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BUSINESS GOODWILL AND REPUTATION – WITH SPECIFIC REFERENCE TO INTELLECTUAL PROPERTY LAW

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Abstract

Passing off protects customer's goodwill, that is, traders spend a great deal of effort and expense in building an identifiable reputation in order to create and enhance a market for their goods and services. There can be no goodwill without a reputation, though a reputation may exist without goodwill.

Trademarks help to maintain commercial reputation. An equally significant protection is afforded through the specific law. Since 1896, there has been consistent development of this form of tort, but there is no judicial consensus as to the legitimate extent of protection required. The alternative suggestion of malicious, falsehood also failed to assume the significance it demanded. Unlike other forms of intellectual property, registered trademarks and passing off, focus on the producer's reputation and goodwill.

Keywords

Reputation, Goodwill, Malicious, Falsehood, Trade Name, Trademark

1. Introduction

Goodwill and reputation which distinct one business from other. Then the consumers can identify easily. It provides protection to the owner of the mark by ensuring exclusive right to use it to identify the goods or services, or to authorize others to use it in return for

payment. Its protection is enforced by the courts, which in most systems have the authority to block trademark infringement. It promotes initiative and enterprise worldwide by rewarding the owners of Trademarks with recognition and financial profit. The protection also hinders the efforts of unfair competitors such as counterfeiters, to use similar distinctive signs to market inferior or different products or services.

1.1 Case Study

The plaintiffs who were Champagne Houses of France. It was held that the defendant's sparkling wine sold under the name 'Spanish Champagne' would be considered as genuine Champagne and injunction was granted restraining the use of the expression although there was no allegation that the defendant's wine will be passed off as the plaintiff's wine.

2. Trademark Registration

Trademarks may be for one or a combination of words, letters and numerals. It may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. There are several categories of trademarks. Service marks are the marks which are used to identify the services of one enterprise from that of others. Services include Banking, Insurance, Transportation, Education, Research Institutions etc. The object of the law is to safeguard the reputation of a business from encroachment by dishonest competitors. Under this, the plaintiff has acquired a sufficient goodwill and reputation in a trademark, get-up or other badge or trade name in relation to some goods or business in India.

2.1 Case Study

2.1.1 Bajaj Auto Limited Vs. TVS Motor Company Limited JT 2009 (12) SC 103

IPR Law- Dispute over Patent for the Use of Twin-Spark Plug Engine Technology – Speedy disposal of Intellectual property rights cases- The Supreme Court of India by this landmark judgment has directed all the courts in India for speedy trial and disposal of intellectual property related cases in the courts in India. In two-year-old dispute involving two companies, which have been locked in a patent dispute over the use of a twin-spark plug engine technology, the Supreme Court observed that suits relating to the matters of patents, trademarks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. The Supreme Court directed that hearing in the intellectual property matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit. The

Supreme Court further directed to all the courts and tribunals in the country to punctually and faithfully carry out the aforesaid orders.

2.1.2 Bayer Corporation Vs. Union of India 162(2009) DLT 371

IPR Law– Bayer Corporation, instead of filing a suit for infringement, filed an inventive writ petition in the Delhi High Court desiring that since the applications of Cipla “SORANIB” allegedly infringed its patent, its (Cipla’s) marketing approval application under the Drugs Act should not even be processed or entertained. It is for the first time that an attempt is made to link drug approval to patent infringement in India. However, the Delhi High Court, denying the injunction, imposed a substantial cost of Rs. 6.75 Lakh to deter any such future attempts.

Bayer relied on the argument that a combined reading of Section 2 of the Drugs and Cosmetic Act along with Section 48 of the (Indian) Patent Act, 1970 establishes a Patent Linkage Mechanism under which no market approval for a drug can be granted if there a patent subsisting over that drug. It also claimed that CIPLA’s “SORANIB” is a “Spurious Drug” as defined under the Drugs Act, for which market approval cannot be granted.

The Hon’ble High Court of Delhi held that there is no Drug- Patent Linkage mechanism in India as both the Acts have different objectives and the authority to determine patent standards, is within the exclusive domain of the Controller of Patents. Moreover, the patent linkage will have undesirable effect on the India’s Policy of Public Health. It further held that the market approval of a drug does not amount to infringement of patent. Therefore, the patent infringement cannot be presumed, it has to be established in a court of law. Such adjudication is beyond the jurisdiction of Drug Authorities.

On the issue of “SORANIB” being a spurious drug, the court held that CIPLA’s “SORANIB” cannot come under the category of spurious goods as there is no element of passing off like deception or imitation present in CIPLA’s drug”.

2.1.3 Clinique Laboratories LLC and Anr. Vs. Gufic Limited and Anr. MANU/DE/0797/2009

IPR Law- Suit for infringement by a registered trade mark owner against a registered trade mark holder: Conditions-The present dispute was between the registered trade mark of the plaintiff as well as defendant. It is interesting to note that before filing the suit the plaintiff i.e. Clinique had filed a cancellation petition before the Registrar of Trade Marks, India, against the defendant for cancellation of the defendant’s trade mark CLINIQ. As per the Section 124(1) (ii), of the Indian Trade Marks Act, 1999 a suit is liable to be stayed till the cancellation petition is finally decided by the competent authority.

However, under Section 124(5) of the Act, the court has the power to pass interlocutory order including orders granting interim injunction, keeping of account, appointment of receiver or attachment of any property.

In this case, the court held that a suit for infringement of registered trade mark is maintainable against another registered proprietor of identical or similar trade mark.

It was further held that in such suit, while staying the suit proceedings pending decision on rectification/cancellation petition, the court can pass interim injunction restraining the use of the registered trade mark by the defendant, subject to the condition that the court is prima facie convinced of invalidity of registration of the defendant's trade mark. In this case the court granted an interim injunction in favour of the plaintiff till the disposal of the cancellation petition by the competent authority.

2.1.4 The Coca-Cola Company Vs. Bisleri International Pvt. Ltd Manu/DE/2698/2009

IPR Law- Infringement: Export: Threats: Jurisdiction – The Delhi High Court held that if the threat of infringement exists, then this court would certainly have jurisdiction to entertain the suit.

It was also held that the exporting of goods from a country is to be considered as sale within the country from where the goods are exported and the same amounts to infringement of trade mark.

In the present matter, the defendant, by a master agreement, had sold and assigned the trade mark MAAZA including formulation rights, know-how, intellectual property rights, goodwill etc for India only. with respect to a mango fruit drink known as MAAZA.

In 2008, the defendant filed an application for registration of the trade mark MAAZA in Turkey started exporting fruit drink under the trade mark MAAZA. The defendant sent a legal notice repudiating the agreement between the plaintiff and the defendant, leading to the present case. The plaintiff, the Coca Cola Company also claimed permanent injunction and damages for infringement of trade mark and passing off.

It was held by the court that the intention to use the trade mark besides direct or indirect use of the trade mark was sufficient to give jurisdiction to the court to decide on the issue. The court finally granted an interim injunction against the defendant (Bisleri) from using the trade mark MAAZA in India as well as for export market, which was held to be infringement of trade mark.

2.1.5 Novartis v. Union of India [CIVIL APPEAL Nos. 2706-2716 OF 2013 (ARISING OUT OF SLP(C) Nos. 20539-20549 OF 2009]

IPR Law- Rejection of a patent for a Drug which was not 'inventive' or had an superior 'efficacy'- Novartis filled an application to patent one of its drugs called 'Gleevec' by covering it under the word invention mentioned in Section 3 of the Patents Act, 1970. The Supreme Court rejected their application after a 7 year long battle by giving the following reasons: Firstly there was no invention of a new drug, as a mere discovery of an existing drug would not amount to invention. Secondly Supreme Court upheld the view that under Indian Patent Act for grant of pharmaceutical patents apart from proving the traditional tests of novelty, inventive step and application, there is a new test of enhanced therapeutic efficacy for claims that cover incremental changes to existing drugs which also Novartis's drug did not qualify. This became a landmark judgment because the court looked beyond the technicalities and into the fact that the attempt of such companies to 'evergreen' their patents and making them inaccessible at nominal rates.

3. Conclusion

Trademark must fulfil two conditions. First, the mark must be distinctive, so that consumers can distinguish it from other trademarks and products. Second, the mark must not be deceptive. It means the mark should not mislead, deceive the customers or violate public order or morality.

It is only reputation giving rise to goodwill which may be defended through passing off, reputation and its accompanying goodwill must coincide in temporal and geographical terms, with the sphere of trading activity of plaintiff and defendant.

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