

INTELLECTUAL PROPERTY RIGHTS

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Topics Covered

- Introduction
- Patents
- Trademark
- Copyrights

Introduction

- IPR is a term given to the work of human intellect to which the legal system attributes incidence of property.
- It is a legal right granted by the State to the inventor of any original creation for a certain period of time which enables him or his assignee to have exclusive benefits over it during that period.
- IPRs can range from artistic, scientific, business reputation, developing plant breeds etc.

Introduction

For example:

If a person writes a computer programme or makes a film, he will be able to take legal actions to obtain an injunction against anyone who copies the program or scenes of the film without his permission.



Introduction

- Why did India get into IPR:

A) Commercial reasons: To reap the benefit of inventions as investments in R & D is high, industry competitive, possibility of reverse engineering by competitors, mutual agreements not enough etc.

B) International Conventions: India is a member of many international conventions like GATT, WTO, TRIPS etc which required it to have strong laws and regulations for protecting IPRs

- Currently, eight IPR Acts in India.

Patents

- Patents Act, 1970 (as amended in 2005) and Patents Rules, 2003 (as amended in 2006).
- Right to obtain patent dates back to British times, when rights and previlages were granted by the Crown under its seal to prevent all other persons other than the grantee and to whom he has authorized from making, exercising or vending in any manner the subject-matter of patent.
- It is a territorial right granted by the State for limited period of time in exchange of public disclosure of the invention.

Patents

- Section 2 defines patent as patent for any invention granted under this Act.
- Section 2 (1) (j) defines invention as a new product or process, involving an inventive step and capable of industrial application.
- Condition for an invention to be patentable:
Novel (i.e. it does not form part of the current state of art)
Inventive step (i.e. not obvious to a person skilled in that area)
Industrial applicability/utility.

Patents

What is patentable

- Substances produced including substances that have undergone improvement though patented
- Process, method or manner of manufacture
- Machine, apparatus of a product
- Not specifically excluded under Section 3 or 4

Patents

What is not patentable

- An invention that is frivolous or obvious
- An invention which is contrary to law or morality or injurious to public health
- Discovery of a scientific principle or abstract theory
- Method of agriculture or horticulture
- Process for any medicinal, surgical or other treatment
- Invention relating to atomic energy
- Mere discovery of a new property or new use of a known substance not resulting in enhancement of its known efficacy or employing at least one new reactant
- A substance obtained by mere admixture
- Arrangement to re-arrangement of known devices

Patents

Procedure for obtaining patent

- Application can be made at any of the four patent offices in India i.e. Kolkata, Mumbai, Delhi & Chennai
- Application to be made by true and first inventor/assignee/legal representative
- Application to be accompanied by provisional or complete specifications, declaration as to inventorship and fees.
- Patent Office to publish the patent application. Anyone can object to the grant of patent giving reasons
- After examination that all requirement of Patent Act satisfied, patent to be granted expeditiously
- Post grant opposition can be made within 12 months
- Patent valid throughout India till expiry

Patents

Term of patent

- Valid for 20 years
- Patentee to pay annual renewal fees
- Can be revoked/transferred/assigned earlier

Remedies available for infringement

- Civil and criminal sanctions
- Civil remedies include grant of damages/injunction/seizure of infringement tools and product
- Criminal remedies include imprisonment/fine/both

Case Studies

Q A and B are working on a new type of aircraft and together complete the research on 2nd December, 2015. Where can the new product be registered?

Q A goes ahead and applies for registration in his name. What can B do?

Q If granted, is protection available throughout A and B's life? What is the time period of protection?

COPYRIGHT

Literary



Films



Dramatic



Musical



Artistic



Sound Recording



Copyright

- Copyright Act, 1957 and Copyright Rules, 1958 as amended from time to time
- Copyright means a set of exclusive rights granted to the author or creator of an original work
- Works included under Copyright Act are:
 - i) Original literary (including computer programmes), dramatic , musical and artistic work
 - ii) Cinematograph film
 - iii) Sound Recording

Copyright

Rights of a copyright holder

- Moral Right i.e. whether to publish or not, when and in what form to publish, to refrain from distortion etc
- Economic Rights i.e. right to issue copies, reproduce, communicate to public, translate, adapt etc
(In case of computer programme, includes right to sell or give on rent)
- Right to assign/ grant license(can still claim authorship, disallow modification etc)

Copyright

Procedure for registration

- Application to be made to the Office of Copyright, Delhi along with requisite fee
- Mandatory waiting period of 30 days – wherein any one can file objections
- Registrar shall examine the application, objections if any, give time for hearing and decide within 30 days
- Issue Copyright registration certificate

Copyright

Term of copyright

- For work published during the lifetime of author, term is lifetime of author + 60 years
- For posthumous publication, anonymous publication, cinematograph films , sound records, work of government or international agencies, term is 60 years from the year of publication
- For broadcasting rights, term is 25 years

Please note, copyright is given for expression of an idea and not for the idea, theme, central plot or historical fact itself.

Copyright

Who owns the copyright

- In case of literary or dramatic work: the author
- In case of musical work: the composer
- In case of cinematograph film: the producer
- In case of sound recording: the producer
- In case of photograph: the photographer
- In case of artistic work other than photograph, the artist
- In case of a computer program: the person who creates

Copyright

Fair use OR Acts not constituting infringement

Limited use of copyright material without permission from the copyright holder. Allowed for:

- Private use, including research
- Criticism or review
- Reporting current events
- In connection with judicial proceedings
- Performance by an amateur club or society before a non-paying audience
- Reading or recitation in public of any reasonable extract from a published literary or dramatic work.

Copyright

Infringement

Doing any of the prohibited acts without consent or license from the copyright holder

Remedies

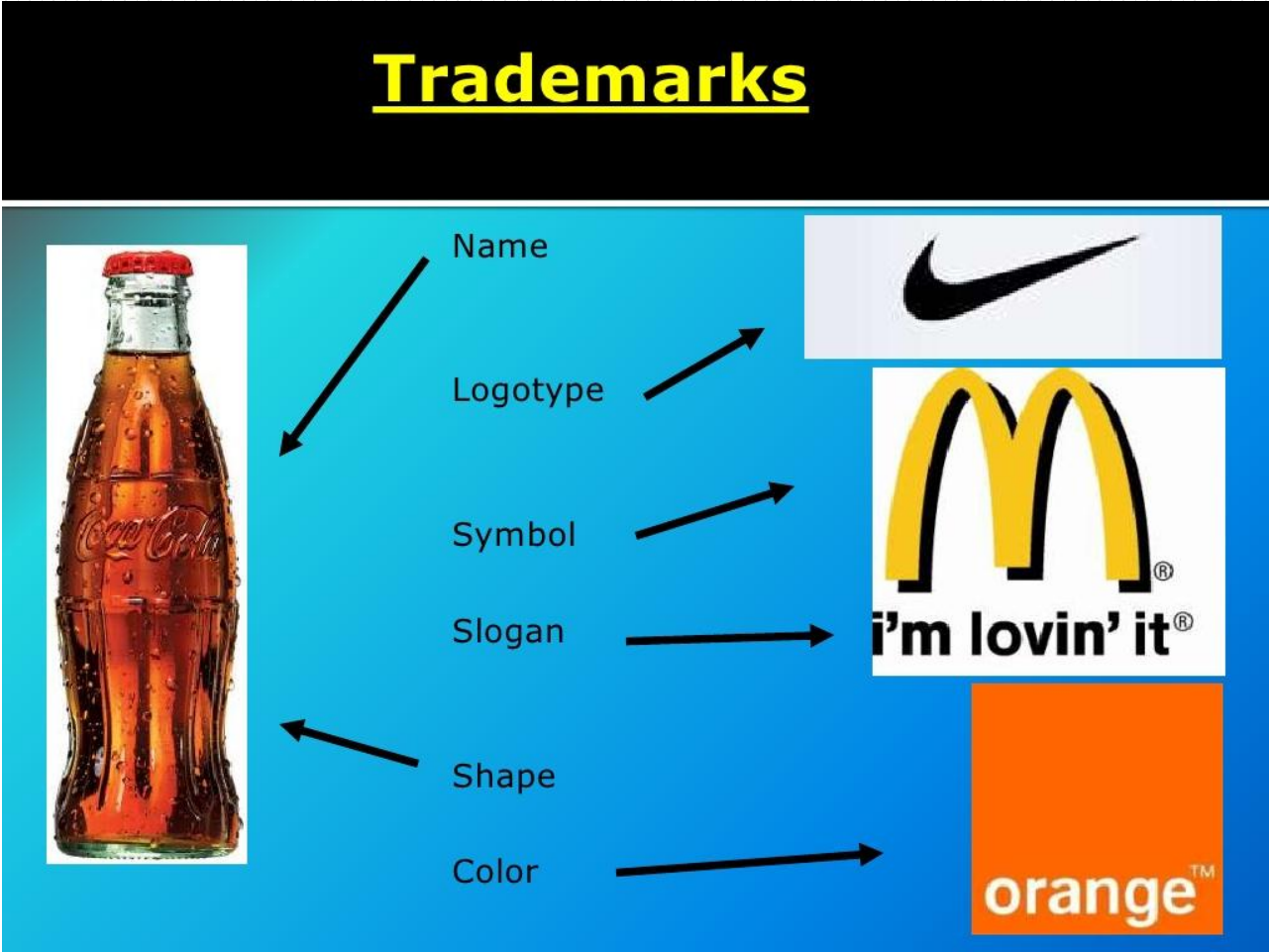
- Before Civil Courts: apply for grant of injunction against such person/claim damages and accounts
- Before Criminal Courts: Imprisonment/fine/ both
- Before Registrar: Can report to stop infringement, confiscate and deliver infringing copies

Case Studies

Q Three producers want to make a film on the life of Bhagat Singh but Mr. A Mehra decided it first. Can he claim a copyright violation and restrain others from making the film?

Q Mr. Sanjay Leela Bhansali want to make a movie on the famous novel 'Romeo and Juliet' 60 years after the author's death. Does he need to take permission from the legal heirs? What if the movie was made within 30 years of the death of the author?

Trademark



Trademark

- Trademark Act, 1999 and Trademark Rules , 2002 as amended from time to time
- Trademark means a mark capable of being represented graphically & which is capable of distinguishing the goods/services of one person from those of the other.
- Trademark can range from a word, signature, name, label, slogan, sound, shape, packaging or colours used by one undertaking to distinguish its product from others, with or without disclosing the identity of the proprietor.

Types of Trademark

- Certification Mark – a guarantee mark indicating that good/services are of certain quality, source etc. Eg ISI mark, Agmark
- Collective Mark – owned by an association/group. Eg. CA, CPA, Amul
- Service Mark – identifies the source of service and not the product. Eg. hospitality, healthcare, travel etc.

Trademark

Trademark that cannot be registered:

- Marks which are not capable of distinguishing
- Have become customary in the current language
- Of such a nature as to deceive the public or cause confusion
- Contains matters likely to hurt the religious susceptibility of any class
- Contains scandalous or obscene matter
- Prohibited under the Emblem and Names Act, 1950
- Term/words/shape commonly used

Trademark

Procedure for registration

- Application to be made to the Office of Trade Mark Registry (the four metros + Ahmedabad) along with requisite fee
- Registrar shall examine the application – can take 3 months to a year
- Registrar shall advertise in the Indian trade mark Journal
- Public can file objections if any, within 3 months from the date of advertisement
- If no objection or after disposing of objections, registrar shall proceed to register the trademark.

Trademark

Term of trademark

- Granted for a period of 10 years at a time
- Renewable

Rights conferred by Trade Mark

- Exclusive use in relation to those goods/services for which registered
- Restrict others from using identical or deceptively similar mark in respect of those goods & services

Trademark

Infringement

- Use of an identical or deceptively similar mark for similar goods or services *eg. Parachute, Parel-G, Koke*
- Use in relation to goods/services which are not similar to those registered, if the TM has a reputation in India + use is without due cause *Eg. Coke mattresses*
- Use as part of his trade name or business concern in same business. *Eg. Coke Industries for drinks*

Remedies

- Before Civil Courts: apply for grant of injunction against such person/claim damages and account for profit
- Before Criminal Courts: Imprisonment/fine/ both

Trademark

Passing Off (unregistered trade mark)

- Means passing off one's good or business as the goods or business of another
- Taken as an act of cheating and therefore illegal
- Should involve : Invasion of proprietary rights + misrepresentation + resulting damage
- Civil & Criminal remedies available, but damage has to be proved.

Case Studies

Q ABC Ltd. marketed coconut oil under registered trademark 'Shalimar'. Another company XYZ Ltd. started marketing sunflower oil under the name 'Shalimarr', claiming it to be different. What remedy does ABC Ltd. have?

Q Can a 100 year old business still continue with the same trademark, without even changing it slightly?