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With this thought, we hereby present to you

ANALYZING THE ROLE OF COPYRIGHTS AND TRADEMARKS IN BUSINESS TRANSACTION

AUTHORED BY - AYUSH VISHWAKARMA

LLM (BUSINESS LAW)

Enrolment No.: A0319324059 Batch: 2024-25

**Research Dissertation submitted to Amity Institute of Advanced Legal
Studies**

Amity University Uttar Pradesh

In Part Fulfilment of Requirement for the Degree of Master of Laws (LLM)

Under the Supervision of Dr. Ankita Shukla (Associate Professor)

DECLARATION

I, **Ayush Vishwakarma**, hereby declare that the dissertation titled "**Analyzing the Role of Copyrights and Trademarks in Business Transaction**" submitted to the **Amity Institute of Advanced Legal Studies, Amity University Uttar Pradesh**, is a result of my original work and has been completed in partial fulfilment of the requirements for the degree of **Master of Laws (LLM)**. The work presented in this dissertation is entirely my own, and no part of it has been copied from any other source, except for references duly acknowledged.

I also declare that the work is based on the study, analysis, and research carried out by me, under the supervision of **Dr. Ankita Shukla** (Associate Professor), and has not been submitted for any other degree or award at any other institution.

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Thank you all for your contributions and support.

Signature:

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LIST OF ABBREVIATIONS

AIR	All India Reporter
Art.	Article
CMI	Copyright Management Information
DMCA	Digital Millennium Copyright Act.
eCO	Electronic Copyright Office System
IPR	Intellectual Property Rights
IT	Information Technology Act
SC	Supreme Court
SCC	Supreme Court Cases
SCJ	Supreme Court Journals
Sec.	Section
Supra	Above
UCC	Universal Copyright Conventio
UOI	Union of India
Vol.	Volume
Vs.	Versus
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organisation

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ABSTRACT

In today's globalized economy, intellectual property (IP) rights, particularly copyrights and trademarks, play a pivotal role in business transactions. These legal instruments protect the intangible assets of businesses, ensuring that companies can maintain their competitive edge, safeguard brand identity, and generate revenue from their innovations. This paper analyses the significance of copyrights and trademarks in business transactions, focusing on their role in licensing, mergers, and acquisitions (M&A), franchising, and the protection of proprietary assets.

Copyrights, which grant exclusive rights to creators over their original works, and trademarks, which protect distinctive symbols, names, and logos associated with goods or services, are crucial in establishing and maintaining brand value. In business transactions, copyrights are often transferred or licensed to allow third parties to use intellectual property while generating royalties or fees for the owner. These agreements are fundamental in industries such as entertainment, software development, and publishing, where the continuous flow of creative works is essential for commercial success. The ability to monetize these works through licensing agreements enhances revenue potential and helps expand market reach.

Trademarks, on the other hand, are vital for brand recognition and consumer loyalty. In business transactions, trademarks often serve as key assets in M&A deals, determining the value of a brand or product line. A well-established trademark can increase the value of a business, making it an attractive acquisition target. Similarly, in franchising, trademarks enable a consistent brand experience across different locations, thereby ensuring the integrity and reputation of the brand.

Additionally, the intersection of copyrights, trademarks, and business law raises important considerations in dispute resolution, infringement risks, and the need for effective enforcement mechanisms.

Keywords: *copyrights, trademarks, business transactions, intellectual property, licensing, mergers and acquisitions, franchising, brand protection, IP rights, business law, dispute resolution, and intellectual property theft.*

CHAPTER 1 INTRODUCTION

1.1 INTRODUCTION

Trademarks and copyrights are crucial for safeguarding the intellectual property of both people and companies. In this study, we will examine the function of trademarks and copyrights in commercial transactions.

Copyrights are a type of legal protection that grants authors of original works the sole authority to manage how their works are used and distributed. A vast variety of items, including literary works, music, software, pictures, and artwork, can be protected by copyrights. Copyrights can be used in commercial transactions to safeguard brand identities, promotional materials, website content, and other uniquely generated works by a corporation.

The protection of a company's intellectual property also includes trademark protection. A trademark is an easily recognisable symbol, design, or expression that identifies and sets one company's goods or services apart from those of other companies. Due to its ability to help firms create a distinctive brand identity and deter competitors from adopting confusingly identical marks, trademark protection is crucial in commercial transactions.

Copyrights and trademarks may have a substantial impact on the value of commercial transactions such as mergers, acquisitions, and licencing agreements. For instance, having valuable copyrighted content or trademarks can raise the company's worth and make it a more desirable target for licencing or purchase.

It is crucial to remember, though, that if copyrights and trademarks are not properly handled, they can also expose companies to legal risks. For instance, a company may be subject to legal action and financial penalties if it utilises copyrighted content without authorization or infringes on the trademark of another party.

Copyright and trademark laws serve as vital pillars in the legal framework governing intellectual property rights (IPR) globally, including in India. Copyright

law primarily protects original works of authorship, such as literary, artistic, and musical creations, while trademark law safeguards distinctive signs, symbols, or expressions used to identify and distinguish goods or services of one entity from another.¹

In India, copyright protection is primarily governed by the Copyright Act of 1957, which has undergone several amendments to align with international standards and technological advancements.² On the other hand, trademark protection is governed by the Trade Marks Act of 1999, providing a framework for registration, protection, and enforcement of trademarks in India.³ The significance of copyright and trademark laws in business transactions cannot be overstated.

Copyright protection enables businesses to safeguard their creative assets, such as logos, software, literary works, and artistic designs, from unauthorized use or reproduction, thereby preserving their competitive edge and market value.⁴ Similarly, trademarks play a crucial role in brand identity, consumer recognition, and market positioning, empowering businesses to build trust, loyalty, and goodwill among consumers.²

Furthermore, in an increasingly digital and globalized economy, where intellectual property (IP) assets constitute a significant portion of a company's value, robust copyright and trademark protection is indispensable for fostering innovation, incentivizing creativity, and promoting economic growth.

Moreover, effective management and enforcement of copyright and trademark rights are essential for mitigating risks, resolving disputes, and ensuring compliance with legal obligations in business transactions.

The aims to provide a comprehensive analysis of the role of copyright and trademark laws in business transactions within the context of India. Specifically, it will examine the legal framework governing copyright and trademark protection, their importance and implications for businesses, and the challenges and

¹ World Intellectual Property Organization (WIPO), "Copyright," <https://www.wipo.int/copyright/en/>, accessed January 30, 2025

² Pravin Anand et al., "Copyright Law in India," Lexology, <https://www.lexology.com/library/detail.aspx?g=660ee49d-5ac7-40f3-b107-fbcd80f27>, accessed January 30, 2025

opportunities associated with their enforcement and management. Through a comparative analysis, case studies, and recommendations, the paper seeks to contribute to a deeper understanding of the practical implications of copyright and trademark laws for businesses operating in India³

From logos to slogans, copyrights and trademarks are essential to modern business. By leveraging exclusive rights on things such as account titles, products, and works of art, businesses can safeguard their reputation and identity. Through copyrighting literature, music or software, businesses gain the security of preventing others from profiting from their ideas or inventions. With trademarks, businesses avoid brand dilution while distinguishing their goods in the minds of consumers. By not only establishing ownership but also limiting replication of original works without permission, copyrights and trademarks help create a secure platform for conducting business transactions.

Furthermore, they foster a level of trust between buyers and sellers by setting standards for uniform quality that helps ensure consumer verification of authenticity. In today's scenario, as a business owner, it is essential for one to understand the importance of the role that Intellectual Property Rights play in conducting smooth business transactions in the market. Though intangible in its nature, it is one of the most important business assets.

The Intellectual Property Rights and the importance that they hold in business transactions. Though each of them is important in itself, this article will help you to focus on the role of copyrights and trademarks in business transactions. Copyrights and trademarks, both terms can be referred to as the central part of business transactions, as both instill a sense of security in the minds of the target consumers and business owners.

Though both terms are proof of the originality of the work of the business, it is relevant to note that the two defend discrete business concepts. They both cannot be referred to interchangeably. Usually, copyrights guard the original work or rational works of the company, while other hand trademarks guard the commercial identity of the company. The role of copyright is mainly to defend the rights of the business

³ Id.

of its intellectual works such as fictional, theatrical, musical, and creative works. And in the case of a Trademark, it plays the role of defending the usage of the name of the business and its brand identity.

Protecting online assets with the proper intellectual property is critical for the smooth operation of any enterprise. Knowing the myriad rules and regulations surrounding copyrights and trademarks will provide stability for your business's reputation at home and abroad.

Historical Context of Copyright and Trademark Laws in India

The evolution of copyright laws in India can be traced back to the colonial era when the British introduced the first copyright legislation, the Copyright Act of 1847, which primarily served the interests of British authors and publishers. However, significant developments occurred with the enactment of the Copyright Act of 1914, which provided broader protection for literary, dramatic, and musical works, as well as the establishment of copyright societies to manage rights collectively.⁸ Subsequently, the Copyright Act of 1957 consolidated and modernized copyright law in India, extending protection to a wide range of creative works and introducing provisions for international copyright protection.

The development of trademark laws in India also has a colonial legacy, with the adoption of the first trademark legislation, the Trade Marks Act of 1940, under British rule. This act focused primarily on the registration and protection of trademarks, but lacked comprehensive provisions for enforcement and remedies.

However, significant reforms were introduced with the enactment of the Trade Marks Act of 1958, which laid the foundation for a modern trademark regime in India, emphasizing the importance of distinctiveness, registrability, and enforcement of trademarks.

Subsequent amendments and revisions culminated in the Trade Marks Act of 1999, aligning India's trademark laws with international standards and addressing emerging challenges in the field of trademark protection.

India's copyright and trademark laws have been significantly influenced by international treaties and agreements, reflecting the country's commitment to harmonizing its intellectual property regime with global norms and standards.⁴ Notably, India is a signatory to various international agreements, including the Berne Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Madrid Protocol for the International Registration of Marks.

These treaties have played a crucial role in shaping the legal framework for copyright and trademark protection in India, by enhancing cross-border recognition, enforcement, and cooperation in the field of intellectual property

1.2 STATEMENT OF PROBLEM

The proliferation of digital technologies and globalization has amplified the complexities surrounding copyrights and trademarks in business transactions. Businesses face several challenges, including:

Unauthorized use and infringement.

The complexities of navigating multiple jurisdictions with diverse legal frameworks.

Lack of awareness among SMEs about effectively managing IP rights. Balancing fair use provisions with innovation incentives.

Difficulties in cross-border enforcement of copyrights and trademarks.

1.3 RESEARCH OBJECTIVES

To analyze the legal framework governing copyrights and trademarks in business transactions across jurisdictions.

To assess the role of copyrights and trademarks in enhancing brand value and safeguarding intellectual assets.

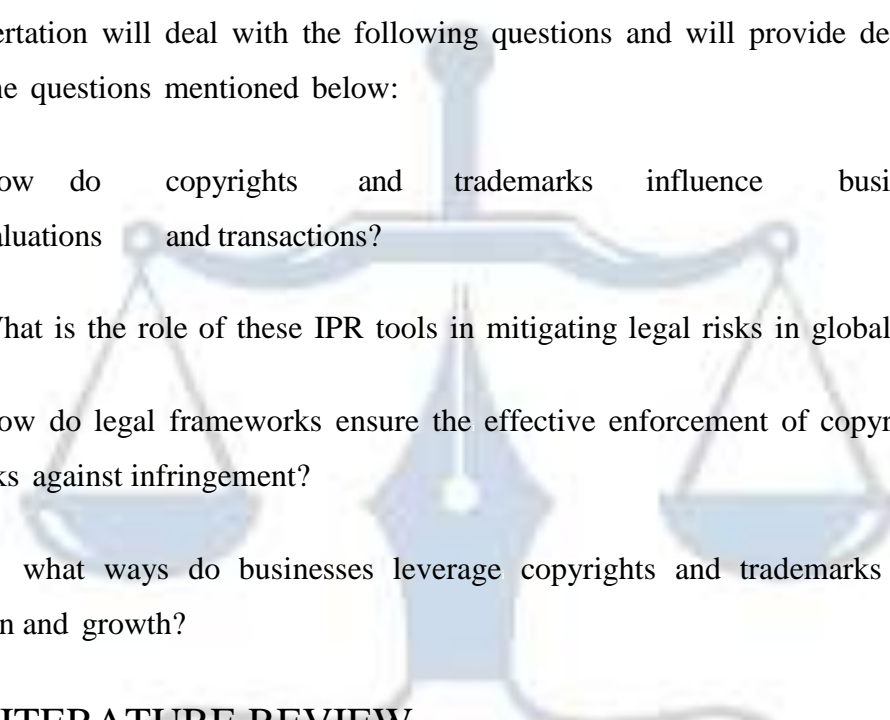
⁴ Prabuddha Ganguli, "Copyright Law in Colonial India," *Economic & Political Weekly*, Vol. 38, No. 45, 2003, pp. 4789-4796.

To examine their contribution to innovation and market positioning, especially in knowledge-driven industries.

To evaluate their impact on business strategies such as mergers, acquisitions, and licensing.
To address challenges like counterfeiting, piracy, and unauthorized use, and propose legal and policy solutions.

1.4 RESEARCH QUESTIONS:

The dissertation will deal with the following questions and will provide detailed view of each of the questions mentioned below:

- 
- I. How do copyrights and trademarks influence business valuations and transactions?
 - II. What is the role of these IPR tools in mitigating legal risks in global trade?
 - III. How do legal frameworks ensure the effective enforcement of copyrights and trademarks against infringement?
 - IV. In what ways do businesses leverage copyrights and trademarks to foster innovation and growth?

1.5 LITERATURE REVIEW

Books

1. Evolution of Copyrights and Trademarks in Business Contexts

The role of copyrights and trademarks has transformed with the growing importance of intangible assets in business. Early legal literature focused on the legal protection of these rights, while more recent works delve into their economic value and strategic application. According to Merges (2004), intellectual property is a crucial asset for businesses, offering them the legal ability to protect, control, and monetize their creations. Similarly, Bently and Sherman (2014) highlighted that trademark have become vital in distinguishing products and services in a competitive market, contributing to customer loyalty and brand equity.

Cohen and Sabel (2006) argue that as markets evolve, businesses increasingly recognize the need to integrate IPR into their business strategies, including in mergers and acquisitions. Trademarks, in particular, serve as brand identifiers that facilitate brand loyalty and consumer recognition. Copyrights, on the other hand, protect creative works like software, music, and literature, and have become key assets for businesses in knowledge-driven industries (Hargreaves, 2011).

2. Copyrights and Trademarks as Business Assets

Copyrights and trademarks are now regarded as business assets with intrinsic value. Scholars such as Kitch (2006) emphasize that the monetization of IPR, especially copyrights and trademarks, plays a significant role in business valuation. In the realm of mergers and acquisitions (M&A), copyrights and trademarks can significantly enhance the perceived value of a company by safeguarding its intellectual creations. Barton Beebe (2012) discusses how the intangibility of IPR makes them challenging to evaluate but critical to business transactions.

The financial significance of copyrights and trademarks is underscored by Chien (2012), who highlights how trademark licensing and franchise agreements serve as revenue-generating mechanisms for businesses. Businesses can leverage trademarks to expand their market presence through franchising, while copyrights enable monetization in industries such as media and entertainment.

3. Role of IPR in Business Transactions: Mergers, Acquisitions, and Licensing

A key area of literature focuses on the role of copyrights and trademarks in business transactions, specifically M&As, licensing, and franchising. According to Liu and Chien (2018), intellectual property rights can be seen as the core assets that define the value of a business during acquisitions. The due diligence process in M&A frequently involves the valuation of IPR and their potential for future revenue generation. They argue that businesses involved in M&As must consider not only the value of the physical assets but also the market position and legal protection offered by copyrights and trademarks.

In the context of licensing and franchising, Mark S. Lee (2011) argues that trademarks play an indispensable role in expanding business operations and generating revenue streams. Businesses can use trademarks in licensing agreements, allowing others to use their brands for a fee, thereby expanding their market reach while maintaining control over brand identity.

4. Counterfeiting and Enforcement of Copyrights and Trademarks

The rise in counterfeiting and piracy has prompted scholars to explore the enforcement mechanisms for copyrights and trademarks. The World Intellectual Property Organization (WIPO) notes that counterfeiting and piracy result in significant losses for businesses, undermining the value of IPR. Ginsburg (2001) discusses how the international legal framework addresses counterfeiting and the challenges businesses face when attempting to enforce their rights across borders.

Further, Fisher (2012) examines the implications of cross-border trade and the complexities of enforcing IPR in global markets. He argues that the increased digitization of creative works, including music and software, has led to an explosion in copyright infringement, complicating enforcement. Similarly, Keller (2015) highlights how trademark counterfeiting is a growing concern in markets where businesses operate internationally, resulting in lost revenue and brand dilution.

5. Challenges and Critiques of IPR in Business Transactions

While copyrights and trademarks are important assets, there are critiques regarding their application in business transactions. Some scholars argue that overly broad protections for Copyrights and trademarks may hinder market competition. William Fisher (2016) contends that excessive copyright protection can lead to monopolies in knowledge-based industries, especially in the software and pharmaceutical sectors.

Additionally, some literature questions the global harmonization of IPR laws, with Rochel and David (2017) noting the discrepancies in how different countries enforce copyright and trademark protection. They argue that such inconsistencies create challenges for businesses operating internationally, particularly in developing nations where intellectual property enforcement may be weaker.

CASES

I. Cadila Health Care Ltd. v. Cadila Pharmaceutical Ltd⁵

In this case, Cadila Health Care Ltd. (the plaintiff) filed a lawsuit against Cadila Pharmaceutical Ltd. (the defendant) for infringing on its registered trademark, specifically regarding the similarity between the marks of their respective products. The plaintiff was engaged in the business of manufacturing and marketing

⁵ Cadila Health Care Ltd. v. Cadila Pharmaceutical Ltd (2001 (5) SCC 73)

pharmaceutical products, including a drug called "Falcigo," which was used for the treatment of malaria. The defendant also manufactured a similar product, "Falcim," which the plaintiff claimed was confusingly similar to its own trademark "Falcigo."

The plaintiff contended that the defendant's use of a similar name and mark for a pharmaceutical product led to the possibility of confusion among the public and could harm its business.

II. Camlin Pvt. Ltd. v. National Pencil Industries 2002 (24) PTC 349⁶

In this case, Camlin Pvt. Ltd. (the plaintiff) filed a suit against National Pencil Industries (the defendant) for infringing its trademark. Camlin Pvt. Ltd. was a well-known company in India, primarily manufacturing stationery products such as pencils, pens, and other writing instruments. The plaintiff's trademark, which included the word "Camlin," was widely recognized and associated with quality products. On the other hand, the defendant, National Pencil Industries, was also involved in the manufacturing of pencils and similar products, and it was using the name "National" for its brand.

The dispute arose because the plaintiff argued that the defendant had adopted the name "National" for its pencils in such a way that it was likely to cause confusion among consumers due to the similarity between the names of the two brands, "Camlin" and "National." The plaintiff claimed that the defendant's use of the name "National Pencil Industries" was infringing upon its established trademark and causing harm to its business reputation.

III. Escort Construction Equipment Ltd. v. Action Construction Equipment Pvt. Ltd. (1999 PTC 36 (Delhi))⁷

In this case, Escort Construction Equipment Ltd. (the plaintiff) filed a suit against Action Construction Equipment Pvt. Ltd. (the defendant) for trademark infringement

⁶ Camlin Pvt. Ltd. v. National Pencil Industries 2002 (24) PTC 349

⁷ Escort Construction Equipment Ltd. v. Action Construction Equipment Pvt. Ltd. (1999 PTC 36 (Delhi))

and passing off. The plaintiff, Escort Construction Equipment Ltd., was a well-known company in the construction equipment manufacturing industry. The plaintiff had registered the trademark "Escorts" and used it extensively in relation to its products, which included machinery, construction vehicles, and other heavy equipment.

The defendant, Action Construction Equipment Pvt. Ltd., had adopted the name "Action" for its construction machinery products. The plaintiff contended that the use of the mark "Action" by the defendant was likely to cause confusion among consumers, given the similarities in the nature of the products and the market overlap. The plaintiff argued that its trademark "Escorts" was well-established in the market and that the defendant's use of a similar name for related goods would likely lead to confusion or misrepresentation, thereby infringing on its rights.

IV. Firm k. Behari Lal v. Firm Adam Haji Premchand Esabh AIR 1944 Sind.21⁸

In the case Firm K. Behari Lal v. Firm Adam Haji Premchand Esabh, the dispute arose between two firms, both involved in the business of selling textiles and related goods in Sind. The plaintiff, Firm K. Behari Lal, was a well-established business, while the defendant, Firm Adam Haji Premchand Esabh, had started using a similar name and selling similar goods. The plaintiff alleged that the defendant's use of a similar name and trade style caused confusion in the market and led customers to believe that the defendant's goods were connected with or endorsed by the plaintiff's established firm.

The plaintiff contended that the defendant's use of the name "Adam Haji Premchand Esabh" was likely to cause confusion and harm the goodwill of the plaintiff's business. The issue at hand was whether the defendant's use of a similar name could amount to an infringement of the plaintiff's trade name and amount to passing off.

⁸ Firm k. Behari Lal v. Firm Adam Haji Premchand Esabh AIR 1944 Sind.21

V. M.R. Verma v. William Hallins and Co. Ltd. AIR 1947 Lah.29⁹

In *M.R. Verma v. William Hallins and Co. Ltd.*, the dispute involved a trademark infringement and passing off action. The plaintiff, M.R. Verma, was a trader engaged in the business of selling various products, including electrical goods. He claimed that the defendant, William Hallins and Co. Ltd., a well-known company engaged in the manufacturing and selling of similar products, was infringing upon his rights by using a mark that closely resembled his registered trademark.

The plaintiff alleged that the defendant's use of a mark that was confusingly similar to his own could lead to consumer confusion, potentially causing harm to the plaintiff's business reputation and goodwill. The defendant, on the other hand, argued that its use of the mark did not infringe upon the plaintiff's rights, as there were sufficient differences between the marks in question, and there was no risk of confusion among consumers.

1.6 HYPOTHESIS

Strong copyright and trademark protection significantly contributes to increased revenue and market share for businesses. Effective management of intellectual property rights enhances a company's competitive advantage and brand value.

Violations of copyright and trademark laws can result in substantial financial losses and reputational damage for businesses. Clear and enforceable intellectual property rights policies are essential for successful business transactions, particularly in licensing, franchising, and mergers and acquisitions.

1.7 RESEARCH METHODOLOGY

.Doctrinal Analysis:

Study of national and international legal frameworks governing copyrights and trademarks.

Comparative Study:

Comparative analysis of practices in jurisdictions like the US, EU, and India.

⁹ *M.R. Verma v. William Hallins and Co. Ltd. AIR 1947 Lah.29*

Case Studies:

Examination of landmark cases and business transactions involving copyrights and trademarks.

Data Analysis: Qualitative Data Analysis:

Thematic analysis of interview transcripts to identify key themes and patterns.

Case study analysis to draw conclusions about the impact of IP management on business success

1.8 STUDENT LEARNING OUTCOME

Understand Intellectual Property (IP) Concepts: Define and explain the importance of copyrights and trademarks as forms of intellectual property and their impact on business operations.

Identify Legal Protections: Demonstrate a clear understanding of how copyrights and trademarks provide legal protection to businesses, safeguarding creative works and brand identity.

Evaluate Business Transactions: Assess the role of these IP rights in business transactions such as mergers, acquisitions, licensing agreements, and franchising, and their effect on business value.

Analyse Market Differentiation: Examine how trademarks and copyrights contribute to market differentiation, consumer trust, and brand loyalty, enhancing a company's competitive advantage.

Understand Risk Management: Evaluate the potential risks businesses face from infringement and misuse of intellectual property and develop strategies for effective enforcement.

Apply Legal Framework: Apply relevant laws and case studies to real-world business scenarios, helping students analyse IP disputes and assess their impact on business decisions

1.9 CHAPTERIZATION:

The research study consists of 6 chapters:

Chapter 1: Introduction and Overview of Intellectual Property Rights

Chapter 2: Legal Framework for Copyrights and Trademarks

The legal framework for copyrights and trademarks is designed to protect intellectual property (IP) rights, ensuring creators and businesses can safeguard their works and brands.

Chapter 3: Copyrights and Trademarks in Business Transaction

In business transactions, copyrights and trademarks play a vital role in mergers, acquisitions, licensing deals, and joint ventures by protecting intellectual property assets and enhancing commercial value.

Chapter 4: Challenges in Enforcement and Practical Implications

Enforcing copyrights and trademarks faces challenges like cross-border infringement, digital piracy, counterfeit goods, and high litigation costs. These hurdles weaken IP protection, demanding robust legal frameworks, international cooperation, and cost-effective enforcement strategies.

Chapter 5: Case Studies on Copyrights and Trademarks in M&A, Licensing, and Franchising

Intellectual property due diligence is the process of reviewing and evaluating a target company's IP assets to discover potential risks and possibilities.

Chapter 6: Recommendations and Conclusion Summary of findings and future

research directions. **Bibliography**

CHAPTER 2

LEGAL FRAMEWORK FOR COPYRIGHTS AND TRADEMARKS

2.1 Introduction

The Copyright Act of 1957 forms the cornerstone of copyright law in India, providing statutory protection for a broad range of creative works. Key provisions include the definition of copyrightable works, duration of protection, rights conferred on copyright owners, and exceptions to copyright infringement.¹⁰

Over the years, the Copyright Act has undergone several amendments to adapt to changing technological landscapes and international obligations. Notable amendments include the insertion of provisions relating to digital rights management, the recognition of performers' rights, and the introduction of statutory licensing schemes for certain categories of works.¹¹

The Copyright Act of 1957 grants exclusive rights to authors and creators of literary, artistic, and musical works, including rights of reproduction, adaptation, publication, and performance.¹²

These rights extend to a diverse range of works, such as books, paintings, sculptures, films, and musical compositions, provided they meet the threshold requirements of originality and fixation in a tangible medium.

Moreover, the Act provides for the protection of moral rights, ensuring that authors' reputations and integrity are preserved in relation to their works

¹⁰ Copyright Act, 1957, India, <https://copyright.gov.in/Documents/CopyrightAct1957.pdf>

¹¹ Rajiv Kr. Choudhry, "Copyright (Amendment) Bill, 2022: A Pathway to Digital Transformation," Lexology, <https://www.lexology.com/library/detail.aspx?g=660ee49d-5ac7-40f3-b107-fbcd80f27>, accessed January 30, 2025

¹² Ibid.

2.2 Copyrights

Copyright relates to any original work of authorship secured in a perceptible medium of expression. It defends the mode in which an author utters knowledge or a set of particulars, but not the concepts or facts themselves. Moreover, copyright relates to an original work of authorship, secured in a concrete medium embodiment consisting of facial expression, body language, and reactions to other performers and features of a scene.

The Copyright Act of 1957 is the primary legislation in India relating to copyright. It adequately protects several creative works. Among the most salient provisions under the Copyright Act are those dealing with copyrightable works, the duration of copyright protection, rights of copyright owners, and exceptional infringement cases¹⁰.

The Act has been amended several times to adapt to changing technology and international commitments. The incorporation of arrangements for advanced freedoms of the executives, the acknowledgement of the privileges of entertainers, and the presentation of legal authorizing plans for specific sorts of works are among the prominent modifications¹³

The 1957 Copyright Act has vested the writers and producers with exclusive rights in all forms of literary, artistic, and musical works, such rights being actualized in reproduction, adaptation, publication of works, and performance

These rights extend to books, paintings, sculptures, cinematographic films, and musical compositions as long as the threshold requirements of originality and fixation in a material form have been met¹³. In addition to this, it also safeguards moral rights, which ensure that the reputation and integrity of the writers regarding their works remain intact. The Copyright Demonstration of India gives common and criminal cures to simplify copyright requirements. Moreover, imprisonment and fines are provided as criminal penalties by the Act for willful copyright infringement for commercial gain

¹³ Copyright Act, 1957, India

Furthermore, any copyright owners can avail of alternative dispute resolution procedures such as mediation and arbitration to settle copyright disputes expeditiously and inexpensively. Common solutions for copyright encroachment incorporate orders, harms, and bookkeeping of profits

2.2.1 Unprotectable Works under Copyright Law

Copyright law is a crucial pillar in the protection of creative and intellectual property. It grants creators exclusive rights over their original works, enabling them to control how those works are used, distributed, and reproduced. However, while copyright is broad in scope, it is not without limitations. There are certain categories of works that fall outside its protective ambit—these are known as "unprotectable works." Understanding these exceptions is essential, not just for legal professionals, but also for creators, businesses, and consumers who navigate the complex world of content creation and innovation. This essay explores the various types of unprotectable works under copyright law, detailing their nature and the reasons why they cannot be protected.

1. Ideas, Methods, or Systems

One of the fundamental principles of copyright law is the **idea-expression dichotomy**, which states that **ideas themselves cannot be copyrighted**, only the particular expression of those ideas can. This rule is based on the notion that ideas are the building blocks of creativity and innovation and should remain in the public domain to encourage further development.

Examples of unprotectable elements under this category include **scientific or technical methods, processes, operations, formulas, and algorithms**. For instance, while a specific written explanation of a new scientific method can be copyrighted, the method itself cannot. Similarly, a computer algorithm, when described in literary form, may be protected in its specific written code, but the underlying logic and process are not.

This ensures that no one can monopolize ideas that are essential for others to build upon. For example, Newton's laws of motion or Einstein's theory of relativity are scientific concepts that are free for everyone to study and use. A textbook

explaining them may be copyrighted in its particular form, but the scientific concepts themselves are not.

2. **Widely Known Information**

Copyright law does not protect **facts, common knowledge, or data** that are widely known or easily accessible. This includes items such as **calendars, height and weight charts, rulers, tape measures, and standard measurement systems.**

The rationale here is that such information is universal in nature and cannot be claimed as someone's original creation. For example, no one can copyright the periodic table, the multiplication table, or the number of days in a week. While someone can present this information in a unique visual format or design, the underlying facts remain unprotectable.

This category also includes historical dates, geographical data, and scientific measurements. If copyright law were to extend to these areas, it would hinder education, research, and everyday life by placing basic knowledge behind legal barriers.

3. **Choreographic Works and Speeches (Unfixed Works)**

Another critical requirement for copyright protection is **fixation**. This means that a work must be captured in a tangible medium of expression—something that can be seen, heard, or reproduced. If a work is not recorded or written down, it cannot be copyrighted.

For example, **choreographic works** that are not recorded on video or written in some form of dance notation are not eligible for copyright protection. A dance performed live without being documented cannot be protected, as there is no fixed version of it that proves its originality or authorship.

Similarly, **speeches that have not been transcribed or recorded** cannot be protected by copyright. If a public figure delivers an improvised speech and it is not written down or recorded, it remains unprotected. Only when the speech is written or recorded does it become eligible for copyright.

This principle ensures that copyright law deals with tangible, verifiable content rather than fleeting, impermanent ideas or performances.

4. Short Phrases, Titles, and Names

Many people assume that any original phrase or name they come up with is automatically protected by copyright. However, **short phrases, names, slogans, and titles** are explicitly excluded from copyright protection. These elements are considered too minimal to contain the necessary level of creativity or originality required by copyright law.

For example, the title of a book, such as "*Gone with the Wind*", is not protected by copyright. While the content of the book is copyrighted, its title is not. Similarly, phrases like "Just Do It" or "I'm Lovin' It" are not protected by copyright but can be protected under **trademark law**.

Trademark protection is more appropriate in such cases, as it safeguards distinctive signs that represent a brand or product in commerce. For instance, **brand names, logos, and slogans** can be trademarked if they are used in connection with goods or services and meet certain distinctiveness criteria.

5. Fashion and Functional Items

Fashion is an industry built on constant reinvention and stylistic evolution. However, contrary to popular belief, **not all elements of fashion design are eligible for copyright protection**. Copyright does not extend to **useful or functional articles**, such as clothing, furniture, or tools, unless there is an element of design that is separable from its function.

For instance, a **shirt or pair of jeans** cannot be copyrighted simply because of their shape or utility. But if a shirt features a unique **artistic pattern or design**, that element may be copyrighted separately. The underlying article of clothing remains unprotected, but the artistic embellishment can be protected as a graphic or visual work.

A well-known example is the **three-stripe design of Adidas**, which is not protected by copyright but is **trademarked**. This design is used consistently across Adidas products, and consumers associate it directly with the brand. If another company uses a similar pattern, it could constitute trademark infringement—not copyright infringement.

This distinction highlights how different aspects of a product may be protected under different branches of intellectual property law, including **design patents** and **trademarks**, even when copyright does not apply.

2.2.2 Significance of Copyright

Copyright is a fundamental aspect of intellectual property law that serves to protect the original works of creators, ensuring they are recognized and rewarded for their contributions. From literature, music, and films to software, architecture, and visual art, copyright safeguards a wide array of creative expressions. The law plays a vital role not only in protecting the interests of individual creators but also in promoting broader economic growth, cultural development, and societal innovation.

a) Legal Protection and Ownership Rights

At its core, **copyright is a legal right granted to the creator of an original work**, giving them exclusive authority over the use and distribution of that work. This includes the right to reproduce, publish, perform, display, and adapt the work, among others. Without this protection, anyone could freely copy or distribute someone else's creation without acknowledgment or compensation.

This legal framework ensures that creators are **protected from unauthorized use, duplication, or exploitation** of their work. For example, a musician who composes a song is granted copyright over the musical composition, preventing others from reproducing or selling it without permission. This protection fosters respect for ownership and discourages theft or plagiarism.

Moreover, copyright provides a clear mechanism for **licensing and monetizing intellectual property**. Individuals or organizations can license their copyrighted work to others for a fee or royalties, turning creative endeavors into sustainable

sources of income. This system ensures that creators benefit both financially and reputationally from their original contributions.

b) **Encouragement of Creativity and Innovation**

Copyright plays a pivotal role in **encouraging creativity and innovation** by offering creators a sense of security and recognition. When individuals know their work is protected and that they will retain rights over its use and distribution, they are more likely to invest time, energy, and resources into the creative process.

Without such assurance, creators might hesitate to pursue new ideas or share their work with the public, fearing that others may exploit their efforts without due credit or compensation. Copyright law addresses this concern by ensuring that **the creator retains control over how their work is used**, and by doing so, promotes a culture of trust and fairness in creative industries.

This encouragement extends beyond individuals to corporations and research institutions as well. For example, companies that develop new software or media content rely heavily on copyright protection to safeguard their intellectual investments. Knowing that the law will protect their innovations, businesses are more willing to **invest in research and development (R&D)**, ultimately leading to new technologies and creative works that benefit society at large.

c) **Economic Support and Fair Competition**

Beyond the benefits to individual creators, **copyright supports broader economic growth** by fostering fair competition and innovation. It allows businesses to differentiate their products and services through protected creative elements—such as branding, packaging designs, product manuals, original software, and audiovisual media—thereby enhancing their competitiveness in the market.

Additionally, copyright helps to ensure a **level playing field** by preventing competitors from unfairly exploiting someone else's work for commercial gain. For instance, if a company spends years developing an original training manual, copyright law prevents another company from copying and reselling that manual.

under its own name. This encourages businesses to develop their own unique materials rather than relying on unauthorized use of others' content.

In this way, **copyright protections stimulate growth in various sectors**, especially those rooted in innovation and creative content. Industries such as publishing, film, music, advertising, video games, education, and software development are all heavily reliant on copyright to protect their investments and ensure sustainable revenue streams.

Furthermore, the **protection of intellectual property leads to job creation and economic contribution**. According to data from many economies, copyright-intensive industries contribute a significant portion of GDP and employment. These industries also tend to be among the most rapidly growing sectors, indicating the pivotal role of copyright in shaping modern economies.

2.2.3 Copyright and Its Influence on Business Transactions

In business, copyright protects intellectual property assets. Under copyright protection, a company can create exclusive rights over its intellectual property assets and, hence, maintain the market value, competitiveness, and innovativeness of such assets, including software, literary works, artistic designs, cinematographic works, and other related creative manifestations

Licensing and assignment agreements over copyright are, quite simply, essential tools of commerce that any copyright owner must avail themselves of if they seek to commercialize their intellectual property assets and expand their commercial presence. Assignment agreements pass the title in copyrights to another party

In nature, these agreements facilitate collaboration, distribution, and exploitation of copyrighted works to enhance revenue streams and avail market opportunities for firms.

Licensing agreements assure a third party of the usage rights of copyrighted works under certain conditions, like duration, territory, or royalty payments. Infringement-related litigation has, in many respects, been the proper tool for safeguarding the copyright owner's interest in preventing the unauthorized use or reproduction of a

work. Businesses, therefore, do litigate while exercising rights against copyright infringement and seek injunctions, damages, and other remedies against infringing parties²⁴. The jurisprudence on Copyright Law in India has been developing through landmark Court judgments and copyright infringement cases, which have served to outline applicable legal theories, concepts, and defences.¹⁴

The two shoppers and copyright proprietors face open doors and difficulties because of the critical impact that digitalization and innovation have on the part copyright play in business exchanges. Computerized advances present colossal dangers of copyright infringement, robbery, and unauthorized utilization of works protected by copyright, regardless of giving never-beforeseen access to worldwide business sectors and audiences²⁵. To limit these dangers and maximize the worth of their scholarly resources in the computerized market, associations need to carry areas of strength for our freedoms the executive's arrangements, innovation arrangements, and implementation strategies. The result has thus been a sea change in copyrighted works of in-developed, distributed and consumed works¹⁵

2.2.4 benefits of Copyright

Copyright law is an essential element of intellectual property protection. It offers significant advantages to creators, businesses, and society as a whole by safeguarding creative works from unauthorized use and ensuring the rights of authors, artists, and other creators are respected and recognized. The benefits of copyright extend far beyond mere protection; it provides a structured, legal framework that encourages innovation, supports fair competition, and enhances economic growth.

In this article, we will explore the various **benefits of copyright**, focusing on its role in protecting the ownership of creative works, allowing creators to assert their rights, and ensuring fair use in the marketplace.

¹⁴ Rajiv Kr. Choudhry, "Copyright (Amendment) Bill, 2022: A Pathway to Digital Transformation," Lexology, <https://www.lexology.com/library/detail.aspx?g=660ee49d-5ac7-40f3-b107-fbcd80f27>, accessed feb 17, 202

¹⁵ Ibid

1. Creation of a Public Record of Ownership

One of the key benefits of copyright is the **creation of a public record of the copyright holder's ownership**. When a work is registered with the relevant copyright office, it becomes a matter of public record that documents the creator's legal rights to the work. This record serves several purposes:

- **Proof of ownership:** It establishes that the creator holds the exclusive rights to the work, making it easier to prove ownership if the work is challenged or infringed upon.
- **Public accessibility:** By creating a publicly accessible record, copyright law ensures transparency in the ownership of creative works, which can help avoid disputes about who holds the rights to a particular work.
- **Legal clarity:** This record offers clarity to potential licensees, distributors, or other stakeholders who might be interested in using or partnering with the work's creator. It simplifies the process of licensing the work for commercial purposes.

Having a public record of ownership can be particularly valuable in industries where intellectual property is a major source of revenue, such as music, film, literature, and software development. Copyright registration acts as a formal declaration of the creator's rights, making the process of asserting those rights more straightforward in case of any legal disputes.

2. The Right to Sue Infringers

One of the most significant benefits of copyright protection is that it provides the copyright holder with the **legal right to sue infringers in court**. This legal right is crucial because it gives creators the ability to take legal action against those who use their works without permission, providing a clear remedy in cases of infringement.

Without copyright protection, creators would have little recourse if someone used their work without authorization. For example, an author whose novel is reproduced and sold without permission could take the matter to court to seek damages and

prevent further infringement. Copyright protection empowers creators to defend their intellectual property rights and seek justice in a court of law.

In the event of infringement, the copyright holder can file a lawsuit and, depending on the case, may be entitled to **statutory damages** or **actual damages and profits** resulting from the infringement. This ability to pursue legal action ensures that creators can safeguard their financial and moral interests.

3. Sufficient Evidence for Court Action

Copyright law provides that if a legal action is taken **within a set time frame from the publication date**, the copyright holder can present **sufficient evidence in court** regarding the validity of the copyright. Copyright registration serves as a legal document that helps prove the ownership of the work and the **date of creation**. This is crucial in the event of a dispute over who created the work or when it was first published.

For example, if two authors claim ownership of the same manuscript, the registration document can provide critical evidence showing which party owns the copyright and when the work was first created. Without a registered copyright, it can be challenging to prove the creation date or ownership, leading to lengthy and complex legal disputes.

Moreover, copyright registration can strengthen a case by showing that the copyright holder has complied with the formal requirements of the copyright system, which adds legitimacy to their claim. The ability to present registration as evidence helps streamline litigation processes and increase the likelihood of a favorable outcome for the creator.

4. Statutory Damages and Legal Remedies

One of the most significant advantages of copyright registration is the ability to **claim statutory damages** in a court case. Statutory damages are predetermined monetary awards set by law, and they are distinct from actual damages (the actual loss suffered by the copyright holder) and profits (the amount the infringer made from the infringement).

By registering their work, the copyright holder can file a claim for statutory damages, which can be especially useful when the actual damages are difficult to quantify. Statutory damages are typically available in cases of **willful infringement**, meaning the infringer intentionally violated the copyright holder's rights. These damages serve as a deterrent against unauthorized copying and usage, providing a strong financial incentive to respect the intellectual property rights of others.

The ability to claim statutory damages is particularly helpful in situations where calculating actual damages would be challenging, such as with digital works that have been distributed online without permission. Statutory damages allow the court to award compensation based on the scale of the infringement, rather than requiring a detailed analysis of lost profits.

Additionally, **punitive damages** may also be awarded in cases of willful infringement, further dissuading parties from engaging in unlawful behavior.

5. Protection Against the Importation of Pirated Works

Another critical benefit of copyright registration is that it allows the copyright owner to **record their registration with Customs authorities**, providing a mechanism for the **protection against the importation of pirated copies of their work into the country**. This is particularly important in countries like India, where there may be concerns about the illegal importation and distribution of counterfeit or pirated goods.

By registering their copyright with Customs, the creator can request that Customs authorities **seize any pirated or unauthorized copies of their work** that are being imported into the country. This allows copyright holders to prevent the circulation of counterfeit goods and maintain the integrity of their original work. This mechanism is especially useful in industries such as fashion, technology, and entertainment, where pirated goods and unauthorized copies can significantly impact revenue streams.

The protection provided by Customs authorities helps preserve the financial value of the copyrighted work and ensures that creators are not deprived of their earnings due to the sale of counterfeit or pirated versions of their products.

2.3 Trademark

The Trademarks Act of 1999 created a system for registering marks that can differentiate one trader's goods or services from those of another¹⁷. The registration procedure comprises applying to the Trademarks Registry, together with the required fees and evidence of distinctiveness or acquired distinctiveness. Marks that fulfil the eligibility requirements are registered and awarded exclusive rights to use the mark in connection with the specified products or services. The Exchange Imprints Act does not permit the utilization of comparable imprints referring to similar goods and services without consent, which is recognized as brand infringement. Directives, damages, and a list of benefits are some of the reliefs that can be availed for encroachment, which includes operation goals to protect the generosity and notoriety of the brand.

In India, trademark disputes are resolved by specialized forums, such as the Intellectual Property Appellate Board (IPAB) and the courts, with provisions for appeals and alternative dispute resolution mechanisms, such as mediation and arbitration. Registered marks include logos, images, mottos, or combinations thereof, which can distinguish one broker's products or services from those of another. The Trade Marks Act provides civil remedies such as injunctions, damages, and the seizure of infringing goods¹⁶. The Demonstration additionally accommodates criminal authorizations, like detainment and fines, for duplicating or robbery of enrolled trademarks.

This is the power and importance of having a trademark. These strong companies were not born with this monopolistic association between their brands and the products/services that they provide to consumers.

Not only did they think up a name, symbol, design, or logo which resonated with their business concepts, additionally they got their intellectual property registered as a trademark.

¹⁶ Trade Marks Act, 1999, India.

A trademark is one of the most important assets that a business will ever own because it helps a business to identify and distinguish the business in the market and its products/services in the marketplace from its competitors.

It is absolutely important to the success of every upcoming and ongoing business in the market. Therefore, it is crucial for every business owner to take a sufficient amount of action to protect and enforce its trademark today.

Trademark law helps consumers in the marketplace to easily recognize products even from a distance. As trademark owners or business owners, you can say you have the right to stop others, including their competitors in the market from using their trademark or any mark that is deceptively similar to their trademark and can cause confusion in the minds of target consumers.

Trademark protection encourages three main policies- defence of the business owner's goodwill, the image, and the efficiency of the economy.

2.3.1 Significance of Trademarks

1. Memorability

The organization's name, logo, and other marking components are quickly conspicuous thanks to a brand name. In a crowded market, it helps the product stand out from the competition. Clients see an association's thing by its image name, which helps with making brand commitment which is hugely valuable for the brand. Like - the logos of brands Nike, and Apple are compelling to the point that shoppers can perceive the item by simply seeing the logo on the double, this assists the brands with hanging out on the lookout.

2. Safeguards the intellectual property of the company A trademark also gives a company's name, logo, tagline, and other branding elements legal protection. Legal action may be taken against you if you attempt to copy or imitate a trademarked name or logo. This adds to smooth deals.

3. Works with Business Development A company's trademarks are transferable, valuable assets that can be assigned to others or licensed to them. This implies that

a business with a solid brand name can make income streams from permitting their brand names to others which can be extra benefit for the business.

4. Marketing device Trademarks are an excellent marketing tool for spreading awareness of a brand's name and logo. This campaign does not only identify the brand but also builds its reputation in the market. In this way, brands can efficiently use the facilities of the internet and social media to mark their existence in any market. For example, such a customer will buy the product or use services, increase ranking and thus further traffic to the website upon searching for the brand name online, increasing the amount of traffic towards the website.

5. It provides economic protection for businesses If an organization gets its enlisted brand name, it goes for a lifetime assuming they keep it reestablishing after finish like clockwork from the date of enrolment, restoration by and large should be possible for a minimal price and fills in as a benefit till the business go on as an important resource.

6. Establishes Credibility And Trust A solid, perceived brand name assists with building trust and validity with clients. It guarantees clients that an organization is genuine and focused on giving quality labour and products

2.3.2 Trademark And Its Influence On Business Transactions

Brand names are essential to bargains because they spread a brand's personality, reputation, and liberality throughout the business community. Because trademarks serve as valuable assets that distinguish one company's products or services from those of competitors, customers can make educated purchasing decisions based on brand recognition and trust

By investing in brand security, businesses can increase deals, share of the pie, and profit. They can build and maintain a robust brand equity, which gives them a competitive advantage as well as brand loyalty. Brand name authorizing and diversifying arrangements are essential for utilizing brand esteem and expanding business tasks through essential associations and coordinated efforts.

Establishment arrangements include authorizing to franchisees a whole plan of action, including brand names, expertise, and working systems. These courses of action empower organizations to exploit their image value, enter new business sectors, and create extra income streams while keeping up with command over brand trustworthiness and client experience. Third parties are granted the right to use trademarks under specific terms and conditions, such as quality standards, royalties, and territorial restrictions, in trademark licensing agreements.

Despite the benefits of trademark protection, businesses face numerous challenges when enforcing their trademark rights in business transactions. Competitors, forgers, or dark market administrators pose serious threats to brand notoriety, customer trust, and market share²⁹ through trademark encroachment, duplication, and unapproved use. In addition, the proliferation of global inventory chains, online shopping malls, virtual entertainment venues, and brand requirements has made it more difficult for businesses to identify, screen, and combat illegal activities.

Due to emerging brand executive patterns like brand expansion, co-marking, and brand authorizing, businesses now have new opportunities to increase the value of their brands and capitalize on shifting customer preferences and market patterns.

Brand allowing engages associations to extend their picture adventure into new business areas, economics, and scattering channels through key approving concurrences with untouchable licensees³⁰. These examples feature the meaning of key brands the board, progression, and adaptability in investigating relentless business areas and driving practical turn of events. Brand extension is the process of utilizing existing brand equity to introduce new goods or services in related or unrelated categories. The process of collaborating with other brands to create novel products and synergistic alliances is known as co-branding.

2.3.3 Benefits of Trademarks

In today's highly competitive business environment, standing out from the crowd is critical to success. One of the most powerful tools businesses can leverage to distinguish themselves from competitors and to build recognition is the **trademark**. A trademark is any distinctive mark, word, logo, symbol, or other identifiers that

businesses use to distinguish their products or services from those of others. It serves as an essential asset that not only protects the business's identity but also plays a pivotal role in enhancing its reputation and fostering customer loyalty.

Trademarks are integral to building a brand, creating an identity, and providing a framework for business owners to communicate with their target market. In this article, we will explore the many **benefits of trademarks**, highlighting their importance in communication, differentiation, consumer recognition, reputation building, and online marketing.

1. **Effective Communication Tool**

A trademark is an incredibly effective communication tool for businesses, enabling them to convey a wide array of messages to their customers. Although intangible, a trademark communicates the essence of a business in a concise and visual manner. For instance, a simple logo or name can communicate complex ideas about a company's values, mission, and quality without the need for lengthy explanations.

When used consistently, a trademark **embodies the business's identity** and reputation. For example, the **Nike Swoosh** or the **Apple logo** immediately evokes images of innovation, quality, and trustworthiness. These visual elements transcend words, creating a **symbolic connection** between the company and the consumer. In this sense, trademarks serve as shorthand for conveying the business's character and promise to customers.

2. **Conveying Intellectual and Emotional Messages**

Beyond the functional aspect of distinguishing products and services, trademarks also have the unique ability to convey **emotional and intellectual attributes** about a business. A well-crafted trademark can evoke feelings of trust, luxury, reliability, or creativity, influencing the consumer's perception of the business and its offerings.

Take, for example, **Coca-Cola's** trademark. The iconic red and white logo doesn't just represent a soft drink—it conveys nostalgia, happiness, and refreshment. Similarly, **Tesla's logo** communicates innovation, cutting-edge technology, and a

commitment to sustainability. These emotional messages play a key role in shaping customer attitudes, loyalty, and long-term relationships with a brand.

In this way, a trademark becomes more than just a visual or auditory marker; it transforms into a **storytelling device** that communicates the values, vision, and aspirations of the business. The intellectual and emotional associations attached to a trademark help businesses forge **stronger connections** with their customers, ultimately leading to **higher customer retention and brand loyalty**.

3. Distinguishing Your Business in a Crowded Marketplace

The modern marketplace is overcrowded with businesses vying for consumer attention. It's not always easy for consumers to identify products or services that meet their needs or stand out from the competition. A trademark **makes it easier for customers to identify a business and its offerings** among the sea of options available in the market.

For example, when a consumer sees the **McDonald's golden arches**, they instantly recognize the brand and associate it with fast, convenient, and affordable meals. A trademark helps to create **visibility** in a competitive market, making it easier for businesses to capture and maintain consumer attention.

The role of trademarks in **differentiation** is particularly important in industries that are crowded with competitors offering similar products or services. In sectors such as technology, fashion, or food, a distinctive trademark allows businesses to communicate to customers that their product is unique and worthy of attention. Without a trademark, a business risks blending in with the competition and losing its identity in the market.

4. Reputation and Trust

A trademark is not just a visual or auditory cue—it's a **symbol of reputation and trust**. For consumers, encountering a trademark signals that they are dealing with a business they are familiar with or have come to trust. This familiarity can be the key to driving repeat purchases and fostering brand loyalty.

Customers tend to gravitate toward brands they recognize and trust because they associate the trademark with positive experiences. For instance, **Disney's trademark** is often seen as a mark of family-friendly entertainment and quality, whereas **Rolex's trademark** is viewed as a symbol of luxury, precision, and prestige. The reputation that businesses build over time through consistent delivery of value is encapsulated in their trademark.

Furthermore, a trademark also acts as an assurance that the customer will receive a product or service that meets a certain standard. If a customer purchases a **Coca-Cola** beverage or a **Sony** product, they are more likely to trust the quality of what they are buying because of the longstanding reputation associated with those trademarks. This trust reduces the perceived risk of purchasing a product and enhances customer satisfaction.

5. Increased Brand Recognition

One of the most important functions of a trademark is its ability to **increase brand recognition**. A well-established trademark provides a business with a competitive edge, as consumers are more likely to recognize and choose products or services from familiar brands. The more visible and recognizable a trademark becomes, the stronger its association with the brand.

Brand recognition is an essential element in consumer decision-making. When consumers are faced with multiple options in the marketplace, they tend to choose the brands they recognize and trust. Over time, this recognition can translate into **market dominance**, as customers continually select products associated with a reliable trademark.

The **“golden arches” of McDonald's** or the **Nike “swoosh”** have become globally recognizable symbols that represent not just a product, but a lifestyle. This recognition is a significant asset for businesses, as it leads to **higher visibility**, increased sales, and greater market share.

6. Facilitates Online and Social Media Marketing

The Internet and social media have revolutionized the way businesses engage with customers. Trademarks are crucial for establishing a strong **digital presence** in the online marketplace. In the age of e-commerce and social media marketing, a recognizable trademark can help businesses stand out and attract attention on platforms such as Instagram, Twitter, Facebook, and LinkedIn.

For example, many businesses use their trademark to craft memorable and easily shareable social media content, creating viral campaigns and fostering customer engagement. **Instagram influencers**, for instance, often use hashtags that include a brand's trademark, contributing to a greater reach and recognition for the business. By associating their products with a **well-established trademark**, businesses can ensure that their brand message is clear, consistent, and easily identifiable across digital channels.

Additionally, trademarks can help **protect online identities** by allowing businesses to secure domain names, handle brand-related legal issues, and prevent infringement. As businesses grow their online presence, having a registered trademark ensures that others cannot unfairly exploit their brand identity in the digital realm.

7. Long-Term Value and Business Asset

A trademark is not just a temporary marketing tool—it is a long-term **business asset** that can increase in value over time. As a business grows and develops a larger market share, the trademark's value can appreciate significantly. This asset can be leveraged for **licensing opportunities**, partnerships, and franchising deals, allowing businesses to generate additional revenue streams.

For example, **Disney's trademark** has grown in value as the company expanded its entertainment empire, encompassing movies, theme parks, merchandise, and more. The **Mickey Mouse** trademark, once associated with a simple cartoon character, has become one of the most valuable trademarks in the world, representing a wide array of entertainment offerings and experiences.

This potential for long-term value makes trademarks an important investment for businesses. In fact, a strong and recognizable trademark can significantly contribute to a company's **overall brand equity**, which enhances its market value and provides additional opportunities for expansion.

2.4 Importance of Ipr in Commercial Transaction

The IPRs are crucial for business transactions because they safeguard the creativity and innovations that companies make, which may be significant assets in the marketplace.

IPR is crucial for business transactions for the following reasons:

- IPR gives firms the exclusive rights to their innovations, inventions, and creative works, protecting innovation. This protection enables companies to spend money on R&D to produce novel goods and services that can be bought and sold in the market. Businesses wouldn't have the required incentives to invest in innovation without IPR protection since their rivals may easily steal their ideas without repercussions.
- IPR aids firms in establishing ownership of their original works, ideas, and creations. Because it enables companies to establish the worth of their intellectual property assets and to bargain for favourable terms, ownership is significant in business transactions including mergers, acquisitions, and licencing agreements.
- Generating money: The owner of the intellectual property can make money by licencing or selling their IPR to other companies. For instance, a company might charge another company to use its patented technology or sell a third party its copyrighted works. These transactions are a key source of income for corporations and have the potential to earn large sums of money.
- Brand value creation: Trademarks are a crucial type of IPR that safeguard a company's brand identity. A powerful brand may boost client loyalty, foster goodwill, and drive up pricing for goods and services. In business transactions, a company's trademarks may be a priceless asset that raises the worth of the firm as a whole. IPR is important because it safeguards the inventive and creative assets that firms rely on for success, IPR is crucial for any commercial

transaction. Businesses may make money, acquire a competitive edge, and protect their interests against infringement and other types of exploitation with its help. Intangible assets produced by human ingenuity and creativity are protected by a set of legal rights known as intellectual property rights (IPR).

Inventions, literary and creative works, symbols, names, pictures, and designs are a few examples of these assets. IPR is essential in business transactions because it promotes innovation while safeguarding a company's rights and assets. IPR is significant in business transactions for a number of reasons, one of which is that it aids in safeguarding a company's distinctive goods or services. For instance, patents might grant the only right to create, use, and market a certain innovation, barring rivals from replicating it.

A company's branding and marketing elements, such as logos and slogans, can be protected by trademarks and used to set its goods apart from those of rivals. IPR can also support a company's efforts to maintain market exclusivity. This may be crucial for luring capital, obtaining finance, and expanding market share. Investors and stakeholders are more inclined to put money into a business that has a distinct competitive advantage and robust asset protection laws. IPR may also improve a business's reputation and brand value.

Trademarks, copyrights, and other intellectual property rights (IPR) may improve a company's reputation as a leader in its field and assist to increase brand awareness and consumer loyalty. Increased market share and profitability may result from this. The ability of IPR to promote innovation in business transactions is a significant part of the law. IPR offers financial incentives for businesses and people to participate in R&D, resulting in the creation of fresh, cutting-edge goods and services. Without IPR, there would be less of a reason to fund innovation, which may limit advancement and economic growth.

International commercial transactions employ intellectual property rights (IPR) to safeguard the interests of the parties involved and to guarantee that the parties can use the intellectual property included in the transaction in a safe and legal manner. IPR is employed in international business transactions in the following ways:

- **Licensing contracts:** Licensing contracts are frequently used in cross-border business transactions to give a party the right to utilise a particular intellectual property asset. These contracts frequently contain provisions addressing ownership, permissible uses, and royalties.
- **Trademark registration:** Registering a trademark is crucial in cross-border business deals to safeguard the brand and make sure it may be used without violating the rights of others. A registered trademark offers defence in court against.
- **Patent protection:** Patents are crucial in cross-border business transactions, particularly in technology-based businesses, as they safeguard inventions and offer a means of redress for infringement by rivals. The Patent Cooperation Treaty (PCT), which permits applicants to submit a single patent application that can be acknowledged in several nations, can be used to secure international patent protection.
- **Copyright protection:** To safeguard artistic, literary, and other types of creative works, copyright protection is crucial in cross-border business deals. Registration offers extra legal protection against third-party infringement and can be used to secure copyright protection.
- **Resolution of Disputes:** Disputes involving intellectual property rights may result from international business transactions. To settle these disagreements and guarantee that the parties' rights are upheld, conflict resolution procedures like arbitration or litigation might be utilised for protection of rights of the parties

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CHAPTER 3

COPYRIGHTS AND TRADEMARKS IN BUSINESS TRANSACTIONS

3.1 Introduction

Copyright proposes authors a legal instrument that compensates them for their creative works. Copyrights are not outright, and a copyright holder never has comprehensive control over all probable practices of the work. A copyright is the right given to inventors for their artistic works or literature, incorporating mediums such as books and e-books, newspapers, plays, computer programs, databases, films, musical compositions, paintings, photographs, sculpture, architecture, advertisements and maps. Copyright does not hold concepts, processes or procedures, mathematical concepts or systems of operation¹. The objective of copyright law is to rule out the unlawful use or piracy of any artistic work or literature by a third party. Works that are not secured by copyright law belong to the public.¹⁷

Trademark law permits consumers, in the marketplace, to rapidly recognize a product they adored or disliked earlier. As a result, trademarks enable companies and consumers to differentiate among the various competing manufacturers of a given product. No one is permitted to trade or supply possessions beneath the look that the possessions develop from someone else. The prominence of consumer protection cannot be exaggerated, and the regular consumer standard should persist the significance of the analysis, and also for field name litigation. Trademark protection encourages three main policies: defense of the trademark holder's goodwill, safety of the consumer, and the efficiency of economy¹⁸

¹⁷ López Martínez, I. (2020). The Reconciliation of Secondary Liability for Trademark and Copyright Law Through Tort Law in Different E-Commerce Situations. a Comparative Study Between Us and EU Systems. Available at SSRN 3771170

¹⁸ Power, B., & Reid, G. C. (2020). The impact of intellectual property types on the performance of business start-ups in the United States. *International Small Business Journal*, 0266242620967009.

3.2 Copyrights

Copyright is a form of security provided to the creators of “original works of authorship” including literary, dramatic, musical and artistic works. Copyright law usually delivers the copyright owner with the exclusive right to use and reproduce the copyrighted work, to prepare derivative works, to distribute copies of the copyrighted work, to accomplish the copyrighted work publicly, and to display the copyrighted work publicly for a very long time (for example, 95 years after the work is published by your company).

Copyrights can be used to safeguard your company’s original creative works – sales brochures, advertising and promotional materials, videos, instruction manuals, photographs and website content – from being used by others without your permission⁴. As a copyright owner, you can control how your work is reproduced, circulated and presented publicly. Importantly, you can stop others (including competitors) from using your copyrighted works or works that are considerably similar to yours.

Unauthorized Access to Computer Systems: The CFAA criminalizes unauthorized access to protected computer systems, including using deception or fraud to gain access (e.g., hacking into financial systems).

1. **Fraud and Misuse of Information:** The law specifically targets instances where individuals access computers to commit fraud or steal sensitive information. This includes the use of phishing schemes to obtain login credentials and other financial frauds.
2. **Damaging Systems or Data:** It also criminalizes the intentional damaging of data or systems, which may be linked to fraudulent activities such as deleting financial records or spreading malware.

While the CFAA was originally designed to target hacking and unauthorized access, its broad language has also been used to address cyber fraud activities, such as exploiting weaknesses in online banking systems or stealing sensitive financial data.

3.3 Trademark

A trademark is something that is used to detect and decide the goods or services of one company from the others. In the business world, a trademark is usually referred to as a brand name or simply a brand. Trademarks embrace words, logos, names, symbols, and taglines or slogans. Trademarks normally display on the definite product or on its packaging. However, service marks appear regularly in marketing for the services or on company websites. Trademarks are also important to the success of licensed businesses.

A trademark is one of the most significant business resources that a company will endlessly own because it ascertains and differentiates the company and its products/services in the marketplace from its respective competitors. Therefore, it is good practice for all business owners to take appropriate action to safeguard and implement valuable trademarks

3.4 Comparative Analysis: Copyright vs. Trademark in Business Transactions

Copyright and trademark laws share similarities in their objectives of protecting intellectual property rights, but they differ in terms of the subject matter, scope of protection, and enforcement mechanisms. Copyright primarily protects original works of authorship, such as literary, artistic, and musical creations, while trademark safeguards distinctive signs, symbols, or expressions used to identify and distinguish goods or services.¹⁹

Copyright protection arises automatically upon the creation of a work, while trademark protection requires registration with the appropriate authorities. Moreover, copyright protection is generally broader in scope and duration than trademark protection, which is limited to specific goods or services and subject to renewal.

However, both copyright and trademark laws provide owners with exclusive rights to use, license, and enforce their intellectual property assets against infringing parties.

¹⁹ World Intellectual Property Organization (WIPO), "Copyright," <https://www.wipo.int/copyright/en/>, accessed January 30, 2025

Copyright and trademark protection play complementary roles in business strategies, offering businesses different avenues for leveraging their intellectual property assets and enhancing their competitiveness in the marketplace.²⁰

Copyright protection is particularly effective for businesses with creative works, such as software companies, publishing houses, and entertainment studios, enabling them to monetize their content through licensing, distribution, and merchandising.⁴⁰ On the other hand, trademarks are indispensable for businesses seeking to build brand equity, loyalty, and recognition among consumers, driving sales, market share, and long-term growth.²¹ By integrating copyright and trademark strategies into their business models, businesses can create synergies, maximize the value of their intellectual property portfolio, and gain a competitive edge in dynamic markets.

Case studies and examples provide valuable insights into the practical implications of copyright and trademark laws in business transactions. For instance, the case of Sony v. Universal Studios exemplifies the importance of copyright protection in the entertainment industry, where Sony successfully defended its rights to produce and distribute VCRs capable of recording copyrighted television programs for personal use.⁴² Similarly, the case of Coca-Cola v. PepsiCo illustrates the strategic significance of trademarks in brand differentiation and consumer loyalty, with Coca-Cola successfully protecting its iconic trademark against infringement by PepsiCo.⁴³ These case studies highlight the pivotal role of copyright and trademark laws in shaping business strategies, fostering innovation, and safeguarding intellectual property rights in diverse industries and context

1. Consumers have the right to know what personal information is being collected and to request that their data be deleted.
2. The law mandates businesses to implement reasonable security measures to protect consumer data from unauthorized access and fraud.
3. It also allows consumers to opt-out of the sale of their personal information, reducing the risk of data breaches and subsequent fraud.

²⁰ Intellectual Property India, "Trademark," <https://ipindia.gov.in/trademark.htm>, accessed January 30, 2025

²¹ Ibid

- Other states have also enacted similar laws, including the New York SHIELD Act (requiring businesses to protect private information), and Virginia's Consumer Data Protection Act (CDPA), further strengthening protections against cyber fraud at the state level



CHAPTER 4

CHALLENGES IN ENFORCEMENT AND PRACTICAL IMPLICATIONS

4.1 Introduction

Associations that work in worldwide business sectors face challenges because of the shortfall of uniform copyright and brand name regulations across locales²². As a result, they must navigate a variety of legal frameworks and abide by numerous regulatory requirements. Also, the development of new advancements like blockchain and computerized reasoning raises new legitimate and administrative worries concerning reserve and copyright assurance, requiring continuous alteration and advancement in lawful systems.

Bulky enrolment systems, ambiguity in legal principles, and jurisdictional issues are among these issues. Copyright and trademark protection in business transactions is seriously threatened by counterfeiting and enforcement issues. Regardless of advances in requirement systems and advances, organizations keep on confronting difficulties in recognizing, forestalling, and discouraging encroachment and falsifying exercises, especially in web-based conditions and rising markets. Besides, the multiplication of fake products and pilfered content not only subverts the respectability of brands and imaginative enterprises yet in addition presents dangers to buyer well-being and security, requiring coordinated endeavours by organizations, legislatures, and partners to battle illegal exchange and safeguard licensed innovation privileges.

4.2 Challenges in India

Businesses face numerous legal and regulatory challenges in navigating copyright and trademark laws in business transactions, including complex registration procedures, ambiguities in legal standards, and jurisdictional issues. Moreover, the lack of uniformity in copyright and trademark laws across jurisdictions poses challenges for businesses operating in global markets, requiring them to navigate

diverse legal frameworks and comply with varying regulatory requirements.²³ Additionally, the emergence of new technologies, such as artificial intelligence and blockchain, presents novel legal and regulatory challenges for copyright and trademark protection, necessitating continuous adaptation and innovation in legal strategies and frameworks. Enforcement issues and counterfeiting pose significant threats to the effectiveness of copyright and trademark protection in business transactions.

Despite advances in enforcement mechanisms and technologies, businesses continue to face challenges in detecting, preventing, and deterring infringement and counterfeiting activities, particularly in online environments and emerging markets.⁴⁶ Moreover, the proliferation of counterfeit goods and pirated content not only undermines the integrity of brands and creative industries but also poses risks to consumer health and safety, necessitating concerted efforts by businesses, governments, and stakeholders to combat illicit trade and protect intellectual property rights.

Despite the challenges, businesses have opportunities to enhance copyright and trademark protection through collaboration, innovation, and strategic partnerships. Collaboration between businesses, industry associations, and government agencies can facilitate knowledge sharing, capacity building, and collective action against infringement and counterfeiting.²⁴

Moreover, investments in technology, such as digital rights management systems, blockchain, and machine learning, offer businesses new tools and capabilities for securing, monitoring, and enforcing their intellectual property rights in real-time.²⁵

Furthermore, initiatives aimed at raising awareness, promoting respect for intellectual property rights, and fostering a culture of innovation and creativity can

²³ Rajiv Kr. Choudhry, "Copyright (Amendment) Bill, 2022: A Pathway to Digital Transformation," Lexology, <https://www.lexology.com/library/detail.aspx?g=660ee49d-5ac7-40f3-b107-fbcd80f27>, accessed January 30, 2025

²⁴ Ibid

²⁵ World Intellectual Property Organization (WIPO), "Enforcement of Trademark Rights," https://www.wipo.int/sme/en/ip_business/trademarks/enforcement.htm, accessed January 30, 2025.

create an enabling environment for businesses to thrive and compete in the global marketplace.

4.2.1 Civil suit

Filing a civil suit is a traditional, but, significantly effective way to enforce trademark rights in India. However, a civil suit might not be the right choice in all fact patterns. As a common law country, India recognises the common law tort of passing-off, and the statute uniquely provides the remedy of filing civil suits against the unauthorised use of both registered as well as unregistered trademarks. Securing registration of a trademark is, therefore, not a *sine qua non* for enforcing trademark rights in the country. However, given that passing-off actions place a heavy burden on owners to prove the reputation and prior use of their marks in India, they should look to register their trademarks in the country even if their brands are not in use here.

Suits for enforcement of registered/unregistered trademark rights can be filed before courts not lower than the level of District Courts (states are divided into cities, which are then split into districts) that are subordinate only to the High Court of the state in which the district is located).

In addition, such suits can also be filed at any one of the five High Courts in India which have been conferred with original jurisdiction, including those in India's large metropolitan cities, namely, Delhi, Mumbai, Chennai and Kolkata. While general civil law requires suits to be filed at the place where the defendant resides or conducts business, or at the place where the cause of action has arisen, the country's trademark statute provides an additional venue for filing infringement suits, i.e., at a place where the plaintiff actually and voluntarily resides or conducts a business.

While trademark infringement is essentially a civil wrong, Indian trademark law also provides remedies in criminal law, namely, for falsification and falsely applying trademarks (akin to counterfeiting). In such cases, the remedy is imprisonment for a term between six months and three years or a fine of INR50,000 (USD600) to INR200,000, or both, which is subject to the discretion of the court.

Generally, a civil suit is a preferred option if the objective is to ensure a complete cessation of unauthorised use of a trademark in the Indian market. Often times, courts will grant damages and costs against a defendant in civil suits and order the seizure of infringing goods. Another advantage of a civil suit is the available remedy for contempt of court in the event of non-compliance by a defendant.

4.2.2 Criminal Enforcement

Brand owners can also avail of enforcement of criminal law remedies. This begins with approaching the local police with a complaint, informing officers of the infringement/counterfeiting activities, and requesting that they conduct a search and seizure operation at the premises of the accused infringer. In case the local police are not willing to offer assistance due to some reason, rights holders can also approach a criminal court seeking a direction to the local police to visit the alleged infringer's premises and seize the infringing/counterfeit goods. The latter process is, however, more time consuming and can also lead to the possibility of the accused party being tipped-off about the possibility of a raid.²⁶

This option is cost-effective and quick. However, the rate of success in criminal raids depends on many variable factors, such as subjective satisfaction of police officials who are frequently not well-versed in the intricacies of trademark law, the availability of sufficient police manpower, the possibility of tip-offs, and so on. Moreover, the process of obtaining police assistance for the purposes of conducting such raids is not streamlined, and it can be difficult to predict specific timelines within which police assistance for a search and seizure operation can be obtained. This option is also not desirable in case the alleged infringer has filed an application or obtained registration for their marks, which is, sometimes, the case

4.2.3 Border enforcement

In cases where right holders have reason to believe that infringing goods are being introduced into the Indian market through imports, border protection measures are available through the actions of the Indian Customs Office. To avail of this option, rights holders must have their registered trademarks recorded with the Indian

²⁶ <https://law.asia/trademark-enforcement-choices-india/>

Customs Office by filing an application in the prescribed format and payment of the stipulated fees. Such registration will enable customs authorities to interdict infringing/counterfeited goods that are being imported into India. However, mere recordal of the trademark registration with the Indian Customs Office does not, by itself, guarantee interdiction/seizure in all circumstances.²⁷

In fact, it is common for infringing/counterfeited products to slip through the hands of customs officials despite their recordation. It is also highly recommended that brand owners hold, at their own cost, training sessions at the customs department to educate them on identifying infringing/counterfeited goods from the authentic products.

This option offers limited relief for brand owners of the interception of goods that are being imported through recognised channels. Unscrupulous sellers and habitual/rank counterfeiters often manage to import infringing products through unrecognised channels, in which case, border protection is not available. Furthermore, this option is available only to traditional trademarks.

4.2.4 Online takedowns

In the event an entity is advertising, marketing, or selling, infringing/counterfeit goods through listings on e-commerce websites, such online use may be tackled by filing takedown requests. Most Indian e-commerce websites provide a mechanism to trademark owners to report and take down problematic listings although the turnaround time and efficacy of such takedowns vary.

While many websites are prompt in taking action against infringing listings, some websites adopt a rudimentary and straight-jacketed approach and refuse to take down infringing content voluntarily if the marks are not identical and/or if the rights holders are unable to produce registration certificates in support of a complaint.

Clearly, this remedy does not address offline uses, which, in our experience, could be widespread, given factors such as the size of the Indian market and, possibly, the low penetration of the internet in some areas of the country.

²⁷ <https://law.asia/trademark-enforcement-choices-india/>

The rising interest of global players in the Indian market has already led to great strides in the effectiveness and predictability of the enforcement mechanisms available in the country. The current situation is encouraging for all trademark owners who are turning their attention to India's market.²⁸

4.3 Lacunae in The Copyright Act

4.3.1 Artificial Intelligence

The growing ability of Artificial Intelligence ('AI') has grown into an immense spread of technology access for internet consumers. Traditionally built by humans to support the indigenous interest, now AI has developed into a massive adaptation of the AI software of ChatGPT. In general, and in prevalent law copyrighted materials were found by human authors, however, in modern times, the intangible forms of art are created by AI chatbots and hence must be protected. This lacuna of law is not established in the framework of Indian law as there is no prevalent legislation and judicial precedents.

4.3.2 Internet Service Providers

There are various points of departure wherein the copyright act, of 1957 is not in tandem with international standards. Without the consent of the copyright owners, sound recordings, digital photographs, literary works, and other literary works cannot be reproduced in accordance with Sections 13²⁹ and 67³⁰ of the Copyrights Act (1957).

However, it places no accountability on Internet Service Providers for infractions (ISP). ISPs are now used to upload the works of copyright holders on the internet.

The scope of copyright rules, as they apply to breaches or violations on the internet, is unclear. Although the responsibility of ISPs is only mentioned in passing in section 79³¹ of the Information Technology Act of 2000. However, in our

²⁸ Ibid

²⁹ Copyright Act, 1957. s.13.

³⁰ Copyright Act, 1957. s.67

³¹ Information Technology Act.s.79.

contemporary jurisdictions, this was addressed in their municipal legislation. As per Section 512(c)³² of the Digital Millennium Copyright Act, 1998 enacted in the USA wherein the liability of the ISPs has been highlighted and they must comply with take-down orders and notices of the authorities or face civil and criminal liabilities.³²

In the case of BMG Rights Mgmt. (US) LLC v. Cox Commcn., Inc, ³³the plaintiffs filed for damages against the defendant which is an ISP, and the court allowed for a sum of 25 million dollars as damages. The reasoning of the court against the said order was that ISPs must comply with copyright takedown orders and would be responsible for the copyright infringement of its users if it adopted a policy to expel serial offenders. In the Indian legal system, there is no concrete methodology or Redressal mechanism to resolve the same.

The aggrieved parties have to undergo tedious litigation proceedings As per Rule 340 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which have been promulgated under the Information Technology Act, 2000, the ISPs must inform their users not to post or propagate any material on which they don't have ownership however the liability of ISPs is limited to the same. ³⁴

4.3.3 Animal as a copyright holder

As per the current legal framework, animals are not considered copyright holders. Copyright laws are designed to protect the rights of creators of original works, such as books, music, software, and artwork, but they do not apply to animals.

Animals cannot own property, including copyrights, and therefore cannot legally hold the rights to any work they may have created. In most countries, copyrights are granted to human authors and their estates, not to animals. However, there have

³² Digital Millennium Copyright Act, 1998.s.512(c). See Also, Anti-Cybersquatting Consumer Protection Act, 1999; Australian legislation Copyright Amendment (Digital Agenda) Act, 2000

³³ Pocket Fm Pvt Ltd v. Mebiglo Labs Private Limited & Ors, 2022 SCC OnLine Del 4077 See Also, Marico Limited v. Abhijeet Bhansali, 2020 SCC OnLine Bom 60.

³⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.Rule 3

been instances where the works created by animals have been protected under “related rights” or “neighbouring rights” provisions, which protect the commercial exploitation of a work without the consent of the creator. In these cases, the profits generated from the commercial use of the work may be managed on behalf of the animal. One example of works created by animals being protected under “related rights” or “neighboring rights” provisions is the case of “Grimaldi's Monkey Paintings”.³⁵

These are paintings created by a group of macaque monkeys who took cameras and snapped photographs. In this case, the animals' behavior was considered a performance, and the rights to the photographs were protected as a performance under the related rights provisions of copyright law. The profits from the commercial exploitation of these photographs were managed on behalf of the macaque monkeys.

4.3.4 Criminality of Section 63 of the Act

The lacuna with respect to the criminality of “Section 63 of the Copyright Act, 1963” pertaining to piracy and infringement has also been under constant debate and confusion. This has been due to variable orders of Hon’ble High Courts in cases. For instance, The Andhra Pradesh High Court held that copyright infringement is a Bailable and non-cognizable offence in its decision in *Amarnath Vyas v. State of Andhra Pradesh*³⁶ in an order dated 19 December 2006.

In contrast, the Kerala High Court held in “*Suresh Kumar S/o Kumaran v. The Sub Inspector of Police*” on May 29, 2007,³⁷ that the offence is cognizable and not subject to a bail requirement.

Due to the aforementioned precedents, there is a conflict with respect to the status of the offence pertaining to bail⁴⁴. Due to such conundrums, here is a rise in the

³⁵ Andres Guadamuz, "Can the Monkey Selfie Case Teach Us Anything About Copyright Law?" (February 2018), in University of Sussex, United Kingdom.

https://www.wipo.int/wipo_magazine/en/2018/01/article_0007.html (last visited on Feb 12 ,2025)

³⁶ *Amarnath Vyas v State of Andhra Pradesh*, 2007 Cri LJ 2025 (A P)

³⁷ *Sureshkumar S/o Kumaran v The Sub Inspector of Police*, 2007 (3) KLT 363. See Also, *Jitendra Prasad Singh v State of Assam*, 2003 (26) PTC 486 (Gau).

cases of piracy in India. ³⁸India has gained notoriety due to remaining on the Priority Watch List continuously for years despite the existence of protection granted by the Indian Copyright Act, of 1957, mostly due to horrendously high piracy rates and a lack of adequate enforcement mechanisms⁴⁵.

India ranked 3rd in the global piracy index in the year 2017. According to the International Intellectual Property Alliance's (IIPA) 2007 study on India, copyright infringement cost the country's economy 496.3 million US dollars in lost commerce.

Such funds have been allegedly used in criminal acts of terror against nation-states. It makes perfect sense in this grim circumstance to give the police the authority to undertake suo-moto raids to stop piracy. However, there must be clarity with respect to the criminality of Section 63.³⁹

4.3.5 Traditional Knowledge

The copyright act, 1957 does not provide for any reference with respect to the protection of traditional knowledge. In a country such as India with such a potpourri of cultures and diversity in demographics, there is an instant need to safeguard the traditional knowledge of citizens.

The copyright act does not protect indigenous people's folklore or their traditional knowledge, but Section 31A of that law, which protects unpublished Indian works, might be used to infer that it does. The question that emerges is whether Section 31A⁴⁰, is adequate to safeguard traditional knowledge.

The question has been raised following the Neem plant patent controversy⁴¹ and the issue of the copyright of Bikram Yoga in the United States of America⁵¹. In the

³⁸ Desai Rachana, Copyright infringement in the Indian film industry, Vanderbilt Journal of Entertainment, Law & Practice (Spring 2005), 259-278

³⁹ Frost, J. (no date) Global piracy increases throughout 2017, Muso reveals, MUSO. Available at: <https://www.muso.com/magazine/global-piracy-increases-throughout-2017-muso-reveals> (Accessed: January 25, 2025).

⁴⁰ Copyright Act, 1957.s.31A

⁴¹ Bikram's Yoga Coll. of India, Ltd. P'ship v. Evolution Yoga, Ltd. Liab. Co. - 803 F.3d 1032 (9th Cir. 2015). See Also, Bikram's Yoga Coll. of India, Ltd.. p'ship v. Evolution Yoga, Ltd.. Liab. co. -

popular case of Bikram Yoga, as per the Ninth Circuit Court of Appeals, the yoga pose sequence was not deemed to be a copyrightable subject matter under 17 U.S.C. 102(b), and Choudhury's copyright in a book outlining his technique did not grant him copyright over the pose sequence itself⁴². The copyright act is inadequate to protect the facets of traditional knowledge as these lack authorship and fixed form i.e. a tangible form.



803 f.3d 1032 (9th cir. 2015) Community, <https://www.lexisnexis.com/community/casebrief/p/casebrief-bikram-s-yoga-coll-of-indialtd-p-ship-v-evolution-yoga-ltd-liab-co> (last visited Jan 25, 2025).

⁴² See Also, Intellectual Property Rights and Traditional Knowledge: The Case of Yoga Published in Economic & Political Weekly Vol. 47 No. 27 & 28, July 14-20, 2007 Pp 2866 - 2871 <http://www.epw.org.in> Krishna Ravi Srinivas.

CHAPTER 5

CASE STUDIES ON COPYRIGHTS AND TRADEMARKS IN M&A, LICENSING, AND FRANCHISING

5.1 Introduction

Intellectual property due diligence is the process of reviewing and evaluating a target company's IP assets to discover potential risks and possibilities. The goal is to guarantee that the buyer has a comprehensive grasp of the IP portfolio's worth, enforceability, and any associated responsibilities. IP due diligence assists in making educated decisions and structuring transactions effectively.

5.2 Prominent Copyright Infringement Cases MGM Studios, Inc. v. Grokster, Ltd.⁴³

The Supreme Court ruled in one of the most well-known copyright cases that file-sharing services can be held liable for copyright infringement if software users share content without permission. The case zeroed in on Grokster, a document-sharing project that permitted clients to download and share protected music and motion pictures without the consent of the privileges holders.

Campbell v. Acuff-Rose Music, Inc.⁴⁴

In this situation, the melody "Oh, Pretty Woman" by the gathering 2 Live Group was sued by the copyright proprietor, Acuff-Rose Music, for taking advantage of segments of it without authorisation. The High Court kept up with the fair use convention, which considers restricted utilization of protected material for purposes, for example, analysis, discourse, news detailing, instructing, grant, or examination. They ruled for 2 Live Group, recognizing that their satire of the tune was fair use.

Tasini v. The New York Times Co.⁴⁵

⁴³ MGM Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005)

⁴⁴ Campbell v. Acuff-Rose Music, [1994], No. 92-1292



The New York Times Co. was sued by freelance authors for violating their intellectual property rights. The High Court decided that paper distributors may not duplicate independent creators' work without approval, regardless of whether the substance was consolidated in new electronic data sets. The verdict confirmed that the work's copyright was solely owned by the creator, who must be compensated for any form of reuse of their work.

In the case of *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey and Ors.*, the plaintiff, Ultra Home Construction, alleged that the defendants had copied their copyrighted brochure and used it for their own business. The court held that the defendants had indeed copied the plaintiff's brochure and issued an injunction to prevent them from using the copyrighted material. This case highlights the importance of copyright protection in the business world, as copyright infringement can have serious financial and legal consequences.⁴⁶

5.3 Prominent Trademark Infringement Cases

McDonald's Corporation v. Joburgers Drive-Inn Restaurant (Pty) Ltd.⁴⁷

The McDonald's Organization sued Joburgers Drive-Inn Diner for utilizing "McJob" in its promotion. The South African court discovered that the expression "McJob" didn't disregard McDonald's image name since it portrayed a low-paying, low-skilled place that was irrelevant to a particular item or administration

Mattel v. MCA Records⁴⁸

The case of **Mattel, Inc. v. MCA Records, Inc.**, 296 F.3d 894 (9th Cir. 2002), is a landmark trademark dispute between Mattel, the maker of the famous Barbie doll, and MCA Records, the label behind the popular song "Barbie Girl" by the band Aqua. The case revolves around Mattel's claim that MCA Records had used its Barbie trademark without permission in a song that it believed to be an infringement

⁴⁵ New York Times Co. v. Tasini, [2001], 533 U.S. 483 (2001)

⁴⁶ Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey and Ors. (2017) 68 PTC 595 (Del)

⁴⁷ McDonald's Corporation v Joburgers Drive-Inn Restaurant (Pty) Ltd. and Another, [1996], 547/95

⁴⁸ Mattel, Inc. v. MCA Records, [2002], 296 F.3d 894 (9th Cir. 2002)

on its intellectual property rights. However, the court ruled in favor of MCA Records, emphasizing the importance of **parody** and **free speech** in determining whether trademark infringement had occurred. The decision holds valuable lessons for trademark law, particularly when it comes to the limits of trademark protection, artistic expression, and the balancing of intellectual property rights with public interest.

Background of the Dispute

In 1997, the Danish-Norwegian dance-pop group Aqua released the song "**Barbie Girl**", which quickly became a global hit. The song, with its catchy melody and playful lyrics, portrayed the Barbie doll and her iconic lifestyle, referencing aspects of the brand such as "Barbie's world" and "life in plastic." The song's lyrics and accompanying music video parodied the stereotypical image of Barbie dolls and the cultural phenomenon they represented. The song's lyrics, for example, included lines like "I'm a Barbie girl, in a Barbie world," which was a clear reference to Mattel's popular product.

Mattel, the maker of Barbie dolls, took issue with this commercial use of the Barbie name and filed a lawsuit against MCA Records, claiming that the song violated its trademark rights. Mattel argued that the song, by using the term "Barbie" in the context of the song's commercial release, **constituted commercial use** of the Barbie trademark without Mattel's permission, which could potentially confuse consumers and tarnish the reputation of the Barbie brand. The company also claimed that the song was an infringement on its intellectual property rights and sought to stop the song from being sold, along with damages.

The **Barbie doll** has been a cultural icon since its introduction in 1959 and has become one of the most recognized trademarks in the world. As such, Mattel closely guards its intellectual property to maintain control over its brand identity, image, and reputation.

The Legal Claims

In its lawsuit, Mattel made two primary claims:

1. **Trademark Infringement:** Mattel alleged that the use of the **Barbie** name in the song violated its trademark rights under the **Lanham Act**. The Lanham Act, the primary federal trademark statute in the United States, prohibits the unauthorized use of trademarks that are likely to cause confusion in the marketplace. Mattel argued that the song created confusion among consumers about the affiliation or sponsorship of the Barbie brand, as the song explicitly referenced Barbie in a commercial context.
2. **Dilution:** Mattel also argued that the song diluted the distinctiveness of the Barbie trademark, an issue that arises when the use of a famous trademark by others diminishes its uniqueness and value. The **Federal Trademark Dilution Act** allows trademark holders to prevent uses of their marks that dilute their distinctiveness, even if there is no likelihood of consumer confusion. Mattel believed that the song tarnished the reputation of the Barbie brand, portraying it in an unflattering and exaggerated light.

In contrast, **MCA Records** argued that the song was a **parody** and thus fell within the protection of the First Amendment, which guarantees freedom of speech and expression. MCA asserted that the use of the Barbie name was not meant to confuse consumers but rather to provide commentary on the cultural impact of the Barbie doll, making it a form of **artistic expression** and protected speech.

The Court's Analysis

The case ultimately reached the **Ninth Circuit Court of Appeals**, which ruled in favor of **MCA Records**, dismissing Mattel's claims. The court's decision is significant in trademark law because it dealt with several important issues related to the intersection of trademark rights and free speech, particularly in the context of **parody**.

1. **Trademark Infringement and Likelihood of Confusion:** The court first addressed whether the song caused **consumer confusion** under the Lanham Act. While Mattel argued that consumers might mistakenly believe that the

song was associated with or endorsed by the Barbie brand, the court concluded that there was little risk of confusion. The court emphasized that the song was clearly a parody and that no reasonable consumer would confuse the song with an official product associated with the Barbie doll. In particular, the **parodic nature** of the song—combined with its playful and exaggerated tone—made it clear that the song was not an attempt to sell Barbie dolls or any related merchandise.

2. **First Amendment Protections and Parody:** The Ninth Circuit placed significant weight on the **First Amendment**, recognizing the importance of protecting artistic expression. The court noted that **parody** is a form of **artistic commentary** and that the use of the Barbie trademark in the song was intended as a **satirical reflection** on the stereotypical image of the Barbie doll and its role in shaping gender norms and ideals. The court held that parody is a form of free speech and that trademarks cannot be used to stifle such speech.

In other words, the court found that the **First Amendment** outweighed the concerns about trademark infringement, particularly because the song did not constitute a commercial use of the trademark in the traditional sense. The song was viewed as an expressive work rather than a business offering intended to compete with or confuse the Barbie brand.

3. **Trademark Dilution:** With regard to the **dilution** claim, the court ruled that Mattel had not demonstrated that the song caused significant harm to the distinctiveness or reputation of the Barbie brand. The court noted that for a dilution claim to succeed, there must be evidence of actual harm to the mark's reputation or distinctiveness. In this case, the court found that the song did not harm the Barbie trademark in a way that would warrant legal intervention.

The court also recognized that the **Barbie doll** had become so iconic and widely recognized that its public perception could withstand parody and satire without experiencing significant harm.

Impact and Significance of the Decision

The ruling in **Mattel v. MCA Records** was a **landmark decision** that underscored the importance of balancing **intellectual property rights** with **free speech protections**. It illustrated how **parody**—as a form of artistic expression—can be a valid defense against trademark infringement claims, even when the parody uses the trademark of a well-known brand like Barbie.

The decision also highlighted the **limits of trademark law**. While trademarks are designed to protect brand identity and prevent consumer confusion, they do not give businesses absolute control over the use of words or symbols in a broader cultural or artistic context. In this case, the court found that the **artistic nature of the song** outweighed Mattel's claims of infringement, reinforcing the idea that trademark protection is not absolute and can be limited by other legal considerations, such as **freedom of expression**.

Apple Inc. v. Samsung Equipment Co. Ltd.⁴⁹

Apple claims that Samsung's smartphones infringe on its patents. The High Court upheld a previous decision, determining that Samsung had broken Apple's licenses and imposing 539 million in punitive fine

In the case of *Christian Louboutin SAS v. Nakul Bajaj and Ors.*, the plaintiff, Christian Louboutin, alleged that the defendants were selling counterfeit products bearing the plaintiff's trademark "Red Sole" through their website. The court held that the defendants had indeed infringed the plaintiff's trademark and issued an injunction to prevent them from using the plaintiff's trademark in any manner. The court also ordered the defendants to pay damages to the plaintiff for trademark infringement. This case highlights the importance of trademark protection in the business world, as trademark infringement can damage a business's reputation and result in financial losses.⁵⁰

⁴⁹ Apple Inc. v. Samsung Elecs. Co, [2015], 786 F.3d 983

⁵⁰ Christian Louboutin SAS v. Nakul Bajaj and Ors. (2018) SCC OnLine Del 10944

5.4 Licensing and franchising intellectual property

Licensing and franchising intellectual property (IP) offer strategic competitive advantages to a brand. Franchising is a situation where a franchisor controls and supervises the exploitation of a trademark while allowing the use of the tradename, the get up and the reputation and goodwill associated with the trademark. A trademark signifies the quality of the products or services being offered along with the identifying source of the goods or services. This understanding is slightly nuanced in the use of trademarks in a franchise relationship. For instance, a consumer who eats at a specific outlet of a restaurant chain in one part of the country expects that the food and service of other outlets elsewhere will be of the same quality. For consumers, such a franchised mark is a symbol of equal quality; the physical source of the goods is immaterial; and the relationship between the trademark owner and the persons who run a particular outlet is inconsequential.

India as a developing economy with interests of a large number of small and medium enterprises has at stake with the advent to multinationals in the market. Often, they are unable to face the might of the global giants from outside, as the MNCs are able to engage in activities detrimental to the host country enterprises. Thus, a proper legal framework is urgently needed to correct the imbalance in the equity. Internationally also, there exists as what is called a widespread acceptance of the twin notions that IPR should be respected and that licensing is useful and pro- competitive.⁵¹

What remains is to harmonize and strengthen prosecutorial strategies regarding serious cases of cartels masquerading as license or crosslicense agreements.²² License agreements can restrict competition and the competition law is the right mechanism to interfere with objectionable licensing arrangements. But, it can be concluded that licensing or franchising as an activity is seen as a beneficial commercial activity and the competition law only tries to stop the undue restrictions to competition which are not the rule, but clearly the exception.

⁵¹ Text is Copyright 1995 by The American Law Institute; Dinwoodie Grame B, Trademark and Unfair Competition: Law and Policy, 1st edn (Aspen Publishers, New York), 2004, p. 912.

Correspondingly, over the past fifty years, the law governing trademark licensing has changed drastically in response to the pressures of new commercial methods of distributing goods and services. With the gradual change in approach towards licensing, it slowly began to be accepted and now is in fact encouraged as a commercial phenomenon in the law.

From 'Unlawful to Lawful' The historical conception of trademarks as symbols indicating the physical source of the goods led a number of early courts to conclude that the owner of a trademark could not license others to use the mark without destroying the significance of the designation as an indication of source. Licenses were sometimes declared invalid (unlawful) as a fraud on the public, and the licensors risked forfeiture of their rights in the mark through a finding of abandonment.⁷ The early twentieth century case of *Bowden wire*⁸ illustrates this approach of the courts, where the Court held that if a registered trademark is licensed it may become invalid if it ceases to show a connection in the course of trade with the registered proprietor or otherwise becomes deceptive by the act of the registered owner.

A licensed trademark loses its distinctiveness and fails to impart its most important function of distinguishing the goods of the owner from the goods of others. However, the trend of licensing could not be completely overlooked as the businesses expanded and in the course of time courts adopted an attitude of tolerance towards it by creating principles and conditions for it to prevail. Licensing, therefore, is no more treated as per se unlawful. From 'Registered Users' to 'Unregistered Users' The system of registration of the licensees came into place with the change in the Trademark Law and now the licensing of trademark required that the owner of a registered mark leaves in the records of Trademark Registry, the particulars of the license agreement and of the parties involved. From here started the concept of 'registered users' as was there under the Indian Trade and Merchandise Act, 1958.⁵²

⁵² Wilkof Neil J, Same old tricks or something new? A view on trademark licensing and quality control, *European Intellectual Property Review*, 18 (5) (1996) 261-270. In this article, he has pointed out at the change in the UK Trademarks Law with the 1994 enactment.

In the economic era of globalization, liberalization and foreign investment, licensing has been looked as one of the most rewarding aspects of intellectual property creation. And in view of the economic developments, the law has also been adjusted and now a trademark could be licensed to ‘unregistered users’ also. A step further, under the Trademarks Act, 1999, ‘permitted use’ means not only the use by a third person of a registered trademark as registered users but also the use by a third person of a registered trademark by the consent of the registered proprietor in a written agreement without registering that person as registered user.

Leveraging Brand Equity for Market Expansion

Trademarks represent a company’s identity in the marketplace, encompassing brand names, logos, slogans, and even the overall look and feel of products. In M&A, trademarks hold immense value because they are closely tied to customer loyalty, brand recognition, and the ability to stand out in crowded markets.

A well-established trademark can be a key driver of future revenue growth, particularly when expanding into new regions or launching new product lines under the same brand umbrella.

For businesses involved in M&A, one strategic focus should be on maximizing the potential of acquired trademarks by integrating them into their broader marketing and brand development strategy.

This could mean expanding the use of the brand into new product categories or geographic regions where the company has not previously operated. However, this requires careful assessment during due diligence to ensure that the trademark is adequately protected in these new markets.

Another actionable tactic is to assess whether the acquired brand has the potential to be licensed or franchised. In industries like retail, food, or hospitality, licensing or franchising a well-established trademark to local partners can offer significant growth opportunities with minimal investment. This allows businesses to leverage brand equity without the heavy lifting of operational expansion.

Businesses should also ensure that any trademark registrations are renewed and up to date in all relevant jurisdictions. Overlooking this aspect can lead to costly litigation or loss of trademark rights, particularly in international markets where trademark laws vary significantly.

5.4.1 The nature of franchise relationships

As the owner of an established brand, a franchisor's sole motive is for the franchisee to succeed so as to attract future investors in the franchise, and help expand the brand's footprint. But franchise relationships are not always guaranteed to succeed. Franchisees may not perform as expected; they may breach the franchise agreement, file for bankruptcy, or even just have an unsuccessful year. The brand symbolizes the goodwill of the franchise and is its most valuable asset, so any defaults encountered in franchise agreements must be acted upon immediately. Failure to monitor the brand or allowing a terminated franchisee to continue to use the brand can significantly weaken the brand and value of the franchise license itself.

The most common solution to such misuse is that a franchisor sues to stop a franchisee from operating its business and using the franchisor's trademarks. Based on the public policy of holding parties to the terms of their agreements, and if it is shown that the franchisee's conduct caused harm, a court may issue an injunction even if such an injunction is likely to terminate the business of the franchisee.

Often, an early injunction is critical to the ultimate resolution of the case. If a franchisor intends to seek injunctive relief, the franchisor must act quickly. A failure to do so can be used to the franchisor's disadvantage.

5.4.2 Brick and mortar franchises: Two case studies

The elements of a preliminary injunction in a franchise relationship were recently discussed by the Bombay High Court⁵³ in a case involving Lakme Lever Pvt Ltd., ("Lakme"), a wholly-owned subsidiary of the consumer goods' major Hindustan

⁵³ Lakme Lever Pvt Ltd. v. Annapurna Enterprises & Anr. [Comm Arbitration Petition (L) No. 4867 Of 2020]

Unilever Limited, and a well-known brand, with an established reputation in the beauty and wellness segment.

Lakme (the petitioner) and the respondents had entered into a five-year franchise agreement in 2015 under which the respondents were to set up a beauty salon in Ranchi under the 'Lakme Salon' brand. After many breaches to the franchising agreement, the petitioner, having failed to receive responses to repeated letters and notices, terminated the franchise agreement. The petitioner then approached the court, pointing out that despite the termination, the respondents had continued to use the 'Lakme Salon' brand, and projected themselves as their franchisee, with its employees even wearing uniforms as per the franchise agreement. The Court granted an injunction, and also appointed a receiver to take into custody all the materials, including uniforms and printed materials that had the petitioner's name on them.

An older case before the Delhi High Court⁵⁴ concerned 'Ozone Spa', also engaged in the health and wellness segment, which had franchised its brand to the defendants. The dispute arose when the defendant started a competitive salon business under a different name for which it adopted the look and feel, layout, choice of colour combination etc. of the petitioner's salons. Besides the breach of confidential information and trade secrets of the petitioner (from the operation manual provided to franchisees), the defendant also diverted customers, poached well-trained staff and used the uniforms of the franchisor's salon. The court granted an injunction, but also noted that, to balance out the competing interests between the parties, the defendants could seek to run their salon services under the name petitioner's brand name for a reasonable amount of royalty.

Domain name disputes

With the growth of the internet, the imitation and misappropriation of others' creative efforts have grown substantially. Although a domain name alone is not a trademark, it can become a protectible mark through use in commerce. For example, if a domain name acts as a source identifier overall, it can be claimed as a mark. If a party uses this name in a manner likely to cause confusion, it can be the subject

⁵⁴ Ozone Spa Pvt. Ltd. v. Pure Fitness & Ors. [2015(63)PTC505(Del)]

of an infringement suit. Various types of misuse on the Internet include: cybersquatting, domain name hijacking, wrongful use of metatags and linking.

Recently, the Himalaya Drug Company, engaged in the business of ayurvedic drugs, found that rogue websites were duping customers of large sums of money by misrepresenting themselves as their affiliates and claiming they were authorized to induct franchisees for its business. Himalaya Drug claimed that the defendants were impersonating the company and communicating with the public via emails, pamphlets, messaging services, application forms, social media, etc., under fraudulent and deceptively similar names. These rogue websites also used the 'Himalaya' trademark and trade name without authorization, as well as the company's website content and photographs, thereby inviting an infringement and passing off suit.

The company approached the Delhi High Court³ for an injunction, claiming that the artwork in the 'Himalaya' logo was its "original artistic work"; and that it has a well-established process for appointing business partners and does not solicit or collect any fee, nor have authorized representatives to do so. The Delhi High Court found that the defendants appeared to have illegally sought to capitalize upon the goodwill of Himalaya Drug, and granted an ad-interim injunction in the petitioner's favour. Domain Name Registrars were directed to freeze the websites and domain names of the Defendants. The banks where these rogue websites had their accounts were also directed to not allow any withdrawals.⁵⁵

Constructing sound franchise agreements

Franchise agreements involve the transfer of a form of IP, which may either be a business format / know-how / trade secret (e.g., McDonalds or a Starbucks coffee chain), or copyright (in the case of character merchandising agreements), or a trademark or trade name (e.g., Nirula's restaurants or FabIndia clothes) or even an invention or a patent or design for the invention (in the case of a manufacturing agreement). It is important to understand the main issues that may arise when entering into franchise agreements involving such IP:

⁵⁵ ³ The Himalaya Drug Company & Ors v Ashok Kumar & Ors [CS(COMM) 95/2021], Delhi High Court

To ensure that the IP rights are not misused in any manner, a condition laying out the exact usage by the franchisee is imperative, so that the IP rights are not used outside the purview of the agreement. Further, as some of the cases discussed here demonstrate, the franchisee may sometimes use a trademark even after termination for reference purposes or as part of a corporate name. It is necessary to clearly lay down all kinds of fraudulent usage to avoid any complications or dilutions to the brand.

The franchisor and franchisee should ensure that the brand and goodwill associated with the trademark is not diluted in any manner due to any actions or inactions of the franchisee.

Before entering into a franchising agreement, the franchisee must ensure that the IP rights being licensed under the agreement exist and that the franchisor has the authority to license those rights. To avoid any future liabilities being imposed, the franchisee should ensure that the rights being licensed do not in any way violate the IP rights of any third party.

The licence must always specify the exact nature of rights granted and the extent to which such rights are granted. It is crucial for the franchisor to decide on the amount of know-how, rights and trade secrets to be transferred to the franchisee, during and after the termination of the agreement.

5.5 Mergers and Acquisitions

This case study is an account of a Law Firm and its activities as it transformed its approach to IP due diligence, specifically with regard to how it reviewed the IP related risks facing target companies.

The Law Firm in this particular case study is a reputable boutique Law Firm specializing in the area of small and mid-market M&A deals as well as PE deals. It is headquartered in London but has offices in a number of other key jurisdictions. It has clients across a diverse range of industry sectors including in the financial services area. This Law Firm has received a number of awards and accolades over the years.

M&A deals are, by their very nature, extremely complex transactions. This Law Firm conducts due diligence exercises on a regular basis, with such exercises naturally including IP. IP due diligence is a specialized subset of the general due diligence process. This IP due diligence is essential because of the increasing importance companies of all sizes and in all sectors have placed on IP in recent times.

IP due diligence:

IP due diligence is essentially an audit to assess the quantity and the quality of IP assets owned by, or licensed to, a target company. It should also include an assessment of the IP related risks facing that target company plus details of if and how these IP related risks are being mitigated.

There are three primary areas of focus for an IP due diligence exercise:

- ownership, status and control of the IP assets of the target company
- the strength and economic value of these IP assets
- the IP related risks facing the target company
- IP risk assessment:

IP is typically classified as within the scope of legal due diligence with the contents usually limited to the ownership of trademarks, patents, copyrights and a review of relevant contract terms. When many Law Firms conduct IP due diligence exercises, they tend to concentrate on the potential liability for infringement when examining the IP related risks facing the target company. Yes these can be critical IP related risks, but they are far from being the only IP related risks a company may face.

The Law Firm recognized that they needed to greatly improve the manner in which they assessed the IP related risks facing the target company. Having too narrow a definition, meant that they were missing many IP related risks during their IP due diligence exercises.

They also faced the challenge that many of the target companies being assessed lacked a robust fit for purpose IP risk management process, so the IP risk data was

simply not readily available from the target company. The onus was therefore on the Law Firm to do the work.

IP related risks:

Any company faces a variety of IP related risks. Not all IP risks are the same and they may be broken down into a variety of different categories, such as the form of IP involved (e.g. patents, trademarks, trade secret, copyright, etc.), the source or origin of the IP related risk, the impact and probability of the IP risk, the date when the risk is likely to materialize, the geographical nature of the IP risk, whether they are generic or specific in nature, the group or sub-group most impacted by this risk in the organization, etc.

Many mistakenly assume that all IP risks originate from competitors, but IP related risks may originate from a variety of sources - the activities of the company itself and its people; the activities of entities within the company's own eco-system (suppliers, partners, distributors, customers); yes, the activities of competitors; the activities of other entities such as NPEs; changes to Standards Settings Bodies policies related to IP; the activities of illegitimate entities such as hackers and counterfeiters, etc.

IP risk assessment process & tool:

The Law Firm adopted a much more structured approach when assessing IP related risks to ensure that they were capturing all forms of IP related risks. It started by broadening its definition of IP.

They also embraced a dedicated IP risk management tool as it greatly improved the manner in which they gathered data on IP related risks, categorized these IP related risks, determined the probability and impact of these different IP risks, and linked IP risks to IP mitigating actions. This tool's reporting functionality also enhanced the manner in which IP related risks were included in the deliverable from the IP due diligence exercise, and articulated to the client.

Old approach to IP due diligence and IP related risks

Prior to making this change in their approach to IP due diligence, the Law Firm was concerned that they were not conducting such IP due diligence exercises thoroughly enough and that some IP related risks were being missed. They had some issues with the manner in which they were gathering data on IP related risks and on the actions being taken to mitigate such risks. They also faced some challenges articulating IP related risks to their clients in a professional manner.

New approach to IP due diligence and IP related risks:

The Law Firm now has a much more structured approach in place, and utilizes a dedicated tool which serves as a central repository for the target company's IP risk information and allows for that information to be properly sorted. Its key function is to provide the client of the Law Firm with significant information on the main IP risks faced by the target company. This allows the client to understand the nature of the IP risks the company faces (the type of IP risk, who raised it and how it could affect the company), to become aware of the extent of those IP risks (likelihood of the IP risk occurring and its potential impact to the company), to identify the level of IP risk that the client is willing to accept (thanks to IP risk prioritization based on its effect on the company), and to recognize its ability to control and reduce these IP related risks (by understanding the actions being taken to prevent these IP risks from happening and/or the risk mitigation actions taken in case the IP risks do occur).

The benefits:

The Law Firm greatly improved its efficiency and effectiveness when conducting IP due diligence exercises. The new approach improved client satisfaction and led to more constructive discussions with the client around the specifics of the IP risks, enabled improved risk quantification with a resultant impact on pricing.

I should state that there has not been any improvement yet in the time taken by the Law Firm to complete IP due diligence exercises.

The fact that the tool underpinning their new approach was a dedicated IP risk management tool was key. The fact that it was easy to install, easy to configure and easy to take into use also proved a major USP. The reporting functionality especially the IP risk heat-map graphic proved of tremendous value.

The technology platform underpinning the tool meant that it was easy to utilize and integrate with the virtual data room platforms they use regularly. In some cases they are still involved in M&A deals using physical data rooms and again in such cases, the tool has worked well.

Good document management practice:

IP professionals involved in such exercises should keep clear records of each due diligence step completed and the results of that review. This applies just as much to the review of the IP related risks facing the target company. In addition to being good practice, these records will be helpful to IP professionals in communicating with corporate M&A counsel or the client.

The Law Firm strongly believes that it has greatly enhanced its document management practice when it comes to IP due diligence of IP related risks facing a target company.

Final thoughts:

Each M&A deal is unique and every deal has both time and budget constraints. However, I trust that this paper has helped raise the importance of IP due diligence and especially the review of IP related risks facing the target company. This is an area I believe has been somewhat neglected in the past.

Although this particular case study focuses on M&A deals, IP due diligence is applicable in many contexts, ranging from M&A deals, JVs, VC & PE financing, IPOs, and securitization of IP assets.

Case studies provide a means for highlighting and extracting practical principles and methods for shaping and accelerating progress in solving real world problems. I

trust that this case study is of interest and of value to anyone involved in IP due diligence work.

The case of **PepsiCo India Holdings Pvt. Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd.**, the plaintiff, PepsiCo India Holdings, alleged that the defendant, Bharat Coca-Cola Holdings, had infringed their trademark “Slice” by using a similar mark “Fruit Slice” for their beverage products. The court held that the defendant had indeed infringed the plaintiff’s trademark and issued an injunction to prevent them from using the infringing mark. The court also awarded damages to the plaintiff for trademark infringement. This case highlights the importance of trademark protection and enforcement in business transactions, as failure to do so can result in reputational and financial losses.⁵⁶

Hidden Liabilities and IP Encumbrances

One of the most important roles of IP due diligence is uncovering hidden liabilities and encumbrances that might not be visible at first glance. Intellectual property assets can sometimes come with legal or contractual obligations that, if not properly addressed, can turn into significant financial or operational burdens after the transaction is completed.

For example, a company may have entered into licensing agreements that restrict the use of its patents or software, or they may be engaged in ongoing litigation over the ownership or validity of a key IP asset.

These hidden encumbrances can directly impact the value of the transaction and the future profitability of the acquired company. Identifying them early on allows private equity firms to either negotiate better deal terms or put measures in place to manage these risks post-acquisition.

For example, if due diligence reveals that a significant portion of the target company’s revenue comes from licensed technology, the acquiring company may need to renegotiate the terms of those agreements or ensure they are transferable. In

⁵⁶ PepsiCo India Holdings Pvt. Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd. (2018) SCC OnLine Del 9603

some cases, it may make sense to walk away from the deal if the liabilities are too great or pose too much risk.

A well-executed IP due diligence process will thoroughly review all contracts, agreements, and legal filings to ensure that there are no undisclosed encumbrances that could negatively impact the value of the intellectual property.

Beyond just checking for ownership issues, it involves verifying that the company's IP is enforceable and that all third-party agreements, such as joint ventures, research collaborations, or outsourcing agreements, are fully understood and accounted for in the transaction.

Future-Proofing IP Assets

Private equity firms should use the IP due diligence process to future-proof the intellectual property they are acquiring. The value of IP assets is not static; it can erode over time if not properly maintained or protected.

During due diligence, it's essential to not only confirm the current value of the IP but also to assess how well the company has positioned itself to sustain and grow that value in the future. This involves evaluating how the company is managing its IP portfolio, its approach to IP renewals, and its strategy for defending against potential infringement.

A key consideration in future-proofing IP assets is ensuring that all necessary registrations are up to date and that critical IP rights are properly maintained. For instance, patents, trademarks, and copyrights all have renewal requirements, and failing to meet these deadlines can result in the loss of valuable protections.

Due diligence should assess whether the company has implemented adequate systems for monitoring and managing these deadlines to ensure that no IP rights are unintentionally abandoned.

Another aspect of future-proofing is assessing the company's ability to defend its IP against infringement. A company that has been lax in enforcing its IP rights may face challenges in defending those rights post-acquisition.

Private equity firms should review the company's history of IP enforcement, including any litigation or dispute resolution actions, and assess whether the company has the resources and expertise needed to protect its IP effectively in the future.

Furthermore, the company's IP strategy should be evaluated in the context of emerging market trends, technological advancements, and potential disruptions.

For example, a business operating in a fast-evolving industry like artificial intelligence or biotechnology should have a clear plan for continuing to innovate and expand its IP portfolio in the face of rapid technological change.

During due diligence, private equity firms should look at the target company's R&D capabilities and its history of filing for new patents, copyrights, or trademarks, as well as its ability to pivot and adapt to market shifts.



CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

Copyright laws provide wide protection for creative works, fostering innovation while also allowing artists to monetize their work through licensing and distribution. In contrast, trademark rules safeguard brand identification, increasing customer trust and commercial competitiveness. The combination of copyright and trademark strategy is beneficial for organizations seeking to survive in a competitive climate by strategically exploiting their intellectual property portfolios. Despite problems such as digital piracy and enforcement issues, technological improvements and governmental reforms present significant opportunities to strengthen IP protection in India. Policymakers may strengthen India's intellectual property framework by supporting legislative harmonization, improving enforcement, and raising awareness, therefore stimulating innovation and long-term economic prosperity.

analysis of the role of copyright and trademark laws in business transactions in India. It has highlighted the importance of copyright and trademark protection in safeguarding intellectual property assets, fostering innovation, and driving economic growth. The has examined the legal framework governing copyright and trademark laws, their implications for businesses, and the challenges and opportunities associated with their enforcement and management. The findings of this paper have significant implications for businesses operating in India, emphasizing the importance of proactive intellectual property management strategies, compliance with legal requirements, and investment in enforcement mechanisms.

Businesses must recognize the value of their intellectual property assets, adopt robust copyright and trademark protection strategies, and collaborate with stakeholders to mitigate risks and maximize opportunities in the marketplace. Looking ahead, future research should focus on exploring emerging trends and technologies shaping copyright and trademark laws, assessing their impact on business transactions, and identifying best practices and innovative solutions for addressing evolving challenges. Additionally, research should investigate the

effectiveness of policy reforms, educational initiatives, and enforcement measures in enhancing copyright and trademark protection and promoting a conducive environment for innovation, creativity, and entrepreneurship in India.

copyright and trademark law permits us to understand IP rights while preparing our own IP rights indices. Moreover, the constant development of the legal regulation and enforcement of IP rights, results in a nonstop alteration of an index regarding copyright and trademark protection. The brief

Econometric analysis further shows the significance of zekcopy6 and zekmark6, and the competitiveness in attracting FDI inflows. Finally, the investigation of the legal background of copyright and trademark law shows a continuous development of the legal regulation and enforcement of IP rights.

In this global world where one can easily reach one pole to another, the protection of trademarks has become one of the most challenging and important tasks for companies. These challenges are generally posed by different jurisdictions, weak enforcement, incentives to counterfeiters, and, low opportunity costs for the offenders.

Trademarks are a messaging tool for companies that inform consumers about the qualities and status of their products. Companies register their trademarks in each jurisdiction to safeguard their products. The World Trade Organization has recognised the right to trademark protection and has developed a mechanism called the World Intellectual Property Organization (WIPO) that serves the world's innovators and creators, ensuring that their ideas travel safely to the market and improve lives everywhere. By registering to WIPO one can register for several countries with one application. IPR laws in developed countries are strict

With the Indian economy growing at breakneck speed, franchising is an easy option for companies looking to growing their brand in this jurisdiction. IP rights are the backbone of most franchise agreements. They grant franchisors the opportunity of business expansion while simultaneously making profits through fees or royalty payments.

However, the nature of a franchise also exposes franchisors to a high risk of misuse of brand reputation, goodwill and other IP rights. Therefore, franchise agreements should be carefully crafted to ensure that the rights of the franchisor are adequately protected. Equally, franchisees must ensure that they are entering into a sound agreement, with all terms and conditions of the use of the IP in question clearly laid out.

Copyrights and trademarks are valuable assets for businesses, and their protection is essential in business transactions. Copyright protection can generate revenue through licensing agreements, while trademark protection can help build brand recognition and consumer loyalty. Due diligence is a critical process in business transactions, and trademark due diligence can help to identify and mitigate potential legal and financial risks.

The importance of conducting thorough trademark and copyright due diligence cannot be overstated, especially in M&A transactions, where the value and risks associated with intellectual property can significantly impact the transaction's success. By prioritizing trademark and copyright protection, businesses can protect their reputation, maintain a competitive edge, and avoid legal and financial risks associated with intellectual property violations.

6.2 Recommendations

Policy reforms and legislative amendments are essential to address evolving challenges and opportunities in copyright and trademark laws in India. Policymakers should prioritize reforms that promote innovation, streamline registration procedures, and enhance enforcement mechanisms to protect intellectual property rights effectively.

Legislative amendments should aim to align copyright and trademark laws with international standards, modernize outdated provisions, and address emerging issues, such as digital piracy, online counterfeiting, and cross-border enforcement challenges.

Enhancing awareness and education on copyright and trademark laws is critical to fostering a culture of respect for intellectual property rights and compliance with legal obligations among businesses, creators, consumers, and stakeholders.

Educational initiatives should target diverse audiences, including entrepreneurs, startups, students, and policymakers, through workshops, seminars, and awareness campaigns.

Moreover, collaboration between government agencies, industry associations, and educational institutions can facilitate the development of educational resources, training programs, and best practices to promote understanding and adherence to copyright and trademark laws. Strengthening enforcement mechanisms is imperative to combat copyright infringement, trademark counterfeiting, and illicit trade effectively.

Law enforcement agencies should receive adequate training, resources, and support to investigate and prosecute intellectual property crimes. Moreover, collaboration between public and private sectors, including customs authorities, internet service providers, and e-commerce platforms, is essential to prevent the importation, distribution, and sale of counterfeit goods and pirated content. Additionally, leveraging technology, such as digital rights management systems, blockchain, and machine learning, can enhance detection, monitoring, and enforcement capabilities, enabling swift and decisive action against infringer.

Stay up to date with changes in trademark and copyright laws: Trademark and copyright laws are constantly evolving, so it's important for businesses to stay current with any updates or changes in the law that may affect their operations.

Conduct thorough due diligence before entering into business transactions: Due diligence is critical to identifying any potential risks or liabilities associated with trademarks and copyrights. By conducting thorough due diligence, businesses can minimize the risks associated with trademark and copyright infringement.

Obtain proper licenses and permits: Obtaining proper licenses and permits before using copyrighted material or trademarks can help to ensure compliance with the law and minimize the risks associated with infringement.

Protect your intellectual property: Businesses should take proactive steps to protect their intellectual property, including trademarks and copyrights, through registration, monitoring, and enforcement.

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