



## I P BULLETIN

Vol. II (02), July-Dec 2021, pp.23-39



### INTELLECTUAL PROPERTY AND SOCIAL MEDIA

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#### WHAT IS SOCIAL MEDIA?

Social media is a form of electronic communication and a collection of websites and applications that focuses on communication, interaction, content sharing, collaboration and many more. It is typically used for social interaction, access to news and decision making social media is globally accessible and mobile applications make such platforms easier to access. Social media is a tool used for sharing information locally as well as worldwide as well as to create and spread information. Social media can influence a company's brand exposure and customer reach through reviews, advertising and tactics of the market. Social media has become a necessary day-to-day activity for people in today's world.

#### RAPID GROWTH OF SOCIAL MEDIA

With the deep insertion of internet connectivity among people, social media uses are rapidly growing in India. As right to freedom and speech is guaranteed to all the citizens by the constitution of India, social media acts as a platform to express and share opinions as well as information around the world. The Indian population has reacted to social media like a knife through butter. An Indian on an average spends about 2.25 hours on social media daily. As per the data, the active social media users in India in the year 2021 are about 448 million due to deep penetration of internet connectivity among people.

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<sup>1</sup> Banasthali Vidyapith

<sup>2</sup> Banasthali Vidyapith

India is the biggest social media platform after china. The most used social media platform by the Indians in the year 2021 with 85.80% users enrolled is YouTube. There are many people who have become big through YouTube. YouTube has the second biggest market in India after U.S.A. After YouTube the second most popular platform used in India is Facebook with 79% of users enrolled. Instagram is mostly used by young people and teenagers. Facebook, the parent company has paid \$1 billion to buy Instagram. The few more problems that are popular in India are twitter (50.6% of enrolled users), LinkedIn (37.7% of enrolled users), Pinterest (34.3% of enrolled users) and reddit (22.1% of enrolled users).

The most favored and likely app used in India is WhatsApp. Facebook has also owned WhatsApp that acquires 79% of the country's total users. Facebook Messenger is the second most used app in India with 62% users. Third is snap chat that is popular amongst teenagers. Third is snap chat that is popular amongst teenagers with 33.7% users. Fourth is the recently banned app in 2021 i.e. Tik Tok with 31.5% users.

## **WHAT IS INTELLECTUAL PROPERTY**

Intellectual property is an umbrella term which broadly categorizes intangible or non-physical assets that are the product of creativity of mind or intellect, such as idea, invention or process.

The various types of intellectual property are:

- **Patents:** It is the temporary monopoly or authority which is granted to an inventor and which bars others from making, using or selling the invention for which the patent is sought after.
- **Copyrights:** It is the legal term used for the right of the creator over his/her original creative work.
- **Trademarks:** It is a type of intellectual property which consists of any unique symbol, design, word, slogan or a combination of all of the aforementioned, and which is used to represent a business or its products.
- **Franchises:** A franchise is a business where the owner licenses its operations—along with its products, branding, and knowledge—in exchange for a franchise fee.
- **Trade Secrets:** It is the confidential information pertaining to a company's process or practice and which are not a matter of public knowledge.

## INFRINGEMENT OF INTELLECTUAL PROPERTY ON SOCIAL MEDIA

Internet is easily accessible to people these days and has changed their lives. It is much easier for people to communicate these days than earlier. The convenience of communication has proportionately increased the abuse of medium of communication. Due to freedom of interaction, basically on social media, people have started posting false statement unnecessarily about a person or entity which affects their goodwill. However, such an act on social media is considered as “Trolls” that amounts to cyber defamation.

Any act which takes place on cyber space leads to cyber defamation. Cyber defamation is used when a person uses defamatory system against any person or entity on social networking site such as Facebook, Twitter, and Instagram etc. or sends messages or emails that contain defamatory content with aim of defaming him/her.

## LAWS ON CYBER DEFAMATION IN INDIA

### DEFAMATION

#### Criminal defamation

Defamation is defined under **section 449 of Indian Penal Code**<sup>3</sup> *“as whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputations concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person”*

**Section 469 of IPC**<sup>4</sup> deals with forgery for purpose of harming reputation. *“It says as whoever commits forgery, intending that the document or electronic record, forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to 3 years, and shall be liable to fine”*.

#### Civil Defamation

The statements made must be false and must be without the consent of the alleged person.

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<sup>3</sup> Indian penal code,1860

<sup>4</sup> Indian penal code,1860

Monetary compensation can be claimed by the defendant against the plaintiff. Requirements for placing a successful defamation suit are:

1. The defamatory statement must be made. The statement must be made in such a manner that it harms the reputation of a person or class of persons by exposing them to hatred. The test shall be done and the degree of defamation shall be calculated from the eyes of a common man.
2. The statement made must purport a person and not made in general like all “Judges are corrupt” and cannot gain compensation for the same.
3. The statement must be either in oral or written form. If a letter has been sent to a person in different language and a third person illustrates the same and defamatory statements are written on the letter, it will amount to defamation. It is necessary for a third person to read it then only it amounts to defamation.

*SMC PNEUMATICS (INDIA) PVT LTD v JOGESH KWATRA*<sup>5</sup>

It is the first case of cyber defamation in India. An employee of the plaintiff’s company started sending defamatory, derogatory, abusive, contumelious emails to his employees all over the world with an intention to defame the company and its director Mr. RK Malhotra. A suit was filed by the plaintiff seeking permanent injunction and restraining him from doing such frivolous acts. An ex-parte injunction was granted by the Delhi High Court to restrain public from sending defamatory and abusive emails to them and their subsidiaries.

*SWAMI RAMDEV AND ANNE v FACEBOOK INC & ORS*<sup>6</sup>

In this case, Pratibha Singh Judge ordered that all the defamatory statements that have been made against Baba Ramdev (yoga teacher) must be removed online without any territorial restrictions. It was stated by the court that if the statements and the content has been made and uploaded in India or on a computer device in India, the court exercises international jurisdiction to issue decisions worldwide.

But, appeal was filed by Facebook against the decision of Delhi High Court. The appeal was made though it was already known the people who had uploaded such content; there was no involvement of the applicant in the case. It was also controversial as Baba Ramdev did not

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<sup>5</sup> CS (OS) NO. 1279/2001

<sup>6</sup> CS (OS) 27/2019

show any prima facie evidence against the irrevocable loss. Facebook also believes that global seizure regulations are contrary to national sovereignty and the international community. This is because there is violation of many defamation laws across countries. Therefore, it was held that once defamatory content is uploaded from India is available globally; access to such content should be blocked world-wide and not just in India.

## **POSITION IN OTHER COUNTRIES**

Defamation laws vary from countries to countries, states to states, provinces to provinces. Therefore, plaintiff gets a luxury of ‘forum shopping’ or choosing the most favorable jurisdiction to him/her. In United States 75% of people file a case of defamation in state courts and rest 25% file it in federal courts. 156 countries (80%) have enabled cyber legislation: Europe has the highest adoption rate i.e.91% and Africa the lowest (72%). The evolvement of cybercrime is a significant challenge for law enforcement agencies and prosecutors especially for cross- border enforcement.

### *SERAFIN v MALKIEWICZ & ORS*<sup>7</sup>

There was an article published in the year 2015 as there was a misuse of private information. It was said by the UK Supreme Court that provided guidance of section 4 of the defamation act 2020, the public interest defense. There was also ordering a full trial in the case concluding that “the justice system has failed both the sides”. With “deep regret” and a degree of embarrassment in relation to respected colleagues in the court of appeal.

### *GUBAREV v ORBIS BUSINESS INTELLIGENCE LTD.*<sup>8</sup>

A publication of the article Buzz feed created a defamation trial and the claimants took action against The Democratic Party leadership. It was stated by the court that the defendant was not held liable for the publication and there was an inform case comment.

## **PATENTS**

### **What is a patent?**

A patent is a privilege provided to the inventor to restrict them from copying, using, selling or importing the invention without the permission of the inventor. An invention can either be a

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<sup>7</sup> (2020) 1 WLR 2455

<sup>8</sup> (2020) EWHC 2912 (QB)

product or a process that provides a novel technical solution to a problem. A patent should be wholly novel to be issued, as if it is already known to the public in any way, the grant may be denied. People may accidentally disclose their invention on social media such as Facebook and Instagram post or a YouTube blog. As a result it becomes a prior art, and when it is viewed by the authorities, it receives an objection. The simplest way to avoid this is to stop sharing and disclosing the inventions on social media.

### **Patent protection in India**

Replacing the Indian patents and designs act 1911, the patents act 1970, along with the patent rules 1972, came into force on 20<sup>th</sup> April 1972. *This patents act was largely based on the recommendations of Ayyangar committee report which was headed by Justice N. Rajagopala ayyangar.* One of the steps taken by the Indian government was to become the member of the *Trade related intellectual property rights (TRIPS) system.*

*Section 2(1) (j) of the patents act<sup>9</sup> defines the word 'invention' as:*

*"Invention" means a new product or process involving an inventive step and capable of industrial application.*

*And the term 'new invention' under section 2(1) (l)<sup>10</sup> as:*

*"new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art.*

Inventions that is eligible for patent protection under the Indian law qualities. The first key element that needs to be qualified is novelty. If the invention has been sold in India or outside India are not eligible for qualification. Other obligatory elements are utility, non-obviousness or usefulness.

The exceptions or innovations that are not eligible for patent protection in India are:

- Medicinal processes
- Agricultural methods

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<sup>9</sup> Indian patents act, 1970

<sup>10</sup> Indian patents act, 1970

- Discoveries of new uses for existing objects
- Frivolous inventions

*MERCK SHARP AND DOHME CORPORATION AND ANR v. YMS LABORATORIES PVT. LTD*<sup>11</sup>.

A suit was filed by the plaintiff, owner of patents holding sitagliptin and its derivative salts seeking an infringement suit against defendant. The plaintiffs contended for Ad injunction during the pendency. An ex-parte interim injunction was granted to the plaintiff. The plaintiff showed that defendant was planning to launch an infringing product under the brand ‘stallip-m’ which enabled ex-parte injunction.

*BAYOR CORPORATION v. UNION OF INDIA*<sup>12</sup>

In the year 2008 plaintiff (Bayer Corporation) for a drug named ‘sorafenib tosylate’ a patent was granted to the plaintiff by the Indian patent office. The drug is used for the treatment of kidney cancer and liver. On March 2012 first compulsory license was granted to NATCO Pharma Pvt. Ltd by the Indian Patent House for the generic version that is patented by Bayer Corporation was selling it for Rs. 22.80 lakh, NATCO promised to sell it for Rs. 8,800. Plaintiff move to the intellectual property appellate boards for a stay on the compulsory license granted to the NATCO pharma stating that it was invalid illegal and unsustainable. However IPAB rejects the appeal as it offered drugs comparatively on lower prices. Plaintiff went to Bombay high court challenging the order. But the high court dismissed the petition stating that public interest should be prioritized at large. It was held by the High Court that the power to make rules lies with the central government illustrated in section 156 of the Indian Patent act. It was also stated by the PGCI that the sale of drug patented by someone else is also not allowed and is incorrect as per section 90 of the patents act. The DGCI can reasonably allow the commercialization of generic drugs even after they are patented. Therefore, it was held by the court that acceptance of the generic drugs would not amount to infringement of the patent.

### **Intellectual property rights around the globe**

Patents can be granted anywhere in the world whether internationally or in a single country. The head of the technology management and intellectual property at daimler Christian hahner

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<sup>11</sup> CIVIL SUIT NO. 823/2018

<sup>12</sup> 162 (2009) DLT 371

said that patenting a product internationally is an expensive process. To protect the patent from being copied and to defend the patent in the court it is very important for the businesses to nationalize the patent, to make valid in other countries. For example Microsoft does not patent its software because doing so will reveal their source code.

There are many social media apps and technologies that are patented. One such example is of twitter, a patent held on a method of managing and detecting group. On an estimate, more than thirty thousand patents have been filed in USA relating to social networking technologies and methods.

### *LIMELIGHT NETWORKS, INC v. AKAMAI TECHNOLOGIES*<sup>13</sup>

In this case, it was held that there is no liability for inducing patent infringement under 35 USC 271 (b) unless there is an actual infringement under 35 USC 271 (a) by the party. In this case, the federal circuit had applied its *muniauction* decision relating to split infringement, and it was found out that none of the parties have performed the full process to ensure claim. Furthermore, there was no direct infringement. The Supreme Court overturned the federal circuit then there could be infringement under section 271(b) in spite of the lack of direct infringement.

### *EGYPTIAN GODDESS, INC v. SWISA*<sup>14</sup>

It was held in this case that there was no requirement of novelty test to find out that there was any infringement of the design patent. Rather court believes more in the observers test. It was also explained by the court, to provide a verbal description of the scope of design patent by the district court.

## **COPYRIGHT**

Copyright, also known as ‘Author’s Right’ is the legal term used for the right of the creator over his/her original creative work. It is a type of intellectual property that aims at protecting the work of a creator from being used without his/her due permission. In simple terms, copyright law gives the original creator of a creative work, the exclusive rights to make duplicate of the work, produce derivative contents, and to make the work publicly available. The

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<sup>13</sup> INC (S.C.T. 2014)

<sup>14</sup> INC (FED. CIR. 2008)



‘creative work’ can include a plethora of works like literary works, music, software, films, paintings, technology etc. It is important to note that copyright protection covers only expressions, and not ideas, methods, procedures or mathematical concepts as such.

There are two types of copyright available to the creator:

- Economic rights
- Moral rights

Economic rights enable the creator to gain financial benefits from the use of his/her work, whereas moral rights are special rights that pertain to the non-economic rights of the creator such as paternity rights and integrity rights.

### **Doctrine of fair use**

The Doctrine of Fair Use allows the use any copyrighted work without taking prior permission from the owner of that copyright. Fair use of any work is for a limited and transformative purpose. There is a very thin line between fair use and infringement. The four factors that determine whether a copied work amounts to fair use are:

- Purpose of use
- Nature of original material being copied
- Substantiality or amount of portion copied
- Effect of the use on the authentic work

### *BLACKWOOD AND SONS Ltd. vs. A.N. PARASURAMAN*<sup>15</sup>

In the present case, the Madras High Court stated that the concept of “fair use” has a two-fold meaning. In order for it to qualify as unfair usage, there must be an intention to compete with the owner of the copyright, and gain profits from the same. Unless the infringer had any mala fide intention, the act would amount to fair use.

In recent times, and more so since the advent of the Covid-19 pandemic, social media has become one of the primary method of communication. There are various platforms such as Instagram, Facebook, Twitter, WhatsApp etc. where contents, expressions, ideas in various forms, are shared with the public at large. Due to the vast reach and influence of social media, many businesses rely heavily on it for the advertising of their products. However, this easy

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<sup>15</sup> AIR 1959 Mad 410

availability to almost every person, could lead to the unauthorized misuse of the creative work if the creator is not vigilant. One would argue that the presence of any creative work on a social media platform itself means that the creator wants it to be used by the public at large, but that is not the case. The content may be easier to copy but it is still protected by copyright and copying it without giving attribution to the creator would amount to infringement.

## **SOCIAL MEDIA PLATFORMS AND THEIR POLICY REGARDING COPYRIGHT**

Every social networking site has certain terms and conditions of service which their users have to comply with. While uploading their original work on social media platform, the creators have to be careful as putting the content on any platform in the first place can amount to granting licence to the social media site to use it and for the public to view it.

### **Facebook and copyright**

Facebook is a social networking site which easily helps us in connecting with friends, family and people all over the world via messages, post, sharing videos etc. Facebook, in its Terms of Services and Community Standards, states that, *“you can only post content to Facebook that doesn't violate someone else's intellectual property rights. The best way to help make sure that what you post to Facebook doesn't violate copyright law is to only post content that you've created yourself”*. Facebook also states that the creator must give them (Facebook), the license to use their content: *“...you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content.”*

Certain users very frequently infringe the copyright policy. For such users, Facebook has a ‘Repeat Infringer Policy’. This policy gives Facebook the authority to limit some features or disable the user’s profile, page, or group in case he/she violated copyright policy frequently.

### *FAIRMOUNT HOTELS PVT. LTD. vs. BHUPENDER SINGH CS (COMM)*<sup>16</sup>

In 2015, a conflict arose when the defendant, Mr. Bhupender Singh posted pictures of the plaintiff’s hotel on his (defendant’s) Facebook page without taking prior permission from the

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<sup>16</sup> 111/2018 & I.A. 17922/2015 AND 1818/2016

plaintiff. Due to this, the plaintiff filed a suit of copyright infringement against the plaintiff before the Delhi High Court. The plaintiff submitted that the defendant was his employee in the past and after leaving his service, had started his own line of hotels in Manali. The plaintiff further submitted that the photos of his hotel was being used for the promotion of defendant's new hotel. After putting into consideration, all the submissions made by both parties to the suit, as well as the financial status of the Defendant, the Hon'ble High Court of Delhi granted a permanent injunction against the misuse of the photos by the Defendant and ordered a direction of 50,000 INR cost to be paid to the Plaintiff.

### **Twitter and copyright**

Twitter is a microblogging and social networking site of American origin, where registered people communicate with each other in the form of short messages called "tweets". Twitter's Copyright Policy state that, *"Twitter respects the intellectual property rights of others and expects users of the Services to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us."*

Twitter reserves the right to remove any content alleged to be infringing copyright, without prior notice, at the company's sole discretion, and without liability to the user. In addition to this, Twitter also reserves the authority to terminate a user's account if the user is a repeat infringer.

### **Pinterest and copyright**

Pinterest is an image sharing social media service that allows users to share, and discover new interests by posting (known as 'pinning') images or videos to their own or others' boards (i.e. a collection of 'pins,' usually with a common theme) and browsing what other users have pinned.

According to Pinterest's Terms of Service, *"You grant Pinterest and our users a non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, store, display, reproduce, save, modify, create derivative works, perform, and distribute your User Content on Pinterest solely for the purposes of operating, developing, providing, and using Pinterest. Nothing in these Terms restricts other legal rights Pinterest may have to User Content, for example under other licenses. We reserve the right to remove or modify User Content, or change the way it's used in Pinterest, for any reason. This includes User Content that we*

*believe violates these Terms, our Community Guidelines, or any other policies.”* Anything that is posted on Pinterest is termed as ‘User Content’ and the creator retains all rights and is solely responsible for the user content.

## **PROTECTION OF CONTENT ON SOCIAL MEDIA**

Claiming ownership of a work does not solely deter a person from using it without permission. Intellectual property theft, though punishable by court of law, is very common. The easiest way to protect intellectual property from being misused on social media is to not put it up there in the first place. However, if it is absolutely necessary to put up an original work on a social media site, the following steps can be followed to ensure that it is not misused:

- Creating a watermark
- Adding a copyright notice
- Using a Digital Millennium Copyright Act (DCMA) badge

The creator must be vigilant to keep track of possible misuse of his/her work and be quick to file complaints. The best way to file a complaint is to use the DMCA takedown notice. This process allows the original creator of any content to send the notice, in a specific format, to the Internet Service Provider (web host) of the website that is violating the copyright. The ISP then removes the misused copy and notifies the website owner.

## **TRADEMARK**

Trademark is a type of intellectual property which consists of any unique symbol, design, word, slogan or a combination of all of the aforementioned, and which is used to represent a business or its products. Trademarks are unique identifying attribute which means that no two business or products can have the same trademark. A trademark is basically used for the purpose of identifying the source of products or services, providing legal protection for the brand and guarding it against counterfeit or fraud. Unlike patents which are granted for 20 years, trademarks once registered forever remains with the business or product registering it.

Trademarks may or may not be registered, however, it is advised to register the trademark because a registered trademark provides more gives more rights and protection than an unregistered one. A person or company becomes the owner of the trademark as soon as they start using it with their products or services, the rights accompanying unregistered trademark

are limited and are applicable in a narrow geographic zone only.

Trademarks are used for the following purposes:

- Identifying the origin and owner of goods and services
- Advertisement of goods and services
- Promoting market of the goods and thus stimulating their purchase

### **Pros of registering a trademark**

The following are the advantages of having a registered trademark:

- It gives the owner the exclusive right to use the brand.
- Provides legal protection against fraud or misuse or counterfeit of the trademark by any other business
- Gives the status of “brand” to the goods or services

### **Signs of trademark**

One of the following three signs are used by companies who have claimed trademarks:

- <sup>TM</sup> - This is the symbol of unregistered trademark but nevertheless alerts competitors that symbol or phrase has been claimed
- <sup>®</sup> - This symbol denotes that a trademark has been registered. Only companies that have their trademarks registered can use this symbol.
- <sup>SM</sup> - This is the service mark logo and is used by companies that sell services, not products

### *APPLE CORPS LTD. V. APPLE COMPUTER, INC<sup>17</sup>*

This case witnessed the decade’s long battle for the trademark “apple”. Apple Corp was founded by the Beatles 8 years before Steve Jobs established Apple Computer. In 1991, both the businesses entered into an agreement that Jobs’s apple would remain limited to computing, software, telecommunication and data processing whereas Apple Corps would deal in the music business. However, in 2001, when Apple Computer launched ‘iTunes’, a music playback software, they were sued by the Beatles claiming that it was a breach of their 1991 agreement. The case was finally resolved when Steve Jobs purchased the trademark from the

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<sup>17</sup> [2006] EWHC 996 (Ch.)

Beatles and sublet them back.

*COCA-COLA COMPANY Vs. BISLRI INTERNATIONAL PVT. LTD.*<sup>18</sup>

This case is popularly known as the ‘Maaza War’. In the present case, the defendant, Bisleri International Pvt. Ltd., by an agreement, had sold and assigned the trade mark MAAZA to Coca-Cola including formulation rights, know-how, intellectual property rights, goodwill etc for India only with respect to a mango fruit drink known as MAAZA, and immediately after filed a trademark application for the same in Turkey. It was held by the courts that since the rights over the trademark were completely assigned to Coca-Cola, Bisleri has no authority to use the trademark in or outside India.

*CADBURY LTD. AND 2 V. ITC LTD*<sup>19</sup>

In April, 2005, Cadbury filed a case against ITC when it started marketing ‘Eclairs’ with the Candyman trademark. ITC, in its defence said that the trademark has not been used by Cadbury since 1994. It was observed that Cadbury had registered three trademarks in India in 1974 that included Eclairs (Chocolate Eclairs, Orange Flavoured Chocolate Eclairs, and Chocolate Eclairs Pop), but none of these were ever used. After more than a decade in court, the case was finally decided in the favour of ITC on account of “non-use”. Section 47 of the Trademarks Act, 1999 states that a trademark can be removed by IPAB on the ground of non-use or if there has been no proof of its use for 5 continuous years from the date of application for registration of the trademark.

Trademark infringement on social media occurs in many ways. Many times we see sites or pages selling counterfeit products or fake products under the guise of the original trademark. This majorly happens with makeup brand, clothes brand etc. Another example is that of cyber-squatting where a user registers a fake account name that involves a famous trademark.

## **TRADE SECRETS**

Trade secrets, one of the many intellectual property rights are crucial and valuable for company’s growth and sometimes for its survival. Many multinational companies want to

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<sup>18</sup> [Manu/DE/2698/2009]

<sup>19</sup> on 20 July, 2005

protect their companies by the means of Trade secrets. Some of these companies are KFC, Dominos, Coke, Microsoft, etc. This is because the concept of IPR is based on disclosure and protection to IPR is given for a certain period of time or till the date of expiry. After the expiry date, the information is available in the public domain and no further benefits can be derived by the owners from such innovations. On the other hand, the trade secrets are based on 'secrecy'. In other words it can be said that as long the companies are able to protect and keep their innovation as a secret it can enjoy the exclusive rights provided for their innovations.

### **What is a trade secret?**

"A trade secret simply refers to any data or information relating to the business which is not generally known to the public and reasonable attempts has been made to keep the information as secret and confidential"

Remote workers might have copies of client lists and other protected information on home computers which have less securities than other company networks and they might share their personal storage with other people, inadvertently exposing the personal information of the people. **To secure data a person must:**

- Establishing home security measures, like password protection (internal policies), locking periods for electronic devices, no sharing personal electronic storage devices with non-employees of the company.
- Limiting the access of trade secrets to employees.
- Assisting employees in confidentiality of the information.

Trade secrets in India are mainly protected through contract law. *Section 27<sup>20</sup> of the Indian contract law, 1872, provides remedy and it restricts a person from disclosing any information which he acquires at the time of employment or through a contract, but in this there is no provision for criminal remedy.*

The party whose trade secrets have been infringed may file a suit of injunction against the wrongdoer under the Specific relief act, 1877.

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<sup>20</sup> Indian contract act, 1872

*NIRANJAN SHANKAR GOLIKARI v. THE CENTURY SPINNING AND MANUFACTURING CO. LTD*<sup>21</sup>.

In this case the defendant was only appointed for five years on the basis that he shall not service anywhere else after he left his service earlier. Later he applied in some other workplace and started working there as he was paid more. It was further observed by the Supreme Court that the information that he has acquired in his last service in the respondent's office is different and he is against disclosing the information to the rival company which requires protection. The Supreme Court held that an injunction to enforce negative contract, which is restricted as to time, can be issued in the order to protect employer's interest.

*BURLINGTON HOME SHOPPING PVT. LTD. v. CHIBBER & ANR*,<sup>22</sup>

It was held by the Delhi high court that there is a thin line between copy infringement and trade secret violation where it comes to lilaking customer's lists or compilation of business data. It was also further said by the court that Trade secret protects the underlying data whereas expression is protected by the copyright. However, in practice these two elements often have so much coverage that any infringement of copyright may also harm the secrets of business.

### **Trade secrets across countries**

It is very important for the owners to protect the trade secrets of their company by imposing special procedures such as technical as well as legal security measures. The reason for the dispute that arises is when the former employees of the company leave to work with the competitor organization and are suspected to share the valuable and confidential information with the employees of that company. For this situation the legal protections that are used are non-disclosure agreements (NDAs), work-for-hire and non-compete clauses. In other words, in order to sign agreements of joining another organization the employer has to sign the agreements stating that the valuable and confidential information will not be shared.

As a company can protect its secrets through legal security measures it creates a perpetual monopoly and does not expire like patents or copyright. The lack of formal protection that is associated with the intellectual property however means that a third party is not bound to sign

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<sup>21</sup> AIR 1967 SC 1098

<sup>22</sup> 1995 PTC (15) 278



the agreement and is not prevented from using the secret information, such as through reverse engineering. The information regarding the trade secrets is shared only with few trusted individuals.

#### *QUALCOMM INCORPORATED v. APPLE INC AND DOES*<sup>23</sup>

Apple keeps involving itself in legal disputes. It was alleged that apple have stolen the trade secrets of the company QUALCOMM and has shared it with Intel Corporation as the codes and the sources were accessible by the Apple. Qualcomm claimed that apple did so to preserve the quality of the chips. Apple purchases but changed the supplier from QUALCOMM to Intel Corporation for their new iPhone. A complaint was filed saying apple has breached a software-licensing contract by sharing confidential details to engineers at Intel Corporation. The law suit is still scheduled to be heard.

#### *WHITMAR PUBLICATIONS LTD. v. GAMAGE*<sup>24</sup>

The London High court granted injunction and restricted the use of LinkedIn group contacts created in employee's employment. The employees secretly collected the information while they were still employed and used them in setting up a competing business.

### **CONCLUSION**

It is safe to say that we live in the age of internet where everything is just a click away. However, it is our responsibility that this click is always for the better for ourselves and the public at large. The easy availability of everything on the internet makes some people prone to misusing them. Same is the case with our non-tangible assets or intellectual property. Creators, businesses all around the world now take to social media for promoting their products and business. Due to the encompassing nature of sharing on social media, it can be difficult for intellectual property owners to keep track of any infringements or violations. When they do, however, the laws can be utilised to restrict sharing or terminate any copyright, trademark, or patent infringement. Intellectual property protection gives the owner the ability to make complaints, remove content, seek compensation, file lawsuits, and much more.

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<sup>23</sup> 1 THROUGH 25(Supreme Court of state of California)

<sup>24</sup> [20B] EWHC 1881