



Analytical Study on Intellectual Property Rights

Dr. RAM NIWAS SHARMA

PhD Law, Assistant Professor, Institute of Law, Nirma University, Ahmedabad

ABSTRACT

At the outset it is noted that Intellectual property is an intangible property. It is creation of mind such as patents, trademarks, copyrights in literary and artistic works, and designs. Intellectual Property is divided into two categories: Industrial property, which includes inventions, trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary, and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

There are different types of legal rights in protecting products of intellectual efforts of creativity in the fields of applied art, knowledge and fine arts. Intellectual Property Rights mainly comprise trademarks, patents, copyrights, service marks, designs and confidential information (trade secrets), know-how etc. and the right to protection of trade marks from passing off.

It is pertinent to note that every citizen of India has freedom to express their ideas in the form of books, novels, plays, articles, etc. They also have right of protection of their patent which is new, non-obvious and useful to the public at large. Right is an interest of a person which must be protected, ensured, fulfilled by rule of law. Likewise, trademarks, geographical indication, designs etc., must be protected by law of the nations.

This paper is an attempt to discuss about the concept of passing off, piracy and infringement of intellectual property rights. The following are the intellectual property rights which are defined in concise and precise form to understand the concept.

KEYWORDS

patents, trademarks, designs, copyrights, original work, passing off, ideas, etc.

Statement of Problem

First and foremost the reader should know the meaning of the term patent. Patent is an exclusive right granted by the government to make use of an invention or process for a specific period of time usually twenty years. It is renewable on payment of required fees.

The conventional way to protect intellectual property is to patent it. This gives an inventor legal protection for his ideas: if others want to use it, they must pay him. The snag is that he must publish his idea, making it easy for someone in a less lawful country to steal it.

In other words, a patent is a monopoly rights granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. It consists of an exclusive right to manufacture the new, invented or manufacture article according to the invented process for a limited period. After the expiry of the duration of patent, anybody can make use of the invention.³

At this juncture it is sufficient to say what is patent and its infringement by others. Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. Permission may typically be granted in the form of a license. The definition of patent infringement may vary by jurisdiction, but it typically includes using or selling the patented invention. In many countries, use is required to be commercial (or to have a commercial purpose) to constitute patent infringement.⁴

'Mark' includes a device, brand, heading, level, ticket, name, signature, word, letter or numeral or any combination thereof. Whereas, trademarks means a registered trade mark or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark; and a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods

and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person and includes a certification trade mark registered as such under the provisions of trademarks Act, 1958.⁵

Meaning of 'trade mark' is strikingly expressed by Bowen, L.J.⁶, in these words-

"A trade mark means a mark used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and some person having the right to use that mark. The function of a trade mark is to give an indication to the purchaser or a possible purchaser as to the manufacture or the quality of the goods, that give an indication to his eye of the trade source or the trade hands through which they pass on their way to the market."⁷

Rights Conferred by Registration of Trade Mark:(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trademarks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trademarks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would

have if he were the sole registered proprietor.⁸

The words 'deceptively similar' have been defined in Clause (h) of Section 2(1) of the Act. It reads thus- "deceptively similar" a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;

What is passing off: when a person passes off his goods as being those of another, he commits the tort of passing off. The fundamental rule is that no one has a right to market his goods for sale as the goods of rival trader and consequently he cannot be allowed to use names, marks, letters or other indicia, by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person⁹. When a person passes off another person's goods as his own, he commits the wrong of reverse passing off. No person may falsely claim that the goods of another person's design and work are his own.¹⁰

Meaning of Copyright: copyright" means the exclusive right subject to the provisions of the copy right Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

- a) In the case of a literary, dramatic or musical work, not being a computer programme,
 - to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - to issue copies of the work to the public not being copies already in circulation;
 - to perform the work in public, or communicate it to the public;
 - to make any cinematograph film or sound recording in respect of the work;
 - to make any translation of the work;
 - to make any adaptation of the work;
 - to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- (b) In the case of a computer programme,-
 - to do any of the acts specified in clause (a);
 - to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:
 - Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental."
- (c) In the case of an artistic work,-
 - to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
 - to communicate the work to the public;
 - to issue copies of the work to the public not being copies already in circulation;
 - to include the work in any cinematograph film;
 - to make any adaptation of the work;
 - to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- (d) In the case of cinematograph film, -
 - to make a copy of the film, including a photograph of any image forming part thereof;

- to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- to communicate the film to the public;
- (e) In the case of sound recording, -
 - to make any other sound recording embodying it;
 - to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
 - to communicate the sound recording to the public.

Explanation: For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.¹¹

What is copyright infringement? Copyright infringement occurs when someone other than the copyright holder copies the "expression" of a work. This means that the idea or information behind the work is not protected, but how the idea is expressed is protected. For example, there have been many movies about Pirates, but only one Jack Sparrow.

Copyright infringement can occur even if someone does not copy a work exactly. This example of copyright infringement is most easily apparent in music and art. Copyright infringement occurs if the infringing work is "substantially similar" to the copyrighted work.¹²

Where copy right in any work has been infringed, the owner of the copy right shall be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are, or may be, conferred by law for the infringement of a right.

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 be¹³

"Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957¹⁴

Knowhow and confidential information can be protected only so long as the owner is able to keep them secret and takes action against unlawful use of such information by others by an action for breach of confidence or contract¹⁵.

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