

Difference between Trademark and Copyright

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Abstract-

Generally we see the usage of a trademark by a company for its product, either it could be on the packaging of the product or on the product itself. Trademark is something which shows the value of the product by protecting it from getting used by others without the consent of the owner. We often see the usage of a trademark by a company for its product, it could be either on the packaging of the product or it could be on the product itself. Trademark infringement means when a person or the business uses the registered trademark without the permission of owner which includes using the registered trademark on the similar kind of products or it could be in the form of using the product in similar name, similar design, or similar logo as an already established brand. Penalties of Trademark Infringement- In India, infringement of trademark is a cognizable offense that means the infringer who has infringed the trademark right may also face criminal charges along with the civil charges and according to the Indian law it is not required for any trademark to be registered for instituting civil and criminal charges and in case of infringement of trademark right under the civil charges the court may order the remedies like temporary injunction, permanent injunction, damages, account of profits, destruction of good using the infringing mark and cost of legal proceedings. IN one of the cases where the trademark of plaintiff was BUPRON while the trademark of the D.D. Pharma was BUPRO and the court held that there is a chance of confusion because of the similar name of the trademark and that is likely to cause harm to the patients and the court also stated that patients are also likely to be confused with the similar name. Although both the companies adopted the name based on the active ingredient, there is likelihood of confusion and the court ordered the permanent injunction in favor of Sun Pharma as against the D.D. Civil remedies- Under section 55(1) of copyright

infringement, which says that the copyright holder is entitled to get the remedy by way of injunction because injunction is the most effective way of getting remedy in case of copyright infringement. Section 63 of the act says that infringement of copyright act is a criminal offense under copyright act, 1957. Although both are forms of intellectual property and provide intellectual protection, here the main difference between trademark and copyright is that they provide protection for different kinds of work but they both have different processes for their registration.

What is intellectual property? Intellectual property is an umbrella term for intangible assets that are non-existent in physical form. Intangible asset means an asset that is an identifiable asset but not present in physical form. Intellectual property is something that is legally owned and protected by an individual without using it with the consent of the owner. Unauthorized use of this results in intellectual property infringement. Intellectual property consists of many types of assets like copyright, trademark and patents, etc but legal protection of all these expires after some time but except of trademark because the protection for trademark lasts forever.¹

What is a Trademark?

A trademark is also an intellectual property which is generally used by an individual, businessman or legal entity to separate its product legally from others. We often see the usage of a trademark by a company for its product, it could be either on the packaging of the product or it could be on the product itself. Trademark is something which shows the value of the product by protecting it from getting used by others without the consent of the owner. A person who is owning the trademark of any particular commodity can take legal action against the person or company who is using it without having the consent.² A trademark protects certain items like brand name, logos, business names and slogans. Trademark applies to anything that brands a business or anything that describes a product. Some of the examples include products of Apple like ipods and MacBook, logo of famous automotive brand Mercedes.³

¹ <https://www.investopedia.com/terms/i/intellectualproperty.asp>

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<https://www.legalraasta.com/trademark-and-copyright/#:~:text=Importance,brand%20or%20logo%20from%20others.>

³ <https://www.upcounsel.com/trademark-examples>

What is Trademark Infringement?

Trademark infringement means when a person or the business uses the registered trademark without the permission of it which includes using of the registered trademark on the similar kind of products or it could be in the form of using the product in similar name, similar design or similar logo as an already established brand. Trademark infringement comes under Trademark act, 1999.⁴

Penalties of Trademark Infringement-

In india, infringement of trademark is a cognizable offense that means the infringer who has infringed the trademark right may also face criminal charges along with the civil charges and according to the Indian law it is not required for any trademark to be registered for instituting civil and criminal charges and in case of infringement of trademark right under the civil charges the court may order the remedies like temporary injunction, permanent injunction, damages, account of profits, destruction of good using the infringing mark and cost of legal proceedings. But in case of criminal charges the court may order for the punishment of imprisonment of not less than six months that may extend upto three years and a fine of not less than Rs. 50,000 that may extend up to Rs. 2lakh.⁵

Case law based on infringement of trademark-

Recently in the case of **Sun Pharma Laboratories Limited vs D.D.Pharmaceuticals Private Limited**, Sun Pharma filed three suits of trademark infringement against D.D.Pharmaceuticals for the adoption of a similar trademark to the former. One of the trademark of plaintiff was BUPRON while the trademark of the D.D.Pharma was BUPRO so initially D.D.Pharma argued that no infringement has taken place because both the parties have adopted the trademark according to the name of the active ingredient that was Bupropion Hydrochloride. So later on the court disagreed with D.D.Pharma and held that there is a chance of confusion because of the

⁴ <https://www.lawbite.co.uk/resources/blog/what-is-the-difference-between-trademark-and-copyright>

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<https://cleartax.in/s/trademark-infringement-india#:~:text=Imprisonment%20for%20a%20period%20not,extend%20to%20Rs%20%20lakh>

similar name of the trademark and that is likely to cause harm to the patients and the court also stated that patients are also likely to be confused with the similar name. Although both the companies adopted the name based on the active ingredient, there is likelihood of confusion and it ordered the permanent injunction in favor of Sun Pharma as against the D.D.Pharmaceuticals from using the trademark sign that was in question.⁶

What is Copyright?

Copyright is the right that is given to creator, author, artist and composers for their work. Copyright is monopolistic in nature that gives exclusive right to sell, publish and reproduce any literary, artistic, musical and dramatic work created by the author. There are many other things that come under the copyright that include books, poems, stories, novels, plays, newspapers, choreography, videos, songs, compositions and paintings and many more.⁷

What is Copyright Infringement?

Copyright infringement occurs when anyone uses, copies, distributes it or uses the work of anyone to which he is not entitled to use and this may happen in physical or digital form. Examples of this include recording of film in a movie theater and making its copies for sale or showing it publicly, usage of images available for free on google, using the information present on the internet without asking for permission or closely replicating the work related to art.⁸

Penalties for copyright infringement-

⁶ <http://www.bananaip.com/ip-news-center/latest-trademark-cases-in-2021-part-14/>

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https://www.researchgate.net/publication/344217569_A_STUDY_OF_INTELLECTUAL_PROPERTY_RIGHTS_AND_ITS_SIGNIFICANCE_FOR_BUSINESS

⁸ <https://www.lawbite.co.uk/resources/blog/what-is-the-difference-between-trademark-and-copyright>

Under copyright act, 1957 there are two categories of remedies in case of copyright infringement.

1. Civil remedies-

Under section 55(1) of copyright infringement, which says that the copyright holder is entitled to get the remedy by way of injunction because injunction is the most effective way of getting remedy in case of copyright infringement. Injunction is the process in which a person who is violating the legal right of an authorized person is ordered to be restrained from doing this or to restore the authorized person in the position where he would have been if the later person had not done it. This section further provides that copyright holder is entitled to get the remedy and the purpose of providing the damage is to reinstate the person in the earlier position and there are various factors that defines the amount of money that needs to be paid to the authorized person, generally the amount that needs to be paid depends upon the condition that how much money the copyright holder would have got if the same had been done after taking the license from the copyright holder and some other factors are there like loss of profit to the copyright holder and loss of reputation as well.

2.Criminal remedies-

Under section 63 of copyright act, 1957 that says the copyright holder can also initiate criminal proceeding against the infringer and one thing should be noted here is that criminal proceeding is not an alternative to civil proceeding but it is complimentary with civil proceeding, therefore copyright holder can bring both the suit that is civil and criminal proceeding against the infringer. Section 63 of the act says that infringement of copyright act is a criminal offense under copyright act, 1957.⁹

Recent case law based on copyright infringement-

In the case of **Sony Pictures Network India Pvt. Ltd. vs. www.sportsala.tv And Ors.** where Sony pictures filed suit against numerous defendants and was primarily praying for the injunction against reproducing, making available, distributing and broadcasting of cricket matches of India's tour of England and Sri Lanka. The court later on gave the injunction in favor of the Sony pictures and a dynamic injunction was also passed against the rogue websites that may produce, broadcast, make available or communicate it to the public and along with this court also ordered the Internet Service Providers to block the rogue websites and directed the government to take appropriate measure to prevent further infringement of Sony Picture in the matches. Court also directed the local commissioners of Delhi to monitor the situation and act as per the order of court.¹⁰

⁹ <https://www.bananaip.com/ip-news-center/indian-orders-and-judgments-intellectual-property-law-2021-2/>

¹⁰

<https://www.bananaip.com/ip-news-center/indian-orders-and-judgments-intellectual-property-law-2021-2/>

Difference between Trademark and Copyright-

Trademark and Copyright are both forms of intellectual property or we can say that trademark and copyright both come under it and it can also be defined as intangible assets. These rights are generally given to the people for the creation of their mind like inventions, literary and artistic works, symbols, names and images etc. Although both are the forms of intellectual property and provides intellectual protection but the main difference between trademark and copyright is that they provide protection for different kind of work but they both have different process

for their registration. Copyright provides protection for literary works, artistic materials and videos. Copyright protection creates itself just after the production or creation of the work and on the other hand trademark rights protects the items that defines the brand, such as their logo or slogan and it requires more extensive registration to get the trademark rights.¹¹



¹¹ <https://www.nerdwallet.com/article/small-business/trademark-vs-copyright>