

PATENTS, DESIGNS, TRADE MARKS, PASSING OFF, COPYRIGHTS AND GEOGRAPHICAL INDICATIONS OF GOODS

Trademarks, patents and copyrights affect the growth and prosperity of almost every industry particularly, the chemicals and pharmaceuticals industries, the printing, publishing and entertainment industries, like the film and recording industries, and the computer software industry.

Familiarity with the law relating to these subjects has thus become fundamental to business strategy.

It is important to know the rights and options as well as the legal formalities and requirements necessary for protecting the products and ideas in the highly competitive market of today.

PATENTS

What is a Patent?

A patent is a monopoly right granted to a person who has invented a new and useful article, or an improvement of an existing article, or a new process of making an article.

It consists of an exclusive right to manufacture the new article invented or manufacture an article according to the invented process for a limited period.

After the expiry of the duration of patent, anybody can make use of the invention.

Benefits of Patent

The chief benefit of patents is that they encourage inventions, on a commercial scale, and ensure that ultimately the patented article or process is utilised for the general good of the people at large.

Governing Act

The Indian Patents Act, 1970, contains the law governing patents.

A patent can be obtained only for an invention which is new and useful.

The following are not treated as inventions, under the Act, and are not patentable.

- A frivolous invention which claims anything obviously contrary to well established natural laws.
- An invention, the primary or intended use or commercial exploitation of which could be contrary to public order or morality.
- A method of agriculture or horticulture.
- Any process for the medicinal, surgical, curative, diagnostic, or other treatment of human beings.

Effect of Trade Marks on Goods – Implied Warranty on Sale.

On the sale or contract for sale of any goods to which a trade mark, has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not falsely applied, unless the contrary is expressed in writing signed by the seller.

Registration of Trade Marks

A Register of Trade Marks is kept at the Head Office of the Trade Marks Registry in which all Trade Marks registered are entered with the relevant particulars.

The Register is divided in two parts – Part A and Part B.

The qualifications for registration in Part B are less stringent than those required for Part A registration.

The validity of Part A registration cannot normally be challenged after the expiry of 7 years from the date of registration.

What Trademarks are registrable:

A trade mark for being registered must contain or consist of the following essential particulars:

- The name of a company, individual or firm represented.
- The signature of the applicant for registration or some predecessor in his business.
- One or more invented words.
- One or more words having no direct reference to the character.
- Any other distinctive mark.

Marks not registrable:

The following marks are not registrable:

- A mark the use of which is likely to deceive or cause confusion as to the goods themselves or the trade source.
- A mark the use of which would be contrary to any law for the time being in force.
- A mark comprising or containing scandalous or obscene matter.
- A mark comprising or containing any matter likely to hurt the religious sentiments of any class or section of the citizens of India.
- A mark which would be disentitled to protection in a court of law.