

Law**Stories**

# Intellectual Property Law

Q&A Exam Guide

◦ Osmania University ◦ Year 2 · IV Semester ◦ Part C

Copyright

Trademarks

Patents

Industrial Designs

TRIPS

Paris Convention

Berne Convention

Fair Use

Passing Off

Compulsory Licensing

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# Intellectual Property Law | Part C

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## All Units: Problem Bank

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# Intellectual Property Law | Part C

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## Problem Questions — IREAC Format

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**Q1. X uses trademark "NIKEE" for sportswear. Nike Inc (owner of registered "NIKE" mark) objects. Decide.**

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PRIORITY: ★★★ | PART: C | FREQ: 6

### Issue

Whether the use of "NIKEE" on sportswear by X constitutes infringement of Nike's registered trademark "NIKE" under Section 29 of the Trade Marks Act (TMA), 1999, on the ground of deceptive similarity.

### Rule

Section 29(2)(b) of the TMA provides that a registered trademark is infringed when a person uses a mark similar to the registered mark on identical or similar goods, where such use is likely to cause confusion. "Deceptively similar" under Section 2(1)(h) means a mark so nearly resembling another as to be likely to deceive or cause confusion. The test is applied from the perspective of a person of average intelligence and imperfect recollection (*Amritdhara Pharmacy v Satya Deo Gupta*, 1963). Additionally, "NIKE" qualifies as a well-known trademark under Section 2(1)(zg), attracting cross-class protection under Section 29(4).

### Exception

Section 30(2)(a) provides a defence where the use is of the defendant's own name in good faith. Section 30(2)(b) provides a defence for descriptive use. However, "NIKEE" is not X's personal name nor a descriptive term: it is a phonetically identical variant of NIKE with no independent meaning. No Section 30 defence applies. Section 35 protects bona fide use of a mark by prior users, but X cannot claim prior use of "NIKEE" against NIKE's globally established registration.

## Application

"NIKEE" and "NIKE" are phonetically identical and visually near-identical (single extra letter "E"). The goods are identical (sportswear). A consumer of average intelligence with imperfect recollection would almost certainly confuse "NIKEE" sportswear with NIKE products. The Cadila Healthcare (2001) multi-factor test supports infringement: phonetic identity, visual similarity, identical goods, same trade channels, same consumer base. NIKE's well-known status further strengthens the case under Section 29(4).

## Conclusion

X's use of "NIKEE" on sportswear constitutes infringement of NIKE's registered trademark under Section 29(2). Nike Inc is entitled to injunction, damages or account of profits, and delivery up of infringing goods. If X acts knowingly, criminal liability under Section 103 also arises.

### Case Laws >

#### Amritdhara Pharmacy v Satya Deo Gupta (SCI, 1963)

##### Facts

"Amritdhara" vs "Lakshmandhara" for ayurvedic medicines. Common suffix "dhara" created phonetic confusion.

##### Held

Deceptively similar. Test: overall impression on person of average intelligence with imperfect recollection.

##### Principle

Phonetic similarity is decisive for goods purchased orally. Marks compared as wholes.

#### Cadila Healthcare v Cadila Pharmaceuticals (SCI, 2001)

##### Facts

"Falcitab" vs "Falcigo" for malaria drugs. Multi-factor test for deceptive similarity.

##### Held

Stricter test for pharmaceuticals. Factors: nature of marks, resemblance, nature of goods, trade channels, purchaser care.

##### Principle

Deceptive similarity is assessed holistically with heightened scrutiny for goods where confusion endangers health.

## Deceptive Similarity as Near-Automatic Infringement for Phonetically Identical Marks on Identical Goods

**Q2. A tribal community has been using a herbal remedy for skin diseases for centuries. A foreign pharmaceutical company patents the same. Advise the tribal community.**

PRIORITY: ★★★ | PART: C | FREQ: 5

### Issue

Whether a foreign pharmaceutical company can validly patent a herbal remedy that constitutes traditional knowledge of an Indian tribal community, and what remedies are available to the community.

## Rule

Section 3(p) of the Patents Act, 1970 excludes from patentability "an invention which, in effect, traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components." Additionally, any patent must satisfy novelty (Section 2(1)(l)): if the traditional use is documented or publicly known, it constitutes prior art that destroys novelty. The Traditional Knowledge Digital Library (TKDL) provides defensive prior art in patent-compatible format. The Biological Diversity Act, 2002 (Section 6) requires prior approval of the National Biodiversity Authority (NBA) before any foreign entity accesses Indian biological resources for IP purposes.

## Exception

If the foreign company has developed a genuinely novel process for extracting or formulating the herbal remedy (beyond what is traditionally known), that novel process may be patentable. Section 3(p) excludes the traditional knowledge itself but does not prevent patenting of novel applications or processes derived from traditional knowledge that involve genuine inventive step beyond traditional practice. However, the product claim (the remedy itself) would remain excluded.

## Application

The tribal community's herbal remedy has been in use for centuries: this constitutes prior art. If filed in India, the patent would be refused under Section 3(p) (traditional knowledge exclusion) and for lack of novelty (prior use). If granted abroad, the community can challenge it by filing prior art evidence (through CSIR/TKDL or direct challenge) as in the turmeric patent case (1997). For future protection: (i) register the remedy in TKDL as defensive prior art; (ii) if the remedy's quality is linked to the geographic area, apply for GI registration under the GI Act, 1999; (iii) register with the State Biodiversity Board under the Biological Diversity Act for access control and benefit-sharing.

## Conclusion

The foreign company's patent is invalid if the claimed invention is in substance traditional knowledge (Section 3(p)) or lacks novelty due to prior traditional use. The tribal community should pursue a layered strategy: TKDL registration (immediate defensive protection), GI registration if geographic quality-link exists, and Biodiversity Act registration for access control. If the patent was granted abroad, a challenge citing prior art (TKDL entries, published traditional use) can secure revocation, following the precedent of the turmeric and neem patent revocations.

### Case Laws >

#### Turmeric Patent Challenge (USPTO, 1997)

##### Facts

University of Mississippi obtained US patent for use of turmeric in wound healing. India's CSIR challenged, producing prior art from Sanskrit texts.

##### Held

Patent revoked. The claimed invention lacked novelty: turmeric's wound-healing properties were centuries-old documented traditional knowledge.

##### Principle

Traditional knowledge constitutes prior art. Foreign patents on known traditional uses can be revoked by presenting documentary evidence of prior traditional practice.

### Q3. P, a scientist, develops a new pest-resistant variety of rice. He wants IP protection. Advise.

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PRIORITY: ★★★ | PART: C | FREQ: 5

#### Issue

Which form of IP protection is available for a new pest-resistant rice variety: patent under the Patents Act, 1970 or registration under the Protection of Plant Varieties and Farmers' Rights Act (PPV&FR Act), 2001.

#### Rule

Section 3(j) of the Patents Act excludes "plants and animals in whole or any part thereof other than micro-organisms" from patentability. New plant varieties are protected under the PPV&FR Act, 2001 if they satisfy the NDUS criteria: Novel (not previously sold), Distinct (clearly distinguishable from existing varieties), Uniform (consistent characteristics), and Stable (unchanged over generations). Registration confers breeders' rights under Section 28: exclusive right to produce, sell, market, distribute, import, or export for 15 years (crops) or 18 years (trees/vines).

#### Exception

If P developed a genuinely novel biotechnological process (not essentially biological) for creating the pest-resistance trait using micro-organisms or genetic engineering techniques, that process may be patentable under the Patents Act (micro-organisms are excluded from Section 3(j)'s exclusion). However, the plant variety itself (the rice) remains unpatentable. The patent would cover the process, not the product (the rice variety).

#### Application

P's pest-resistant rice variety is a plant. It cannot be patented under the Patents Act (Section 3(j) exclusion). P should apply for registration under the PPV&FR Act. The variety must satisfy NDUS: (i) Novel: not previously sold or disposed of commercially; (ii) Distinct: the pest-resistance trait distinguishes it from existing varieties; (iii) Uniform: all plants in the variety show consistent pest-resistance; (iv) Stable: the pest-resistance persists over successive generations. If registered, P receives exclusive commercial rights for 15 years. Farmers retain the right to save, use, and share seed under Section 39.

#### Conclusion

P should seek protection under the PPV&FR Act, 2001, not the Patents Act. If the variety meets NDUS criteria, P will receive breeder's rights for 15 years. The patent route is available only for any novel biotechnological process P used to create the variety (if applicable), not for the variety itself.

## Monsanto Technology v Nuziveedu Seeds (SCI, 2019)

### Facts

Monsanto held patents on Bt cotton technology. Nuziveedu challenged whether patent protection extends to plant varieties through GM traits.

### Held

Remanded for adjudication. The interface between Patents Act and PPV&FR Act on GM traits remains a live legal question.

### Principle

The boundary between patent protection for biotechnological processes and plant variety protection under PPV&FR requires case-by-case determination.

## PPV&FR Act as the Exclusive Route for Plant Variety Protection in India

### Q4. A teacher photocopies 3 chapters from a textbook for classroom distribution. Publisher sues for copyright infringement. Will the suit succeed?

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PRIORITY: ★★★ | PART: C | FREQ: 5

#### Issue

Whether photocopying portions of a textbook for classroom educational purposes constitutes copyright infringement under Section 51 or falls within the fair dealing exception under Section 52(1)(i) of the Copyright Act (CA), 1957.

#### Rule

Section 52(1)(i) provides that reproduction of any work "by a teacher or pupil in the course of instruction" does not constitute infringement. This is a specific statutory exception for educational reproduction. In *University of Oxford v Rameshwari Photocopy Services (2016)*, the Delhi High Court held that preparation of course packs (photocopied chapters from multiple textbooks) for educational purposes falls within Section 52(1)(i), even when done through a commercial photocopy intermediary.

#### Exception

The exception under Section 52(1)(i) is not unlimited. It must satisfy the Berne three-step test (Article 9(2)): the reproduction must be in a special case (education), must not conflict with normal exploitation (must not substitute for the textbook market entirely), and must not unreasonably prejudice the author's interests. Photocopying the entire textbook would likely fail step 2 (it substitutes for purchasing the book). However, photocopying selected chapters for specific lessons is within the exception's scope as established in the *DU Photocopy Case*.

#### Application

The teacher photocopied 3 chapters (not the entire book) for classroom distribution (educational purpose). This falls squarely within Section 52(1)(i): reproduction by a teacher in the course of instruction. The *DU Photocopy Case (2016)* confirms that educational photocopying is not infringement even if the photocopy is done commercially. Three chapters out of a full textbook does not substitute for the entire book (satisfies three-step test step 2). The purpose is instruction, not commercial sale of copies.

## Conclusion

The publisher's suit will fail. The teacher's photocopying of 3 chapters for classroom instruction falls within the fair dealing exception under Section 52(1)(i). This is not infringement. The DU Photocopy Case (2016) is directly on point: educational reproduction, even through commercial intermediaries, is protected.

### Case Laws >

#### University of Oxford v Rameshwari Photocopy Services (Delhi High Court, 2016)

##### Facts

Photocopy shop prepared course packs from multiple textbooks for DU students. Publishers sued for infringement.

##### Held

Section 52(1)(i) applies. Educational photocopying is not infringement regardless of commercial intermediary.

##### Principle

The educational exception (Section 52(1)(i)) is broad: purpose determines applicability, not the commercial nature of the copying service.

## Educational Reproduction as a Statutory Exception Beyond Publisher Control

### Q5. An architect designs a building. Another architect copies the design. Can the first architect claim copyright? Advise.

PRIORITY: ★★★ | PART: C | FREQ: 3

#### Issue

Whether an architectural design constitutes a copyrightable "artistic work" under the Copyright Act, 1957 and whether copying another architect's design constitutes infringement.

#### Rule

Section 2(c) of the Copyright Act defines "artistic work" to include "a work of architecture" which means "any building or structure having an artistic character or design, or any model for such building or structure" (Section 2(b)). Architectural plans and drawings are also protected as artistic works. Copyright arises automatically on creation (no registration needed). Section 14(c) grants the author exclusive rights to reproduce the work (including making a three-dimensional reproduction of a two-dimensional work: turning plans into a building). Infringement occurs under Section 51 when a substantial part is copied without authorisation.

#### Exception

Section 52(1)(x) provides that the making of a painting, drawing, photograph, or engraving of an architectural work is not infringement (you can photograph a building without infringing). Section 52(1)(y) provides that the reconstruction of a building in accordance with the original architectural drawings is not infringement where the building has been destroyed. However, no exception permits copying an architect's design to construct a new, different building. The first architect's copyright in the design is infringed when another architect copies the design for construction.

## Application

The first architect's building design is an "artistic work" (work of architecture) under Section 2(c) and 2(b). Copyright subsists automatically from creation. The second architect's copying of the design constitutes reproduction of a substantial part without authorisation, infringing Section 51. The fact that both are architects is irrelevant: copyright protects against copying regardless of the copier's profession. The first architect can seek injunction (to prevent construction), damages (for commercial loss), and delivery up of copied plans.

## Conclusion

The first architect can claim copyright. Architectural designs are "artistic works" under the Copyright Act. Copying another architect's design without permission constitutes infringement under Section 51. The first architect is entitled to injunction, damages, and delivery of infringing copies. The only exceptions (photographing the building, reconstructing after destruction) do not apply to this scenario of design copying for new construction.

### Case Laws >

#### Rajesh Masrani v Tahiliani Design (Delhi High Court, 2009)

##### Facts

Fashion/architectural design dispute. Question whether visual designs applied to articles constitute copyrightable artistic works.

##### Held

Original designs with artistic character constitute artistic works under Section 2(c). Copyright protects against reproduction.

##### Principle

Designs with artistic character are protected as artistic works. Copyright prevents unauthorised reproduction.

## Architectural Works as Protected Artistic Expression Under Copyright

**Q6. A software developer creates a new application. A competitor copies the source code. The developer also wants to patent the software. Advise on available IP protection.**

PRIORITY: ★★★ | PART: C | FREQ: 3

### Issue

Whether software is protectable under copyright (source code copying) and whether it can also be patented under the Patents Act, 1970 given the Section 3(k) exclusion of "computer programme per se."

### Rule

Software source code is protected as a "literary work" under Section 2(o) of the Copyright Act, 1957. Copyright arises automatically on creation. Section 3(k) of the Patents Act excludes "a computer programme per se" from patentability. However, in *Ferid Allani v Union of India* (2020), the Delhi High Court held that the qualifier "per se" limits the exclusion: computer-implemented inventions demonstrating a "technical effect" beyond normal software-hardware interaction may be patentable.

## Exception

Section 52(1)(aa) permits making backup copies and adaptations by lawful possessors. Reverse engineering for interoperability may be permitted in limited circumstances. However, wholesale copying of source code for commercial exploitation has no exception. For patents, if the developer's software merely implements a known algorithm without producing a novel technical effect in the physical world, Section 3(k) bars the patent. The developer must demonstrate that the software solves a "technical problem" and produces a "technical effect" beyond mere data processing.

## Application

**Copyright protection:** The competitor's copying of source code is clear copyright infringement under Section 51 (reproduction without authorisation of a literary work). The developer can seek injunction, damages, criminal prosecution (Section 63), and Anton Piller orders to seize the copied code. No registration is needed (though advisable for evidentiary purposes). **Patent protection:** The developer must assess whether the application produces a technical effect. If the software controls an industrial process, improves hardware performance, or solves a technical problem in the physical world, a patent application may succeed. If it merely performs data processing, business logic, or algorithmic computation, Section 3(k) excludes it.

## Conclusion

The developer has automatic copyright protection for the source code: the competitor's copying is infringement with full civil and criminal remedies available. For patent protection, the developer must demonstrate "technical effect" beyond the programme per se (Ferid Allani, 2020). The two protections are complementary: copyright protects the code (expression); patent may protect the technical application (if qualifying). The developer should pursue copyright enforcement immediately and evaluate patent filing based on the technical effect assessment.

### Case Laws >

#### Ferid Allani v Union of India (Delhi High Court, 2020)

##### Facts

Patent application for network information retrieval method rejected under Section 3(k).

##### Held

"Per se" limits the exclusion. Technical effect must be examined; automatic rejection for software involvement is impermissible.

##### Principle

Software with technical effect beyond normal code execution is not excluded by Section 3(k). Patent Office must assess technical contribution.

## Software's Dual Protection: Copyright for Expression, Patent for Technical Application

### Q7. A company produces herbal oil and labels it "Hyderabad Herbal Oil" though produced in Mumbai. Advise the Hyderabad producers.

PRIORITY: ★★★ | PART: C | FREQ: 3

#### Issue

Whether use of "Hyderabad" on herbal oil not produced in Hyderabad constitutes infringement of a geographical indication or amounts to misleading the public as to geographic origin.

## Rule

Section 22 of the Geographical Indications of Goods (Registration and Protection) Act (GI Act), 1999 provides that a registered GI is infringed by any person who uses the GI on goods not originating from the indicated geographic area, or uses it in a manner that misleads the public as to the true geographic origin. Even without GI registration, Section 22(2) prohibits use of a GI in a manner that constitutes unfair competition under Article 10bis of the Paris Convention. Additionally, passing off applies: if Hyderabad producers have established goodwill in "Hyderabad Herbal Oil" as indicating origin, use by a Mumbai producer misrepresents origin.

## Exception

If "Hyderabad Herbal Oil" has become a generic term (no longer associated with the place but merely a product description), Section 9 may prevent GI protection. If the Mumbai company can show the term is generic (like "Cologne" for perfume in some jurisdictions), the claim may fail. However, if Hyderabad producers can demonstrate that "Hyderabad" in relation to herbal oil indicates geographic origin and quality linked to the Hyderabad region (traditional formulations, specific ingredients, Unani medicine heritage), the GI claim is strong.

## Application

If "Hyderabad Herbal Oil" is registered as a GI, the Mumbai company's use is direct infringement under Section 22 (goods not from Hyderabad bearing the GI). If not registered as a GI, the Hyderabad producers can: (i) apply for GI registration demonstrating the origin-quality nexus; (ii) sue for passing off (goodwill in "Hyderabad" as origin indicator, misrepresentation by Mumbai company, damage to Hyderabad producers); (iii) invoke Section 22(2) against misleading use constituting unfair competition. The Mumbai company's labelling misleads consumers into believing the oil originates from Hyderabad when it does not.

## Conclusion

The Hyderabad producers should: (i) apply for GI registration if not already registered; (ii) sue for infringement under Section 22 if registered, or for passing off and unfair competition if unregistered; (iii) seek injunction restraining the Mumbai company from using "Hyderabad" on its oil. The labelling is misleading as to geographic origin and the Hyderabad producers have remedies under both statutory (GI Act) and common law (passing off) frameworks.

### Case Laws >

#### Scotch Whisky Association v Golden Bottling (Bombay High Court, 2006)

##### Facts

Indian company used "Scot" on Indian-made whisky suggesting Scottish origin.

##### Held

Misleading use of a geographic term constitutes GI infringement. Protection extends to derivatives and evocations.

##### Principle

Using a geographic name on non-origin goods is infringement/passing off regardless of exact term used.

**Q8. A pharma company holds a patent on a cancer drug priced at Rs 3 lakh/month. Only 2% of patients can afford it. An Indian company wants to manufacture it at Rs 10,000. Advise.**

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PRIORITY: ★★★ | PART: C | FREQ: 2

### Issue

Whether a compulsory licence can be granted under Section 84 of the Patents Act for an unaffordable patented cancer drug.

### Rule

Section 84(1) provides three grounds for compulsory licensing after 3 years from grant: (a) reasonable requirements of the public not satisfied, (b) not available at reasonably affordable price, (c) not worked in India. In *Natco Pharma v Bayer Corporation* (2012), the Controller granted India's first compulsory licence for sorafenib (cancer drug): Rs 2.8 lakh reduced to Rs 8,800; 6% royalty. All three grounds were independently satisfied. TRIPS Article 31 and the Doha Declaration (2001) confirm that compulsory licensing for public health is TRIPS-compliant.

### Exception

The applicant must have first attempted to obtain a voluntary licence from the patentee on reasonable commercial terms (Section 84(6)(iv)). This prior negotiation requirement is mandatory unless the Controller waives it under Section 92 (national emergency/extreme urgency). The licence will be non-exclusive (patentee can still sell), non-assignable, predominantly for domestic supply, and the patentee must receive adequate remuneration (royalty determined by the Controller).

### Application

The Indian company should: (i) attempt to negotiate a voluntary licence with the patentee on reasonable terms (record this attempt); (ii) if refused or terms unreasonable, apply to the Controller under Section 84 after 3 years from grant; (iii) demonstrate all three grounds: only 2% patient access (reasonable requirements not met under Section 84(1)(a)), Rs 3 lakh unaffordable (Section 84(1)(b)), and if the patentee imports rather than manufactures locally (Section 84(1)(c)). The *Natco v Bayer* precedent directly supports this application.

### Conclusion

The Indian company has strong grounds for a compulsory licence following *Natco v Bayer* (2012). The Controller will likely grant the licence with a royalty rate (6-7% based on precedent) payable to the patentee. The company can then manufacture and sell at Rs 10,000 per month for the Indian market. The patent remains valid; the patentee receives royalty; patients gain access.

## Natco Pharma v Bayer Corporation (Controller of Patents, 2012)

### Facts

Bayer's cancer drug Nexavar at Rs 2.8 lakh/month; only 2% access; imported not manufactured locally.

### Held

Compulsory licence granted. All three Section 84 grounds satisfied. Natco at Rs 8,800; 6% royalty.

### Principle

Affordability, public access, and local working are independently valid grounds for compulsory licensing.

## Compulsory Licensing as the Access Remedy for Unaffordable Patented Medicines

### Q9. A person registers the domain "tatamotors.org" and offers to sell it to Tata Motors for Rs 50 lakh. Advise Tata Motors.

PRIORITY: ★★★ | PART: C | FREQ: 2

#### Issue

Whether registration of a domain name incorporating a well-known trademark with intent to sell constitutes cybersquatting actionable under trademark law and UDRP.

#### Rule

In *Satyam Infoway v Sifynet Solutions* (2004), the SCI held that domain names function as trademarks and passing off principles apply. Under WIPO's UDRP, the complainant must prove: (i) the domain is identical or confusingly similar to the trademark, (ii) the registrant has no legitimate interest, and (iii) the domain was registered and used in bad faith. Offering to sell the domain to the trademark owner at an inflated price is a specified indicator of bad faith (UDRP Paragraph 4(b)(i)). Section 29(4) TMA also provides that use of a mark similar to a well-known mark is infringement.

#### Exception

If the registrant can show a legitimate interest (operating a genuine business under the name, or the name is their personal name), the UDRP claim may fail on element (ii). However, "tatamotors" has no meaning other than as the Tata Motors trademark. A registrant with no connection to Tata who registers the domain solely to sell it has no legitimate interest.

#### Application

Tata Motors should pursue multiple remedies: (i) file a UDRP complaint with WIPO (for .org domains): "tatamotors.org" is identical to the TATA MOTORS trademark; the registrant has no legitimate interest (not connected to Tata); registration to sell at Rs 50 lakh is classic bad faith. WIPO panel will order transfer within 45 days. (ii) File civil suit for passing off and infringement: domain creates confusion suggesting official Tata Motors site; Section 29(4) protects well-known marks; injunction and damages available. (iii) For Indian .in domains, INDRP would be the appropriate forum.

#### Conclusion

Tata Motors will succeed. The registrant's conduct constitutes cybersquatting: bad faith registration of a well-known mark as a domain for the purpose of selling to the trademark owner. UDRP will order transfer. Civil suit will yield injunction, damages, and costs. The registrant has no legitimate defence where the sole purpose is to profit from another's trademark.

## Satyam Infoway v Sifynet Solutions (SCI, 2004)

### Facts

Similar domain names for competing internet services.

### Held

Domain names function as trademarks. Passing off applies to domain disputes.

### Principle

Domain names are protectable under trademark law; cybersquatting is actionable as passing off.

## Cybersquatting as Bad Faith Trademark Exploitation in the Digital Domain

### Q10. X copies the design pattern of Y's textile product. Y's design is registered under the Designs Act. X argues the design is "common in the market." Decide.

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PRIORITY: ★★★ | PART: C | FREQ: 2

#### Issue

Whether copying a registered design constitutes infringement under the Designs Act, 2000 and whether the defence of "common in the market" (prior publication or lack of novelty) can invalidate the registration.

#### Rule

Section 22 of the Designs Act, 2000 provides that during the existence of copyright in a registered design, the registered proprietor has the right to prevent any person from applying the design (or any fraudulent or obvious imitation) to any article in the class in which the design is registered, for purposes of sale. Section 19 provides grounds for cancellation: if the design has been previously published in India or elsewhere, or if it is not new or original. The burden of proving that the registration is invalid lies on the party challenging it (X in this case).

#### Exception

If X can demonstrate that Y's design was previously published or was "common in the market" before Y's registration date, X can apply for cancellation under Section 19. However, until cancellation is granted, the registration is presumed valid (Section 31: certificate of registration is prima facie evidence of validity). X cannot merely assert "common in the market" without producing evidence of prior publication or prior use predating Y's registration.

#### Application

Y's design is registered: it enjoys presumption of validity. X's copying constitutes prima facie infringement under Section 22 (applying a registered design without authorisation for commercial purposes). X's defence of "common in the market" is essentially a challenge to the registration's validity: X must file for cancellation under Section 19 and prove, with documentary evidence, that the design was previously published or in use before Y's registration date. Until cancellation succeeds, Y's registered right prevails. X bears the evidentiary burden: trade catalogues, prior products, dated photographs, or third-party publications showing the design in use before Y's registration date.

## Conclusion

X infringes Y's registered design under Section 22. The "common in the market" defence requires X to formally challenge the registration's validity under Section 19 with evidence of prior publication. Until such cancellation is granted, Y's rights subsist and X must cease the infringing use. Y is entitled to injunction, damages or account of profits, and delivery of infringing articles.

### Case Laws >

#### **Bharat Glass Tube Ltd v Gopal Glass Works (SCI, 2008)**

##### Facts

Registered design for glass tubes alleged to be commonly available. Defendant claimed lack of novelty.

##### Held

Registration creates prima facie validity. The challenger must prove prior publication with evidence. Mere assertion of commonness is insufficient.

##### Principle

Registered design is presumed valid. Cancellation requires proof of prior publication predating registration. The burden is on the challenger.

## **Registered Design as a Presumptively Valid Right Requiring Formal Challenge to Overcome**

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