ISBN - 978-81-926265-0-5

Establishment Year - 1983

Seminar Proceedings

NAAC Sponsored
One Day National Seminar on

Intellectual Property Rights in Legal Framework

Organized by IQAC

MSP Mandal's

Shri Shivaji Law College, Parbhani.

INDEX

Chapter	Title	Author	Page No.
27	An Analytical Study of the Designs Act, 2000	Dr. Harsha Suryawanshi	150
28	Emergence of Intellectual Properties: Role of World Intellectual Property Organization with special reference to the WIPO Copyright Treaty, 1996 : An analytical Study.	Dr. Waseem I Khan	154
29	Role of copyright board and its quasi-judicial power for protection of copyright in India	Dr. Mrs. P.G. Chavan	159
30	Statutory Perspective of Trademark Law in India and Its Application[1]	Mr. Sopan D. Jadhav	165
31	Transfer of Patent Rights Under Indian Patent Law	Anita Bhagawat Desale	169
32	Intellectual Property Rights in Legal Framework	Mrs. Bagal Manjusha Sunil	176
33	A Trademark Issue : Domain Name Dispute	Aarti Banthia	183
34	Software Piracy Issues and Legislative Measures in India	Dr. LeenaLangde	190
35	Traditional Knowledge: Protection under the Intellectual property Rights	Mrs. Vishakha Bagdey	198
36	The role of Intellectual Property Rights in protection of Biodiversity	Miss Hanifa Sheikh Miss Priyanka Mardikar	204
37	Developing Nations and Protection of Traditional Knowledge under the Present IPR Regime	Vaishali Shivankar	211

An Analytical Study of the Designs Act, 2000

Dr. Harsha Suryawanshi
Asst. Prof., MSP Mandal's, Shri Shivaji Law College, Parbhani

Introduction :

Globalization has intensified competition in consumable goods. The competition compels the manufacturers of goods to upgrade the goods on and often. Up gradation of goods involves novelty of designs so as to attract and appeal to eyes of consumers.However, competition must be fair so as to prevent fraud against consumers as well as manufacturers engaged in novel designs. Designs is one of the most emerging branch of intellectual property. Being property it is necessary to be given statutory protection just like traditional property, keeping in view this facet of property, designs have been accorded statutory protection under the Designs Act, 2000. This paper focuses on analytical study of the Designs Act, 2000.

What is industrial design?

To seek protection as intellectual property, it is necessary to define what amounts to property. Section 2(d) defines "design" as only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section(1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.

Objectsof the Act :

The main object of the Act is to protect the creative originality of designsby giving legal protection to the designs. Other object of the Act is to provide for registration of original designs and prohibit its copying by others. The Act also recognizes rights of design holder, enumerates circumstances regarding infringement of design and legal remedies available against infringement. All these provisions are analyzed in the present paper.

Registration of Designs :

Section 3 to 10 of the Act deal with registration of designs. Section 3 deals with

ISBN - 978-81-926265-0-5

authority for registration of design i.e. Registrar for Patents, Trade mark shall also be shouldered with registration of designs.

Section 4 Prohibits registration of certain designs. A design which

(a) is not new or original; or

b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or

(c) is not significantly distinguishable from known designs or combination of known designs; or

(d) comprises or contains scandalous or obscene matter shall not be registered.

Thus, section 4 bars registration of certain designs and these are designs which are not new or original, designs which are disclosed to public in tangible form or in use, designs that are not distinct from others or are combination of known designs and lastly, designs comprising scandalous or obscene matter. Indirectly, for valid registration,

a. a design must be new and original,
b. design that is not prior published,
c. design is applied to article,
d. design which is contrary to public order and morality. (Bhandari, 2011)

In *Hello Mineral Water Pvt. Ltd. Vs. Thermoking California Pure,* it was held that mere novelty of shape or form is not sufficient but there must be some new element or new position of an old element different from prior structure.

Who can apply for registration?

Section 5 states that person claiming as proprietor of new or original design can make application for registration in prescribed format.Section 2(j) defines proprietor as either author of design, person obtaining design from author for good consideration or person on whom the design has devolved from original proprietor.

Procedure for Registration :

Section 5 to 10 deal with actual process for registration of designs. Section 5 specifically deals with application for registration of design and it is,

(1) The Controller may register the design under this Act, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality.

Provided that the Controller shall before such registration refer the application forexamination, by an examiner appointed under sub-section (2) of section 3, as to whether such design is capable of being registered under this Act and the rules made thereunder and consider the report of the examiner on such reference.

(2) Every application shall be in the prescribed form andshall be filed in the Patent Office

ISBN - 978-81-926265-0-5

in the prescribed manner and shall be accompanied by the prescribed fee.

(3) A design may be registered in not more than one class, and, in case of doubt asto the class in which a design ought to be registered, the Controller may decide thequestion.

(4) The Controller may refuse to register any design presented tohim for registrationif he thinks fit, and person aggrieved by any such refusal may appeal to the High Court.

(5) An incomplete application shall be deemed to be abandoned if it is so because of default or negligence of applicant.

(6) A design when registered shall be registered as of the date of the application for registration.

Section 6 deals with registration of design on to be in respect of particular article or class of articles. Section 7 permits the Registrar substitutions of applications during publication of particulars of registered Design. As per section 8 the Registrar shall issue certificate of registration to the proprietor and imposes obligation to maintain register of designs.

Effect of Registration :

The proprietor of design after registration shall have following rights,

i. the right to exclusive use of the design,
ii. the right to protect the design from piracy.

Cancellation of Registration :

Registration of design may be cancelled on application filed by any person having interest on following grounds,

a. if design is previously registered in India,
b. if it is published in India or other country before registration,
c. design is not new or original,
d. design is not otherwise registarble under the Act,
e. it is not design as defined in Section 2(j).

Piracy of Design :

The proprietor of a design is conferred with 'copyright in design'. (Bhandari 2011) According to section 2(i) says that copyright in design is an exclusive right to apply a design to any article in any class in which the design is registered. When copyright in design is infringed by another person, it is called piracy of design. Section 22 of the Act enlists instances of infringement of design and is as follows,

During the existence of copyright in any design it shall not be lawful for any person-

(a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obviousimitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) to import for the purposes of sale, without the consent of the registered proprietor, any

article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof, or

(c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent sale that article....

In *GlaxoSmithkline Consumer Healthcare Co. vs. Amigo BrushesPvt. Ltd.*, it was held that tail part of the tooth brush being thick or thin is not infringement or piracy of design.

Legal Remedies against Piracy of Design :

Section 22 also provides for remedies against in the form of damages and injunction. It further reads as below,

2. (1) If any person acts in contravention of this section, he shall be liable forevery contravention-

(a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this subsection shall be instituted in any court below the court of District Judge.

Conclusion :

Artistic work applied to products appeal eyes of a person immediately and seek attention of consumers. Consumers get attracted to products due to shape, configuration, pattern, ornamenting etc. which are characteristics of design. Hence designing is categorized as one form of intellectual property and is conferred statutory protection. The Designs Act, 2000 protects originality of designs and prohibits its unauthorized copying by others, thus preventing economic interests of proprietor of designs.

Bibliography :

1. Bhandari M.K. Intellectual Property Rights, Central Law Publications, Second Ed. 2011
2. The Designs Act, 2000
3. Hello Mineral Water Pvt. Ltd. Vs. Thermoking California Pure 2000 PCT 117 (Del)
4. GlaxoSmithkline Consumer Healthcare Co. vs. Amigo BrushesPvt. Ltd. 2004 (28) PCT 1 (Del)