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A LEGAL STUDY ON INFRINGEMENT OF DESIGNS UNDER INTELLECTUAL PROPERTY RIGHTS WITH RELEVANT CASE LAWS:

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ABSTRACT:

An Infringement of Design refers to the unauthorized use of a protected design, pattern for commercial purposes. It can include copying, reproducing, or adapting a design without the owner's permission. This abstract examines the issues of design infringement and legal implications. It explores the various forms of protection available to designers such as patents, trademarks, and copyrights. It also considers the factors that determine whether an infringement has occurred, includes the level of similarity between the original and copied design, the intent of the alleged infringer, and the extent of the harm caused to the owner. The research paper further discusses the remedies available to design owners when infringement occurs, such as damages, injunctions, and account of profits. In conclusion, it emphasizes the importance of understanding and respecting Intellectual Property Rights.

Keywords: Designs, Infringement, Protected designs, Legal remedies.

INTRODUCTION:

Design means purpose of intention combined for plan in mind, aim, object, purpose, intention that carried for effect. The Design includes the plan includes the means by which it is to be brought about¹. It is not essential that a design have been primarily in use. Publication is two types: Publication of prior documents, Publication prior user².

Explanation: Design is featuring pattern, shape, ornamental apply for an article for any industrial process like chemical or mechanical, combined or separate, in the finished thing &

¹ P. Ramnath Aiyar, The Law lexicon 1997

² Jaspal Singh (P) Ltd. Vs R Auto Components Ltd 2002.

any creative work. It includes composition of line, color for any articles, articles are of two-dimensional method or 3D form or in both ways³.

Necessities of Design: -

1. It must be applied two articles,
2. Apply to the eye,
3. Uniqueness and Novelty,
4. Copyright in drawings,
5. Presumption of originality,
6. No prior publication,
7. Effect of prepublication.

Registration of Design under the Act:

Section 3 to 10 of the Design act, 2000 deals with registration of designs. Submission for the registering of a design may filed by any individual ask for the proprietor of the unique proposal, not previously registered in India⁴.

Owner of unique design must be:

- Either the writer of a plan;
- Any additional individual who acquired design or right to apply any article;
- A person on whom such rights have progressed⁵.

Effect of Registering: -

Once a design is registered, registered property of design, will be entitled for the rights like; Rights to exclusive use of design, copy right in design, and the right to protect a design from piracy. Rights in the proprietors of the registered designs: Instance of piracy of design, Infringement of pirated design, fraudulent and obvious imitation.

Infringement of Design:

Violation of a copy right in design is named as the piracy of the registered design. Section 22, Design Act 2000, any unlawful request of a registered design/fake/obvious imitation covered by the registration of trade purpose or violation of the Copyright in design.

³ Section 2(d) of the Act

⁴ Under provision S.3.

⁵ S.2(j) of the act 2000, Mohammad Abdula Karim vs Mohammed Yasin and other, AIR 1934 ALL 798 800.

In **Gorbatschow Wodka K.G case**⁶, Gorbatschow Wodka K.G. (Plaintiff) is a German company engaged in the production and distribution of vodka under the well-known brand name "Gorbatschow Vodka." The company is recognized for its distinctively designed vodka bottles, which have a unique dome-shaped cap and a curved body. The plaintiff claimed that this bottle design had acquired a typical identity and had become associated exclusively with its brand in the market.

John Distilleries Limited (Defendant) is an Indian company involved in the production and sale of alcoholic beverages, including vodka. The plaintiff alleged that the defendant had introduced a vodka product under the brand "Salute Vodka," which was sold in a bottle that closely resembled the distinctive shape and design of Gorbatschow Vodka bottles.

The plaintiff initiated legal proceedings against John Distilleries Limited, alleging that the defendant's actions amounted to infringement of trade dress, passing off, and unfair competition. It sought an injunction restraining the defendant from manufacturing and selling vodka in bottles that allegedly copied the plaintiff's unique design.

Issues: Whether the bottle design of Gorbatschow Vodka qualifies for protection as a distinctive trade dress under Indian trademark laws, whether the defendant's use of a similar bottle design for Salute Vodka amounted to trade dress infringement and passing off, whether the plaintiff was entitled to an injunction restraining the defendant from continuing the alleged infringing activity, whether there was a likelihood of confusion among consumers due to the similarity in bottle designs.

Judgment: The Hon'ble Court ruled in favor of Gorbatschow Wodka K.G. and granted an injunction against John Distilleries Limited. The key observations of the Court were; The Court acknowledged that trade dress, including the shape, color scheme, and packaging of a product, is protectable under Indian trademark law. The unique bottle design of Gorbatschow Vodka had acquired a distinctive reputation and was identifiable with the plaintiff's brand in the market. The Court held that the similarity in bottle designs was substantial and could mislead consumers into believing that Salute Vodka was associated with or endorsed by Gorbatschow Wodka K.G. The overall visual impression created by the defendant's bottle design was deemed confusingly similar to that of the plaintiff.

⁶ Gorbatschow Wodka K.G. v. John Distilleries Limited (2011 (47)) PTC

The Court found that John Distilleries Limited had attempted to take undue advantage of the goodwill and reputation of Gorbatschow Vodka. By using a deceptively similar bottle design, the defendant had engaged in unfair competition and passing off.

The Court granted an injunction restraining the defendant from manufacturing, selling, or distributing vodka in bottles that were similar to the plaintiff's unique design. This decision was based on the principle that intellectual property rights, including trade dress, must be protected from unauthorized imitation.

The judgment reinforced the significance of trade dress protection under Indian intellectual property laws. It established that unique packaging and bottle designs, if distinctive and recognizable, are entitled to legal protection against imitation. The ruling in Gorbatschow Wodka K.G. v. John Distilleries Limited emphasized the need to prevent consumer confusion and to uphold the integrity of established brands in the market.

Examination for infringement:

The courts are expected to regulate whether the violation been held in the same pattern. The High Court of Bombay observed that it is not necessary in every case that the pattern or design in order to bring in with the statute, it must be same reproduction of registered design.

Judicial Remedy:

Remedy for the violation of a registered design recovery of the damages along with the injunction. A suit in the appropriate manner for seeking the relief in the form of an injunction is also recommended. The Term of Copy Right in design; u/s 11 of the Act, the term of the copy right in design is 10 years from the registration which may be extended to period of another five years term. Therefore, the maximum time period of the copy right in designs is 15 years.

Jurisdiction: Any suit or proceeding under s.22(2) of the act, each ground on which the registering of the design may be void under section 19. Shall available as a ground of a defense and once such a ground is taken in defense, Under the section 22(4) of this act, suits or any proceeding to be transferred to high court for decision⁷. S.22 deals with piracy of registered

⁷ Escorts equipment Ltd vs Gautam engg.co. AIR 2010

designs. design registered future will not be eligible to protection against first or prior registered proprietor of design⁸.

In **M/S. Cello Household Products case**⁹, the plaintiffs, Cello Household Products, alleged that the defendants, Modware India, had infringed upon their registered design of a plastic water bottle named "PURO." Cello claimed that their bottle featured a unique shape, configuration, and surface pattern, which were novel and original. They contended that Modware's "KUDOZ" bottle was almost identical in design, including a similar two-tone color scheme and packaging, leading to consumer confusion.

The primary issues before the Bombay High Court were: Whether Cello's design of the "PURO" bottle was novel and original under the Designs Act, 2000, Whether Modware's "KUDOZ" bottle infringed upon Cello's registered design, Whether Modware's actions constituted passing off by misleading consumers into believing that their product originated from Cello. In its defense, Modware argued that the design of the "PURO" bottle lacked novelty, asserting that it was merely a combination of pre-existing designs (a concept known as "mosaicking"). They also contended that the shape of the bottle was generic for fluid containers and that Cello's design was derived from previously known designs. Additionally, Modware challenged the court's territorial jurisdiction. The Bombay High Court, upon examining the evidence, found in favor of Cello.

The court held that Cello's "PURO" bottle design was sufficiently original and novel, rejecting Modware's defense of mosaicking. It concluded that Modware's "KUDOZ" bottle was almost identical to Cello's design, leading to consumer confusion. Consequently, the court issued an injunction restraining Modware from manufacturing or selling the infringing "KUDOZ" bottles and from passing off their products as those of Cello.

In **Smith Kline Beecham Consumer Healthcare case**¹⁰ a legal action for infringement and passing off toothbrush designs. The Plaintiffs, Smithkline Beecham Consumer Healthcare GmbH, stated that the Defendants, Hindustan Lever Limited (HLL), had replicated their toothbrush designs, that is, the ACQUA FLEX and ACQUAFRESH FLEX N' DIRECT

⁸ Vikas Jain v Aftab Ahmad, 2008.

⁹ M/S. Cello Household Products and Anr. v. M/S. Modware India and Anr, March 30, 2017:

¹⁰ SmithKline Beecham Consumer Healthcare vs. Hindustan Lever Limited, 2000 (52) DRJ 55

models. The Plaintiffs argued that these were novel designs which had gained distinctiveness in the market.

The Plaintiffs believed that HLL's toothbrushes were fraudulently similar to theirs and could mislead consumers into associating them with the Plaintiffs' products. They argued that such similarity brought about confusion and diluted their trademark.

Court's Findings: The court analyzed whether the design was novel and distinctive. It also evaluated whether the infringement resulted in consumer confusion or unfair competition. The ruling in this case would have hinged on whether the Plaintiffs were able to prove distinctiveness and whether the product of the Defendants created market confusion. Remedies in such a case are usually injunctions against continued use of the infringing design, damages, and account of profits.

CONCLUSION:

An Infringement of design refers to the unauthorized use of a protected design, pattern for commercial purposes. It can include copying, reproducing, or adapting a design without the owner's permission. the issues of design infringement and legal implications. It explores the various forms of protection available to designers such as patents, trademarks, and copyrights. It also considers the factors that determine whether an infringement has occurred, includes the level of similarity between the original and copied design, the intent of the alleged infringer, and the extent of the harm caused to the owner. the remedies available to a design owners when infringement occurs, such as damages, injunctions, and account of profits.