

Basic Tenets of Intellectual Property Rights



INTRODUCTION

India, in the past few centuries has been witnessing a surge in creativity and innovations in various fields like literary, arts, information technology, musical work and so on. The introduction of these intellectual ideas, new inventions, methods, techniques, ways of trade and commerce to the general masses lead to a realization that such ideas and techniques can be commercialized and money could be made out of it. Thus, Intellectual Property Rights can be understood as the exclusive rights given to persons over the creations of their minds. In other words, it is the commercialization of the products or services created by application of intellect. With India being a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) and also with the establishment of World Trade Organization (“WTO”),

new legislations were adopted in India for the protection of Intellectual Property Rights, so as to align it with the international obligations.

In India every Intellectual Property (“IP”) is being governed by a separate and independent Act, which can be classified as follows:

- Copyright
- Patent
- Trademark
- Geographical Indication (GI)
- Designs
- Plant Varieties

Each one of these are discussed briefly in this note.

COPYRIGHT

- Governed by the Copyright Act, 1957, (**“Copyright Act”**) amended from time to time, extends to whole of India,
 - Denoted by “©”,
 - Copyright shall be described as an exclusive or a privileged right, of the individual who is the creator or owner over the work he/she has created, with regards to the rights of reproduction, publication, selling, performing or displaying the original work. The word “work” is clearly defined so as to avoid any discrepancies and thus defining the ambit of the Act. It is defined to mean a wide array of literary (including software), dramatic, musical, artistic, architectural, as well as sound recordings, films and broadcast, paintings, live performances, photographs and software.
 - It must be noted that the work must be original and something which is not known to the public and must be materially expressed.
- Sheer ideas without its material expression are not protected by the Copyright Act.
- An Individual who is the author (creator) of such work can seek protection to its work under this Act for a period of his/her lifetime plus sixty (60) years after death.
 - Once the copyright has been granted, the author not only gets the right to authorship but also gets right under which, without his prior permission his work cannot be amended or used. If any use is made against his/her will, it can be brought into the court and the author can stop such act immediately and recover any kind of damages caused to him by such act.

- CASE LAW: ***Neetu Singh v. Rajiv Saumitra & Ors (2017) SCC OnLine Del 9590*** – Interim Injunction in favour of the Ms. Neetu Singh (**“Plaintiff”**) was granted by Hon’ble High Court of Delhi for copyright infringement in literary work wherein it was clarified that when the ownership of copyright is disputed between an employer i.e. Paramount Coaching Classes (**“Defendant No. 2”**) and an employee i.e. the Plaintiff in this case, it is the nature of employment that have to be looked into. Here, in this case the work done by the employee i.e. the Plaintiff was out of the boundaries of employment contract and was thus considered to be her own work and not something that belonged to the company i.e. Defendant No. 2.



PATENT

- Governed by the Patents Act, 1970, (“Patent Act”) amended from time to time, extends to whole of India,
- The Patent Act grants shelter to the inventions and legal rights that give a right of monopoly to a person for his invention. With the Patents (Amendment) Act, 2005, product patent was introduced which extended to all fields of technology including food, drugs, chemicals and micro-organisms.
- For the grant of patent rights to an idea it is required that patent rests on following three requisites,
 1. New/ novel (it must be something that did not exist previously);
 2. Involves an inventive step;
 3. Capable of having industrial application.
- It is important to know that the patents are valid only within the territory where they have been granted. Once a product or process gets patented, it cannot be commercially produced, distributed, used, or sold without the consent of the patent owner.
- In India, under the Patent Act, patent rights are granted for a period of twenty (20) years from the date when the patent application has been filed.
- Though the basic idea of Patents and Copyrights has many similarities, they differ a lot when commercially applied.
- CASE LAW: **Novartis v. Union of India (2013) 6 SCC 1** – The Hon’ble Supreme Court refused to grant a patent for the drug ‘**Glivec**’ of Novartis AG, (“**Novartis**”) a Swiss based pharmaceutical on the ground that it was not ‘inventive’ or had no superior ‘efficacy’. In 1998, Novartis filed the application for grant of patent for Imatinib Mesylate in Beta Crystalline form wherein it claimed that it was a new invention at Chennai Patent Office on July 17, 1998.

The application was kept on hold at that time. After the Patents (Amendment) Act, 2005, India revised its patent law and started granting patents on pharmaceutical drugs. The patent application of Novartis was rejected by Chennai Patent Office in 2006 stating that the said drug did not exhibit any major changes in therapeutic effectiveness over its pre-existing forms which was already patented outside India. The Chennai Patent office observed that the drug was not patentable under Section 3(d) of Patent Act. In May 2006, Novartis challenged the decision of Chennai Patent office in the Hon'ble High Court of Chennai. . In August, 2007 the Hon'ble High Court of Chennai transferred the case to newly created Intellectual Property Appellate Board ("IPAB") wherein

the IPAB held that the invention satisfied the tests of novelty and non-obviousness but the patentability of the product was hit by Section 3(d) of the Patent Act. Further, Novartis challenged the Order of the IPAB by way of filing a Special Leave Petition before the Hon'ble Supreme. The issues that were raised before the Hon'ble Supreme Court were what is 'Known Substance', the meaning of efficacy and whether the increase in bioavailability qualify as increase in therapeutic efficacy under Section 3 (d) of the Patent Act. Since, Novartis failed to prove that therapeutic efficacy of "Beta Crystalline form of Imatinib Mesylate" is more than therapeutic efficacy of "Imatinib Mesylate", the Hon'ble Supreme Court upheld the decision and findings of the IPAB.



Trademark

- Governed by the Trademark Act, 1999, (“Trademark Act”) amended from time to time, extends to whole of India
- Denoted by “TM”
- Any mark that includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof can be defined as “mark” under Section 2 (1) (m) of the Trademark Act.
- Trademarks are considered to be that principal form of IP that are used in the branding or marketing of an enterprise and its products or services. It is seen many times that the trademarks prove to be of greater value to the business entity than that of the actual services or products supplied.
- The Trademark Act in India provides for protection to a mark for a period of ten years, starting from the date of filing. A provision relating to renewal of the same for another ten (10) years, on payment of the prescribed fees has also been made in the Trademark Act, 1999.
- Trademarks classification is done in Goods and Services, each class has different types of goods and services. There are only thirty-four (34) classes for goods and eleven (11) classes for services out of total forty-five (45) classes.
- Registered trademark is said to be infringed when a person who is not a registered proprietor of the trademark or who is not permitted to use the trademark by the registered proprietor uses a mark which is identical with or deceptively similar to the trademark of the registered proprietor of in relation to his goods and services. Section 29 of the Trademark Act states various aspect related to the infringement of the Trademark.
- Passing off is remedy available under common law to enforce rights of unregistered as well as registered trademark.

It is the misrepresentation of one person's goods and services to that of another. The concept of passing off has changed with the course of time. As per Section 27(2) of the Trademark Act, an action for passing off can be initiated in civil law by a prior user of a trademark against a registered user of the same.

- CASE LAW: ***Ferrero Spa & Nr vs M/S Ruchi International & Anr (2018) SCC OnLine Del 8129*** -The Hon'ble High Court of Delhi held that Ruchi International & Anr. ("**Defendant**") infringement of trade dress of Ferrero Spa & & NR ("**Plaintiff**") also amounted to passing off. The Defendant were running the business of importing chocolates out of China under the name 'Golden Passion'. The packaging was identical to the Plaintiff's world famous Ferrero Rocher chocolates.

The mere fact that the Defendant was manufacturing and selling chocolates in nearly identical packaging, 'trade dress, colour combination, layout and get up, designed to imitate the Plaintiff's' chocolates, which was evident and proved amounted to passing off. The suit was decided in favour of the Plaintiff on account of the Defendant being infringing the registered marks and trade dress of the Plaintiff and also for violating the interim orders of the Court.



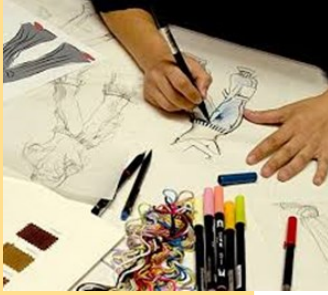
GEOGRAPHICAL INDICATION (“GI”)



- Governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999, (“GI Act”) amended from time to time, extends to whole of India
- Few examples of GIs in India which can be seen in a variety of products are Basmati Rice, Darjeeling Tea, Feni, Alphonso Mango, Alleppey Green Cardamom, Coorg Cardamom, Kanchipuram Silk Saree, Kolhapuri Chappal, and plethora of other commodities.
- It is often seen that few products originating from a particular region carry certain distinctive characteristics which is different from that of others. Such products possessing distinctive qualities or a reputation because of it having emerged from a specific geographical origin is given the Geographical Indication tag.
- Thus, the GI is nothing but a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. To qualify as a GI, the qualities, characteristics or reputation of the product should essentially be due to the place of origin.
- Often GI is used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial
- It is interesting to know that unlike other intellectual properties, registrations for geographical indications are not subject to a specific period of validity. This means that the protection for a registered GI will remain valid unless the registration has been cancelled. Geographical indications registered as collective and certification marks are generally protected for renewable term of ten-years.
- Recently, the Manipur Black rice Chak-Hao, Kashmiri Saffron, Kovilpatti kadalai (peanut candy from Tamil Nadu) mittai, got the Geographical Indication tag.

- **CASE LAW: *Tea Board of India Vs. ITC Ltd (2011) SCC OnLine Cal 1083*** — The Tea Board of India (“**Plaintiff**”) is a statutory body while ITC Limited (“**Defendant**”) is an industrial house that operates many premier hotels across India and has a famous luxury hotel in Calcutta, the ITC Sonar Hotel as “The Darjeeling Lounge”. The Plaintiff obtained the status of the first GI Tagged product for the name ‘Darjeeling’ and the logo with the numbers 1 and 2 respectively in Class 30 in respect of tea. The suit was filed for the infringement of the registered GI rights of the Plaintiff by naming its lounge as “Darjeeling Lounge”. The Hon’ble High Court of Calcutta held that GI is confined only to goods and the Plaintiff does not own any right in the name of ‘Darjeeling’ for any goods other than tea. The GI Act, can only extend to goods and admittedly, the Defendant's lounge does not fall within the category of ‘goods’ so there was no infringement as alleged. Also the suit was filed beyond the limitation provided under Section 26(4) of the GI Act which is for five (5) years.





DESIGNS

- Governed by the Design Act, 2000 (“**Design Act**”) amended from time to time, extends to the whole of India
- Any shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, in two or three dimensional (or both) forms can be understood as a Design. Such designs, when applied by any industrial process or by means (manual, mechanical or chemical) separately or by a combined process, can seek protection under the said Act. Needless to say that the design which is to be registered must be new or original and not previously published, or used in any country prior to the date of filing for registration.
- It is important to note that, the design to be registered should not include any trademark or property mark or artistic works as defined under the Copyright Act.
- The registered proprietor shall enjoy exclusive rights in the registered design for a period of ten (10) years from the date of registration. The Act provides for an extension period of five (5) years by filing a renewal application along with the prescribed fee.
- CASE LAW: ***Dabur India Ltd. vs Amit Jain & Anr (2008) SCC OnLine Del 1293*** - The Hon’ble High Court of Delhi held that publication abroad by existence of the design in the records of the Registrar of Designs which is open for public inspection cannot be said to be “prior publication” as per the meaning of the term as found in Sections 4(b) and 19(1)(b) of the Designs Act. A mere fact of registration being done in U.S in respect of similar bottles and caps cannot come in the way of the Dabur India Limited (“**Appellant**”) for seeking an order restraining Amit Jain & Anr. (“**Respondent**”) from infringing its registered design.



PLANT VARIETIES

- Governed by the Protection of Plant Varieties and Farmers' Rights Act, 2001, ("**PPVFR Act**") amended from time to time, extends to the whole of India, Though India being an agricultural country, Plant Varieties were never given much importance for a considerable long period of time. It was only with the development in the technology was the need to protect these Plant Varieties felt.
- This Act provides protection to the plant breeders, researchers and farmers who have developed any new or extant plant varieties. Once the registration has been granted, the farmers are entitled to save, use, sow, re-sow, exchange or sell their farm produce including seed of a registered variety in an unbranded manner.
- For a plant variety to be eligible for registration under the Act, it should essentially fulfill the criteria of Distinctiveness, Uniformity and Stability (DUS). So far the Central Government has notified near about 157 crop species for the purpose of registration.
- The Act provides for the following period of protection for
 1. Field crops - Fifteen (15) years from the date of registration
 2. For trees and vines - Eighteen (18) years from the date of registration
 3. For notified varieties - Fifteen (15) years from the date of notification by the Central Government

- CASE LAW: ***Maharashtra Hybrid Seed Co. vs. Union of India and Anr., (2015) SCC OnLine Del 6436*** — Maharashtra Hybrid Seed Company (“Petitioner”) impugned a common order dated May 24, 2012 passed by the Registrar, Protection of Plant Varieties and Farmers’ Rights Authority holding that parent lines of known hybrid varieties, could not be registered as ‘new’ plant varieties under the PPVFR Act. The main issue before the Hon’ble High Court of Delhi (“**Court**”) was that whether sale or disposal of hybrid seeds will amount to sale or otherwise disposal of the “propagating or harvested material” of the parent lines and consequently destroy their novelty under Section 15(3) (a) of the PPVFR Act. The Hon’ble Court held that the parent lines of the extant hybrid varieties cannot be considered as “novel” plant varieties for registration under the PPVFR Act. The Hon’ble Court stated that the plain language of Section 15(3) (a) of the PPVFR Act indicates that variety would be “novel” if harvested material of variety has not been sold, or otherwise disposed of before the specified period. It would, obviously, follow that the plant would cease to conform to the novelty criteria as required for being registered as a new variety if the propagating material / harvested material of the variety was sold or otherwise disposed of for exploitation of such variety prior to the specified period. The Hon’ble Court observed that the hybrid seeds from the parent line fell within the definition of “propagating material” as they are capable of or suitable for regeneration into a plant. The hybrid seeds (as propagating material/harvested material) were, in fact, sold or otherwise disposed of prior to one year from the date of filing of the application for registration for protection.

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