparagement.
- Passing off, however, was limited to instances in which a party misrepresented the source of goods or services.

## Cont...

- An advertisement that is literally false is clearly actionable.
- Even advertisements that are implicitly false or unclear, however, are actionable if they are nevertheless likely to mislead or deceive consumers.
- False advertising is actionable under section 43 of the Lanham Act, which prohibits advertisements that falsely represent the nature, characteristics, or qualities of one's own or another's goods or services.
- In many cases, surveys of consumers are used to prove that the message conveyed, even if literally true, is deceptive to the public at large.
- If scientific, medical, or technical claims are made in an advertisement, experts are usually called to demonstrate truth or falsity.

# Examples of False Advertising

Following are some examples of advertising held to be false:

- A failure to disclose that advertised prices did not include additional charges.
- A statement that a pregnancy test kit would disclose results in “as fast as 10 minutes” when a positive result would appear in 10 minutes but a negative result might take 30 minutes.
- A claim that a certain motor oil provided longer life and better engine protection than a competitor’s product when that claim could not be substantiated.
- A claim that orange juice was pure, pasteurized juice as it came from the orange and showing a celebrity squeezing an orange and pouring the juice directly into the carton when the juice was heated and sometimes frozen prior to packaging
- A false claim that automobile antifreeze met an automobile manufacturer’s standards

## Cont...

- Falsely claiming a whiskey to be “Scotch” whiskey when it was not
- Covering up a label stating “Made in Taiwan” that appeared on goods
- Many cases involve comparative advertising claims in which one party claims its products are superior or equivalent to those of a competitor.
- The competitor need not be specifically identified for an action to lie.
- In comparative advertising cases, a plaintiff must in fact show that the claimed product is inferior or not equivalent.
- Claiming that a product is “compatible with” or “works with” another product is permissible as long as the claim is true.