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Study on new Age IP Infringement

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Intellectual Property Rights (IPR) are intangible assets which are grant inventors or developers exclusive rights for their impeccably worthy invention or development. In light of today's globalization, Intellectual Property Rights are the focal focus point of international trade and everyday livelihood activities globally. Such important rights have improved the aware and innovative environment by delegating the creators or inventor recognition, advancements, and economic benefits while the lack of awareness of IPR and its ineffective enforcement may hamper the nation's economic, technological, and societal developments. Therefore, the dissemination of IPR information and its suitable implementation is the highest requirement for any country. The present paper discusses various IPR concepts, such as patents, trademarks, product designs, geographical indications, copyright, etc., with their corresponding laws, legislation, needs, and roles directly related to the situation in India. However, the status of India's involvement in IPR-related activities worldwide has been briefly discussed.

Keywords: Patent, Copyright, Social Media, Infringement.

HISTORICAL GROWTH OF COPYRIGHT

Copyright is an idea that evolved from the ancient ages, during the olden ages protection for the owner of land or another material is solitary compared to the creator of original work on poetic, art, and literary work, they had a very hard time protecting their intellectual property, we could say that how the demand of copyright protection or the idea of copyright protection was

organized, During the 18th century, Charles II who was the empire of England passed the Licensing of Act to regulate the copyright of the books the Act created a register for licensed books from there the need evolved and finally to Morden copyright law. Morden copyright law not only focused on the traditional demand of protection which is individual author and artist creations but it widened the protection on moral rights and publisher's rights of that creation including cinematic and sound recording, it also focused on technology sector like protection of computer software.

COPYRIGHT INFRINGEMENT

The ultimate goal of the copyright act is to provide original intellectual property created by the author or owner for protection, it provides exclusive rights to the owner of the property when these rights are exploited or used by any person without the owner's permission it will be called copyright infringement¹. copyright infringement can be given in classified in two ways primary and secondary infringement. When an infringement involves a direct infringement or the real act of copying by a person from the holder of copyright called primary infringement. Secondary infringement happens to work without actually copying and if someone provides or makes way to another person or group in infringing on a copyright material can be termed as secondary infringement.

A. Copyright infringement through the translation of original work

Protection on original work given in the copyright act is much solid and any usage without authorization deals with infringement but the translation of an original work became one of the grey areas for instant an author who wrote a book in English and wanted to publish in another language and when he finds out a similar book is been written in that language and got copyright protection here there are few scenarios we have to consider, whether the book is copied and translated it by someone or its an original idea.

¹ Copyright Act 1957, s 57

The problem is even though the essence of the book feels like a translated copy of the original book yet if the author includes any creative work and modifications made still it doesn't amount to infringement. In the USA a famous doctrine Modicum was coined in a famous judgement it was held a minimum level of creativity should be made by the person to acquire copyright protection². In Delhi, the high court made a judgement stating that not every effort put in by labour and investment doesn't qualify to get copyrighted it must have some minimum amount of creativity involved and should be created in a somewhat different involving intellectual effort³.

B. Copyright from Audio to text infringement

In the modern digital world Converting original content from audio to text or text to audio for posting it as a document or as an audio file in social media is common, When an original material is converted into a different form there is always a scope of infringement when the convention is done by a third person Reporters from The Times newspaper took down shorthand notes of a series of speeches given by lord Rosebery a famous politician was giving a speech and it was recorded as notes by the reporters of Times newspaper and reproduced in the newspaper, It was used by John Lane in his book question was put up before the court that reporters work are subjected to copyright⁴. It was held work is subjected to copyright protection. It is to be highlighted that as per Berne Convention translated work can be given copyright protection. the translated work only enjoys copyright protection if it has minimum creativity involved⁵.

C. Copyright on social media

Modern world revolves around social media, it's a great asset for people who create original content to reach their audience or publishers so many original work samples or the work itself flows in social media, there is always a scope for infringement but people take great risk on publishing their content when it's not copyright registered, creators of these containers are very

² *Feist Publications, Inc. v Rural Telephone Service Co* [1991] 499 U.S. 340

³ *Emergent Genetics India Pvt. Ltd v Shailendra Shivam & Ors* [2011] Civil Suit (OS) 50/2004

⁴ *Walter v Lane* [1900] AC 539

⁵ Berne Convention 1886, art. 2(3)

new or beginners so the truth is most of the content created is not registered so it's not protected by copyright people risk this because people all around the globe can be viewed there connected so they can reach there targeted audience.

D. Copy right on digital photograph

A new age of copyright infringement in the digital wor especially in social media revolve around the digital photograph, many people just use an image that they found on the internet without getting permission from the owner, we have to be much more clear here image of a person in the photograph may or may not be the owner it depends upon the agreement he or she made, the problem is many people just use the images from the internet or social for commercial purpose for an instant person using the photograph to design a banner or a poster to promote their business without getting proper permission from the owner, this is a clear infringement yet the problem is for the owner is to find the infringed person because he or she may be using it in a whole new different country, so its advisable to always better to protect it with proper watermark

In one case, Pirro fox news used a photograph and made some changes then posted it on their official account, which was the work of the North Jersey media group they have protection from the copyright, the court gave a judgement that making some alternation and adding just hashtag which cannot be called as a creation of a new image public still view it as work done by the original creator⁶.

COPYRIGHT INFRINGEMENT RELATED TO ONLINE VIDEO CONTENT

Apart from entertainment social media is a great place to earn, many people started to use social media platforms for earning as a main source of their income, and many new social media influencers is started to grow, this created a wide range of market for advertisement and promotion of a product, this made many people thrive in social media to create a new content

⁶ *North Jersey Media Group Inc v Jeanine Pirro and Fox news network LLC* [2015] 13 Civ. 7153 (ER)

video for getting more view which intern get them more ads view simultaneously their revenue increases

A major issue faced by these content creators is their videos as been utilized by someone and they might get away from infringement, On the platforms like youtube, they have given some exceptions on using other content these exceptions are widely given as fair use policy, fair use exception includes criticism of the content, passing commentary and used for news reporting. it is determined whether the used content comes under fair use or not mainly on four parameters.

- Purpose of the use;
- Nature of the original work;
- Amount of portion used from the original content;
- What Effect is it caused by the value of the original work?

CONCEPT OF FAIR USE

The concept of Fair use aims to promote freedom of expression. yet important to consider the use and purpose, it's always a balance between freedom of expression and the rights of the original copyright holder. In a famous case lord dinning said "*It's impossible to define what is fair dealing,*"⁷ he further said it must be seen everything together which means a fair deal depends upon circumstances and very case-to case

This fair use made many people utilize other content for an instant in the name of review people are using the content of others and gaining more views than the original content itself, for example, a person makes a short film and uploads it on youtube, another person makes a review of that film using some part of the video and most importantly giving away the core story of the film this makes the audience less interest in the short film eventually cause a loss to the original creator and some times the review video get more view then the original video itself, here the reviewer had no creativity involved yet he just reviewed the original content and may gets away with that.

⁷ *Hubbard v Vosper* [1972] 2 WLR 389

These kinds of fair use systems can be seen in Indian copyright law also which says which allows criticism and review as an exception to copyright strikes⁸ A similar issue was raised in a famous case and it was noted that any person who is not bonafide to criticise or review the producer or author of the work should not determine the focus of the audience or viewer⁹. Here's how "youtube" provides a remedy if an original owner finds out his video is infringed he can make a claim it uses an automated algorithm to take down the material used and it's taken down by "strike" and this is not absolute is a person gets a " strike " he can always counter these option is always does arbitrarily If he didn't respond and within 90 days a person gets three copyright strikes all his channel and account gets terminated

REMEDIES TO COPYRIGHT INFRINGEMENT

Even though the concept of the doctrine of fair use is well known and accepted yet there is always a remedy available if the person goes beyond the fair use and uses content India has two ways to provide a remedy for copyrighted materials they are civil and criminal remedies:

Civil remedies for copyright infringement:¹⁰

- the injunction by statutory;
- through Anton Piller's order;
- by pecuniary remedies;
- by merava injunction;
- Norwich Pharmacal order.

Criminal remedies for copyright infringement:¹¹

- fine up to three lacks and not less than fifty thousand rupees;
- imprisonment not below six months and a maximum of three years;
- seizing of the infringed material made by the person;

⁸ Copyright Act 1957, s 53(1)(a)

⁹ *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd* [2011] (45) PTC 70 (Del.)

¹⁰ Copyright Act 1957, s 55

¹¹ Copyright Act 1957, s 63

returning the infringed material to the owner.

PATENT INFRINGEMENT

Infringement is a subtle crime that steals the idea and soul of a man's Intellect. Patents, in the world of IP, is an instrument that acts as an exclusive right to the holder for a stipulated period preventing the rest from replicating the technical solution. Section 48 of the Patents Act¹² gives the patent holder, the patentee an exclusive right during the term. This creates monopolistic rights over the patented invention/ product/ process. Thus, any activity which violates such a monopoly can be considered a patent infringement.

Patent infringement, provides the patent holder, the right to sue the infringing party to get relief and compensation for the damage caused. Sections 104-114 of the Act¹³ delegate guidelines to patent infringement such as the burden of proof, defence, court authority, and exceptions to infringement, and reliefs. To qualify for a patent infringement claim, the burden to prove will be based that the original invention was breached to reproduction without consent. To begin your claim, you will want to start by using your patent file as your primary resource. The key term for analyzing a patent infringement lies on the backdrop on which a commission was made.

Affluent technologies and digitalisation have deemed open the pandora box of new interventions along with extreme challenges within the field of intellectual property. The ambit lies not just inside the circle of protection of non-traditional trademarks, like holograms, bar codes, and NFT, but, also conventional e- creations, like mobile applications and software. The interrogation regarding the hows and whats of enforcement of these rights in online environments and digital marketplaces.

The protection of intangible assets can retrograde a humongous worth for a company, and it becomes quintessentially complex in a highly globalized digital world. Beyond the current development of legal regulations, intellectual property disputes can cause significant risks for companies on their reputation and value. Intellectual property disputes and endangerment have

¹² Patents Act, 1970, s 48

¹³ Patents Act 197,0 s 104-114

come much broader in the age of hyperconnectivity. An example the Amazon's popular marketplace, which permits third-party sellers to delegate their products on its website. Financial media on the the topic in Court of Justice of the European Union established that MNCs as an intermediary, would not establish to infringe by go downing products that infringe the trademark rights on their e-commerce platform.

Yet another glamorous dispute between tech giants in current times has been over intellectual property, in specific with software patents. Establishing a precedent in the technology sector in terms of how copyright works are the software. One of the frequent risks in entrepreneurship is how another entity copies and misuses an idiosyncratic attribute of its brand. This can activate both within and beyond the sector of work which is the pros of the business' goodwill, potentially pathing to consumer confusion.

DEEP DIVE INTO THE REMEDIES

In the digital world, where we cannot potentially analyse the characteristics of the purchased products, it becomes a risk that must be especially aware of to identify possible trademark disputes. The battle between Gucci and Guess was global, causing reputational damage in contention. The terms of the contract were not disclosed, rather the duo a statement announcing the end of the legal battles to protect the reputation and contract.

When such identification of infringement is partially or wholly imitated by a third party, with the motive of taking unfair advantage from an already existing repute in line, it becomes a situation similar to identity theft. An entity gives rise to confusion amongst the general public by the appropriation of already recognized identity, to generate profit. In addition to amounting to serious damage on an entity level, brands can suffer some irrevocable damages to their goodwill and business, which is why they seek judicial intervention. There are ample high-profile suits to face the fact. McDonald's' accusation over the tag of Big Mac, Adida's various lawsuits over the OG's three parallel lines on its sneakers, the controversy of Schweppes in Spain, and the legal battle of Inditex's legal defence against Zara highlight the disputes.

The victory of a brand underlies its convertibility of easy identification and recognition by the general public. The media's involvement in issues with relation to industrial property, involving well-known companies of the brand and its effect and values was called into question. In add more, it leads to online ambiguation. The impact of these processes can make an effect on a company's various stakeholders.

All these characteristics involve the impact of the media coverage on both the brands involved and the legal proceedings. The information released can hurt the process, of prejudices. The messages delivered through the media build in the collective imagination, the most intervened best-positioned arguments. The position that prevails in the news is more likely to gain attention in the legal proceedings, not only because it may be more accessible to those involved in the process, but also because the parties often provide what is published in the media as evidence in these cases. The timeline is shortened or elongated on leaks or risks from media pressures. It is quintessential for legal professionals to count on guidance from experts with help from support of actions in the media, as a filter for possible requests.

To comprise, brand reputation is affected positively or negatively, during litigation for longer than the process itself – and sometimes regardless of its outcome. Threats posing as opportunities, these issues can provide a chance for emergence, particularly with an appropriate action plan and strategy. Despite Apple's victory, the giant failed to accumulate a competitive advantage over Samsung. The latter took advantage of competitive communications to launch mass campaigns to promote its Galaxy in the smartphone world.

The key is to build a direct, and simple narrative, from complex terminologies. However, it is quite impossible to separate the messages from the court conveyance. The submission of my analysis sheds its ambit on the brand name, the unique nature of the suppository, and prior reputation as a legacy poses to be a likelihood of association. Along the lines of the precedent argument, evidence of the brand's prevalence will be required. Confusion on the origin or quality is the major consequence of types of conflicts, and market analysis can prove very useful in demonstrating it. These boundaries can build a narrative that will convey the vision and debates during a dispute involving its brand, allowing it to reinforce and emphasize its values.

Brand use media monitoring, network arrangement, and digital platforms with the tools, possible to track the user on the. It can help detect unlawful or fraudulent uses or uses that do not comply with the terms while establishing a platform to review, manage, and monitor events. Market research can help a brand's reputation and consumer awareness. An independent analysis will serve as a compelling instrument in the legal process while strengthening the brand's position. Arguments aiding possible confusion among consumers with an unfair advantage are usually decisive in this type of case.

A dispute arising from similar visual aspects can be useful for experts to carry out a study on the similarities or differences between the graphic aspects. They can look at typographical, morphological, and colour scheming, to supply an impartial, professional, and objective view that can strengthen the company's position. In short, the curiosity about the characteristics and features of patent disputes and current points are most likely to be called into question which will rather allow the companies to anticipate the procedural complexities of the process and combine their legal strategies to aid in the betterment of protection and reinforcement of reputations related to the brand.

CONCLUSION

The Internet world has deeply changed the landscape of business, it is currently imperative that we preserve the protection of Intellectual Property with strategies in place that would outsmart the IP infringers in the online marketplace. Eagerly ending online infringing activities should be our topmost priority. Achieving that goal requires an immediate action plan for ensuring that the incriminating content is not accessible online. Companies that web screen linking up with various E-commerce platforms and internet service providers can be enabled to detect and disable the websites that surpass the sustainable infringing goals of websites and portals.

Imposing monetary damages and causing financial disruption to the infringers can be a difficult task, indeed. Especially, in the present society that bears no boundaries and borders in the digital world. It is here where the tracing of the identity of an infringer has become a complicated process. The judiciary and other law enforcement agencies can help in the stopping of illegal use

of brand heads, online by initiating and negotiating legal proceedings effectively against unauthorized use. As the infringers of IP nowadays are very intelligently equipped with the latest smart technologies and tools, the in-house legal team and providers with the agency of specialized services can tackle such issues and provide efficient solutions in a professional, cost-efficient, and responsible manner.