
CRITICAL ANALYSIS ON TRADE SECRETS AND UNFOLDING THE PATH OF INTELLECTUAL PROPERTY RIGHTS UNDER LEGAL FRAMEWORK

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ABSTRACT

The main aim of the research paper is to unfold the path of Intellectual property rights and communicate as to how these trade secrets play pivotal role in competitive world. It focuses on various Intellectual property such as trade secrets, Copyright, Patent, Trademark, Design and Geographical Indications within the context of legal picture as to how these matters dealt with IPR awareness, legal Remedies on infringement of these rights. Where in various authorities like Copyright board, Patent office and others comes in to picture. Also the paper deals with matter pertaining to assignment and usage of classes of work by the author/ owner. The empirical study on various Anti- competitive tactics used to destroy market in IP sectors and the paper deals with as to how these reflect on Institutions, Industries, Businesses etc.

Keywords: Intellectual property rights, Trade secrets, Geographical Indication, Trademarks, Patents, Design, Anti- competition, Infringement.

INTRODUCTION

In today's world, the abundant supply of goods and services on the market has made life very challenging for any business. In its on-going quest to remain ahead of competitors. To differentiate one's product a prerequisite for its success Intellectual Property comes in to picture.

The term Intellectual property refers to creativity of human minds like Inventions, artistic works, symbols, names, images, literary, design etc. The most noticeable difference between intellectual property is it cannot be defined or identified by its own physical parameters which demands protection of these rights while they are infringed. Thus the scope of IP is constantly evolving with the inclusion of newer forms under the legal field and various authorities like Copyright board of India which adjudicates copyright matters , Controller General of Patents, Design, and Trademark who administers statutory protection of trademark etc. Also statutes such as Design Act,2000, Trademark Act,1999, Patent Act, 1970, Copyright Act, 1957, Geographical Indication of Goods Act (Registration and Protection) Act, 1999 etc play a very prudent role in administering cases relating to trade secrets and have been build up to deal with issues arising out of breaking laws relating to Intellectual Property Rights. In recent times, geographical Indications, protection of plant varieties, protection for semi-conductors and integrated circuits and undisclosed information have been brought under the ambit of intellectual property.

On one hand, where businesses and their successful run is vital to the growth of economy ; on the same hand, a structured set of IP protection helps in the advancement and development of businesses under a hassle free environs. Henceforth, aligning the International practices, India too is having a systematic legal system to take care of IP protection.

RESEARCH METHODOLOGY

The research paper i.e Critical Analyses on Trade secrets and unfolding the path of intellectual property rights under legal framework is purely based on Secondary source of data such as Articles, Historical data, News reports, Previous research papers, modules, Internet searches, Electronic statistics, Journal paper, Magazines, websites, Published sources as well as unpublished personal sources, Blogs, Government records, Books and Preferable Acts under law relating to Intellectual property rights are used to critically analyze the topic and evaluate with respect to legal context.

CHAPTER-I

“A STUDY ON INTELLECTUAL PROPERTY RIGHTS, ADMINISTRATION AND VARIOUS LEGISLATION GOVERNING THOSE RIGHTS IN INDIA”.

India remains to be one of the world's most growing country when it comes to Intellectual property Rights and its awareness. Business models which are already successful, nowadays have to rely on the effective use of IP tools to gain competitive edge in the business world. In the Era of cut- throat competition to boost the interest of Authors, Owners and users of intellectual property and to avoid Anti- competitions government has come up with different statutes.

A. What are Trade secrets?

“Trade secrets” are the confidential business information that provides the competitive edge. Usually these are manufacturing or industrial secrets and commercial secrets which includes consumer profiles, distribution method, sales method etc. Contrary to patent, trade secrets are protected for unlimited period without registration but substantial element of secrecy must exist. In order to qualify as a trade secret the information must be of commercial valuable because it is secrecy, Also known to limited group of persons and subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidential agreements and contracts for businesses.

Trade secret protection and judicial ruling in India.

In this era of competitive world, wherein various countries are expanding in terms of businesses simultaneously it cannot be denied that such competitions are leading to difficulty in managing and securing trade secrets. To keep the new businesses flourishing it is very essential to incorporate protection in legal field. Therefore the International community, development of trade secrets protection can be traced Trade related aspects of Intellectual property (TRIPS), North American Free trade Agreement (NAFTA) and General Agreement on tariff's and Trade (GATT).

In India, the protection with respect to trade secrets is only granted by way of traditional judicial rulings and through provisions of contract law and equitable law. The absence of a legislation for trade secrets has made rulings difficult but judicial pronouncement have always tried to

develop and protect trade secrets and give remedy to breach confidentiality. However, Indian courts and tribunals uphold trade secret protection, confidential information and business know-how also judicial authorities have made it clear that in absence of specific remedy they will be protecting those under common law for the betterment of Intellectual properties and securing public interest in case of breach of obligation of confidence as well as third party accessing confidential information in unauthorized manner¹.

B. What are Copyrights?

Copyright protects original work of authorship, such as literary works, music, dramatic works, Pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software. The holder of copyright has the exclusive rights to assign, create, grant, distribute, modify, display, perform and copy the work.²

A Copyright exist from the time the work is created as in order to assure its protection it is very much necessary to register ones work to prevent chances of misuse or unauthorized usage. The term of copyright lasts for 60 years. In case of musical, drama, literary and artistic works the 60 years is calculated from the year of death of the author. And in case of sound-recordings, cinematography, posthumous, photography, pseudonymous publications, Work of International organizations and government works, the 60 years period is counted from the date of publication.

In India, The Copyright Act, 1957 was the first enforcement and there after it was amended several times as per changing requirements. Also it was amended in the year 1984 to include computer programming in the definition of "Literary work". The greatest challenged faced by copyright Industry that whether the books, films, musical works, television program, computer software or computer database comes in to the purview of copyright herein the Copyright (Amendment) Act, 1994 came in to role. Afterwards the Copyright Amendment Act, 1999 was enacted to ensure fair dealing "broadcasting" gaining popularity with the growth of the internet and to meet the concerns of the copyright industries. Further it was amended in the year 2012 with a view of making certain changes for clarity, to remove operational difficulties and also address the newer issues that have arise within the digital world and internet. The main

¹ "Niharika Sandhya", "Protecting Trade Secrets in India In the absence of a regime".(9th June 2020).

² Supra note 1

objective of the amendments is to create IPR awareness among users and non- users , to prompt culture of enterprise and ensures its credibility.

Classes of work for which copyright protection is granted in India.

Firstly, In order to determine that the person is eligible for copyright protection the primary criteria is to know that is the work is original in its own expressions i.e All original intellectual creations expressed in the reproducible form shall be eligible for copyright. The work is protected irrespective of the quality thereof and also when it may have little in common with accepted literature or art.

Assignment of Copyright and its exceptions

The owner of copyright in an existing work or the prospective owner of the copyright in a future may assign to any person subject to wholly or partly, generally or with limitations, wholly or part there off. The assignment mention the rights, duration and territorial limits to extent of its use subject to payment of “*Royalty*”. Where the assignee does not exercise rights assigned to him within a period of one year from the date of assignment it shall lapse. But in order to protect the interests of users, some exemptions have been prescribed to enjoy copyright freely such as- For the purpose of criticism or review, foe reporting current events, in connection with judicial proceedings, Performance by an amateur club or society, for the purpose of education and religious ceremonies and research or private study.

Administration and management of the Copyright law.

The Copyright Act provides for a quasi-judicial body called “The Copyright Board” in India to adjudicate matters pertaining to copyright cases. It consists of two or more, but not exceeding fourteen, other members and the chairman of the board should be at the level of judge of a high court like

- Hear appeals against the orders of the registrar of copyright.
- Hear applications for rectification of entries in the registrar of copyright;
- Adjudicate upon disputes on assignment of copyright;
- Grant compulsory license to publish or republish works;

- Fix Royalties in case of sound recordings.
- Grant license (In any language after period of 7 years from 1st publication) etc.

C. What is Trade mark?

A Trademark is a distinct symbol that is the identity of particular goods or services which are manufactured or produced by Business enterprises or Industries to highlight their product identity. It may be one or a combination of words, letters, and numerals. They may consists of drawings, symbols, three-dimentional sign such a as the shape and package of goods, audible sign such as music or vocal sounds, fragrances, or colours used to distinguishing features³. Startups need to be caution in selecting trademark, logos, brands, packaging of products, domain names and any other mark.

Trademarks are classified in to various categories which are-

- **Generic-** Names used for the product like “*Salt*” for Salt.
- **Descriptive-**Describing characters of the product like “*Fair*” for fairness cream.
- **Suggestive-** Suggesting character of the product like “*Habitat*” for home furnishing products.
- **Arbitrary-** Marks which exist in popular vocabulary but no logical relation with products like “*Blackberry*” for Phones.
- **Invented/ Coined** – Coining new word which as no dictionary meaning like “*Adidas*”

Enforcement of Trademark Rights and Remedies for infringement.

Trademarks can be protected under statutory law i.e Trademark Act,1999 as well as common law i.e under remedy of passing off. If a person uses any similar mark which is already possesses as a well-known trademark related to any goods or services or both in such case the person whose rights have been infringed can file a suit against that person for violation of IP

³ “Sagar Kishor Savale”and “Varsha Kishor Savale”, “World Journal of Pharmacy and Pharmaceutical sciences”, Volume 5, Issue 6, 2529-2559 “Intellectual Property Rights”(October 2018).
https://www.researchgate.net/publication/328161728_INTELLECTUAL_PROPERTY_RIGHTS_IPR

rights irrespective of the fact that the trademark is registered or not as registration of trademark is not pre-requisite to initiate civil or criminal proceedings in India.

Generally, the Court may usually grant relief in suits relating to passing off or infringement are permanent and interim injunction, recovery of damages, account of profits, delivering of the infringing goods for destruction purposes and cost pertaining to legal proceedings. Also it prudent to know that infringement of trademark is cognizable offence and criminal proceedings can be initiated against the infringers.

D. What are Patents?

Patent, In common parlance means right on an "Invention". As per patent act, 1970 the term "Invention" means a new product or process involving an inventive step and capable of industrial application⁴. Invention includes new and useful;

- Art, process, method or manner of manufacture;
- Machine, apparatus or other article;
- Substance which are produced or manufacture, and includes any new and useful improvements.

One could get patent to its invention by filing patent application with the patent office in India. Patent can be granted by either inventor or by assignee or legal representative of inventor. In India, the term of the patent is for 20 years thereafter it is renewed every year from the date of patent.

Inventions cannot be patented.

But also it is essential to know that all categories of inventions are not patentable i.e inventions which are frivolous, obvious, contrary to well established laws, against morality, mere discovery of a scientific product, formulation of an abstract apparatus, a method of horticulture and agriculture, Inventions relating to atomic energy which are known or used by any other person, or used or sold by any person in India or outside India.

⁴ Defination – "Invention", The patent Act , 1970

Enforcement of Patent Rights-

It is important to note that the patent infringement proceedings can only be after grant of patent in India. The challenge in enforcing rights related to patent is prolonged time taken by courts for its decision. A patent lawsuit ordinary takes approximately five to seven years to be finally decided after trial, if it is contested by the other party⁵. It is pertinent to note the patent infringement proceedings can only be initiated after the grant of patent in India but may include a claim retrospectively from the date of publication of the application for grant of patent. Infringement of a patent consists of unauthorized making, importing, using or offering for sale or selling and patented invention within the India. Under the (Indian) Patent Act, 1970 only civil actions can be initiated in court of law⁶. Reliefs provided by the court in case of patent is same as in case of trademark, Permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction purpose and legal costs.

E. What are Designs?

An overlook on designs –

Looking the considerable progress in the field of science and technology it was released that there is a need for stronger rules and law pertaining to design activities in order to promote these. The Design Act, 2000 was created to remove impediments to the free use of available designs. The design law is outside the purview functioning features of an article and only grants protection which have aesthetic appeal. For instance – A tea cup is hollow receptacle for holding tea and this method of designing cups cannot be registered.

Infringement of Designs and its Remedies.

The owner of design have exclusive rights over such registered design and have control over its manufacturing or selling, but if in case any other person or third party who is not licensed to use particular design and if it uses without permission of the owner then it shall be considered as “Infringement of Design”. As per section 22(2) of the Design Act, 2000 whoever infringes

⁵ “Ranjan Narula” and “Suvarna pandey”, India: Challenges faced in the protection and enforcement of patent rights (September 18, 2019)

⁶ Supra note 1

the design shall be subject to penalty of sum not exceeding Rs.25000/-. Apart from these civil remedies to the owner are protected by interim and permanent injunctions and damages.

CHAPTER II

“EVOLUTION OF GEOGRAPHICAL INDICATIONS AND ROLE OF LEGISLATION”.

Geographical Indications was welcomed as new form of Intellectual property which identifies a product as something originating in a territory or region, or a locality in a territory, where a given quality, speciality, popularity and other characteristics of the product is attributable to its geographical origins. For Instance Darjeeling tea is widely acknowledged for its quality in Darjeeling city in the Indian state of west Bengal. Patenting turmeric, basmati, neem ets drew a lot more attention towards thes form of IP. But these were not registrable in India previously due to which Indian geographical Indications were misused by people outside India. So in order to protect this matters there was need of comprehensive legislation where in legislation, namely, the Geographical indication of Goods (Registration and Protection) Act, 1999 was enacted to administer geographical indication registry under the charge of controller General of patent, Designs and Trademarks.

Role of Legislation are spread to wider context these are-

- Registration of geographical indications;
- Provisions to protect specified goods.
- Provisions of framing of rules by central govt for filing of applications, its contents and matters relating to substantive examination of geographical indications applications.
- Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an unauthorized user;
- Compulsory Advertisement of all accepted geographical indications applications and for inviting objections.
- Appeal against registrar’s decision would be to the Intellectual Property Board established under the trademark legislation etc.⁷

⁷ Supra note 1

CHAPTER III

“ANALYZING UNFAIR COMPETITION IN THE FIELD OF INTELLECTUAL PROPERTY RIGHTS AND ITS AWARENESS”.

The Competition law and Intellectual property rights can be correlated as in the IPR law which gives exclusive rights to its creator and user to gain advantage over their inventions, but if they use these rights to stifle the competition or creating Anti- monopoly to the market which can be not only detrimental for current businesses but also for upcoming ones. The fact that Intellectual property is one of the most developing sector in the growing economy and worldwide, looking at this it cannot be denied that there are chances of manipulating rights which are available in the domain of Intellectual property. Also consequently extracting any secrets or information not subject to disclosure via coercion, cheating or threatening shall be included under the ambit of unfair competition. There are several factors through which intellectual property rights are affected specially when it comes to copyright – Wherein the substantial part of the work is unauthorizedly used i.e Public exhibition of infringing copies, Importing infringed copies in India, Making infringing copies for sale or hire or selling or letting them for hire etc. In order to cope up with the coming consequences one should have greater awareness among the rights conferred under provisions of Intellectual property.

In recent studies it has been noticed that the amount of knowledge of IPR among people is not sufficient. In some countries, lack of awareness in IPR resulted in to lower applications and the reasonable quantities of innovations and inventions are taking place at universities and research houses are not translated in to IP protections. In the matter of creating awareness the Republic of Korea had come up with four strategies which are-

- Cultivating creative young investors;
- IPR acquisition campaign for SMEs
- Strengthening support for women’s invention activities.
- Promoting awareness in universities and research organizations⁸.

⁸ Reference-World Intellectual Property Organization,“ Administration and Management of Intellectual Property”; “Methodology for the Development of National Intellectual Property Strategies” (2014)

Therefore it is very necessary to create a strong layer of protective umbrella to avoid unhealthy competitions which disrupts the businesses environment and its secrecy.

CONCLUSION

It is obvious that the Intellectual property has hit not only the businesses worldwide but had a greater impact on International treaties, Individuals, Universities, Small and micro enterprises and others in terms of Valuation of IP assets, licensing of IP assets, Financing commercialization of IP rights. Looking at all these it is clear that the IPR is developing with the upgrading technologies which can be noticed while we come across different symbolic designs and features of various inventions. Further IPR is not only restricted to product identifications but has come up with other new angles of Geographical indications making awareness of product popularity in its birth country. With this widely spread of Intellectual Property with the changing time many other have added in the list of Intellectual property such as Protection of new plant variety, Layout design for integrated circuits etc.

SUGGESTIONS

While researching on various aspects of Intellectual property and matters pertaining to its rights it has been noticed that still there is necessary for stringent laws which protect those rights which faces anti-competitions and large amount of unfair trade practices. Trade secrets are most crucial factor of any entity and unauthorized disclosures leads to market disruptions to avoid these occurrence it is the duty of government to not only shelter these with civil suits remedies but also provide other specific remedies leading to high impositions of punishments and penalties or any other remedy which creates threatening among those infringing it. On the other hand India has come up with several provisions which empowers to secure interest of Intellectual property right users and grant reliefs in form of compensations and penalties to the infringer. But with the great idea of inventions one should first have the knowledge of protecting those inventions and therefrom the concept of IPR comes in to picture. Apart from all such consequences also government should come up with IPR awareness campaigns to boost upcoming ideas.

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