

INDIA

Supreme Court cases 1971-1985

1. Copyright
2. Trade Mark

(Note - No case on Patents was reported in AIR 1971-1985 Supreme Court.)

By

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Case No. 1

**Musical works
Copyright Act (1957), Sections 14, 17.**

The composer of a lyric or a musical work retains the right of performing it in public for profit, otherwise than as a part of the cinematograph film and he cannot be restrained from doing so. An existing and future right of music composer and lyricist in their respective 'works' as defined in the Act is capable of assignment, subject to the conditions mentioned in section 18 of the Act, as also in section 19 of the Act, which requires an assignment to be in writing signed by the assignor or by his duly authorised agent.

The author (composer) of a lyric or musical work who has authorised a cinematograph film producer to make a cinematograph film of his work, and has thereby permitted him to appropriate his work by incorporating or recording it on the sound track of a cinematograph film, cannot, however, restrain the author (owner) or the film from -

(i) causing the acoustic portion of the film to be performed or projected or screened in public for profit; or

(ii) making any record embodying the recording in any part of the sound track associated with the film by utilising such sound track; or

(iii) communicating (or authorising the communication of) the film by radio-diffusion, as section 14(1)(c) of the Act expressly permits the owner of the copyright of the cinematograph film to do all these things.

In such cases, the author (owner) of the copyright of the cinematograph film cannot be said to wrongfully appropriate anything which belongs to the composer of the lyric or musical work. Thus, a protectable copyright comes to vest in a cinematograph film on its completion, which is said to take place when the visual portion and audible portion are synchronised. The rights of a music composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in section 17(b) and (c) of the Act.¹

1. **Indian Performing Right Society Ltd. v. Eastern India Motion Picture Association**, A.I.R. 1977 SC 1443 (Krishna Iyer & Jaswant Singh, JJ.).

Case No. 2

Copyright in idea Copyright Act (1957), Section 51.

There can be no copyright in an idea, subject-matter, theme, plots or historical or legendary facts. Violation of the copyright in such cases is confined to the form, manner and arrangement and **expression of the idea** by the author of the copyright work.

Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there, it would amount to violation of the copyright. In other words, in order to be actionable, the copy must be a substantial and material one, which at once leads to the conclusion that the defendant is guilty of an act of piracy.¹

1. **R.G.Anand v.Delux Films**, A.I.R. 1978 S.C. 1613 (S. Murtaza Fazal Ali, Jaswant Singh & R.S. Pathak, JJ.).

Case No. 3

**Import and transit
Copyright Act, 1957, Sections 51-53.**

The word "import", in sections 51 and 53 of the Copyright Act, means "bringing into India from outside India" and is not limited to importation for commerce only, but includes importation for transit across the country. This interpretation, far from being inconsistent with any principle of international law, is entirely in accord with international Conventions and the Treaties between India and Nepal. As such, an order under section 53, Copyright Act may be made even in respect of infringing copies of artistic works that have been brought to India for transit across India to Nepal. On the order being made, the offending copies are deemed to be goods whose import has been prohibited or restricted under section 11 of the Customs Act. Thereupon, the relevant provisions of the Customs Act are to apply, with the difference that confiscated copies shall not vest in the Government, but shall be delivered to the owner of the copyright.¹

1. **Gramophone Company of India Ltd. v. Birendra Bahadur Pandey**, A.I.R. 1984 S.C. 667 (O.Chinnappa Reddy, E.S. Venkataramiah and R.B.Misra, JJ.).

Case No. 4

Quasi legislative orders Copyright Act, 1957, Section 53.

One fundamental difference between the nature of a notification under section 11 of the Customs Act, 1961 and an order made under section 53 of the Copyright Act is, that the former is quasi-legislative in character. The quasi-judicial nature of the order made under section 53 is further emphasised by the fact, that an appeal as provided to the Copyright Board against the order of the Registrar under section 72 of the Copyright Act. The Registrar is not bound to make an order under section 53 of the Copyright Act as soon as an application is presented to him by the owner of the copyright. Since all legitimate defences are open and the enquiry is quasi-judicial, no one can seriously complain.¹

1. **Gramophone Company of India Ltd. v. Birendra Bahadur Pandey, A.I.R. 1984 S. C. 667 (O.Chinnappa Reddy, E.S.Venkataramiah and R.B.Misra, JJ).**

Case No. 5

**Instructive Mark
Trade and Merchandise Marks Act (1958) Sections 32(c), 56**

Fact that mark is not distinctive must exist as on date of filing rectification application under section 56 and not on date of registration.

While section 32(b) Trade Marks Act, relates to facts existing at the time of and after registration, clause (c) relates to facts which are post-registration facts, existing at the date of the commencement of rectification proceedings. If the trademark at such date is not distinctive in relation to the goods of the registered proprietor, the rule as to conclusiveness enunciated in section 32 would not apply. Therefore, a person can apply for cancellation on the ground that the trade mark in question was not at the date of the commencement of the rectification proceedings distinctive in the sense of section 9(3). The burden of proof, however, in such a case is on the applicant applying under section 56.¹

1. National Bell Co. v. Metal Goods Mfg. Co.(P) Ltd. AIR 1971 S.C. 898 (J.M.Shelat and C.A.Vaidialingam JJ.).

Case No. 6

**Neglect to proceed
Trade and Merchandise Marks Act (1958)
Section 32(c)**

Mere neglect to proceed does not necessarily constitute abandonment, if it is in respect of infringements which are not sufficient to affect the distinctiveness of the mark, even if the proprietor is aware of them. Where neglect to challenge infringement is alleged, the character and extent of the trade of the infringers and their position, have to be reckoned, in considering whether the registered proprietor is barred by such neglect.¹

1. National Bell Co. v. Metal Goods Mfg.Co.(P) Ltd. AIR 1971 S.C. 898 (J.M.Shelat and C.A.Vaidialingam JJ.).

Case No. 7

**Resemblance
Trade and Merchandise Marks Act (1958)
Sections 2(d), 29.**

To decide the question as to whether the plaintiff's right to a trade mark has been infringed in a particular case, the approach must not be that adopted in an action for passing off goods of the defendant as and for those of the plaintiff. In order to form the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side, to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. It is of no use to note on how many points there is similarity and in how many others there is absence of it.¹

1. Parle Products (P) Ltd. v. J.P. & Co. Mysore AIR 1972 S.C. 1359 (C.A. Vaidialingam, I.D. Dua and G.K. Mitter, JJ.).

Case No. 8

Trade Mark and Property Mark **Trade and Merchandise Marks Act (1958) Sec. 2(1) (j)**

The concept of a "trade mark" is distinct from that of a "property mark". A trade mark means a mark used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and some person having the right to use that mark. The function of a trade mark is to give an indication to the purchaser (or a possible purchaser) as to the manufacture or the quality of the goods, to give an indication as to his eye of the trade source or the trade hands through which they pass on their way to the market.

A property mark attached to the movable property of a person remains, even if part of such property goes out of his hands and ceases to be his.¹

1. **Sumet Prasad Jain v. Sheojanan Prasad** AIR 1972 S.C. 2488 (J.M.Shelat Ag.C.J. D.G.Palekar and S.N.Dwivedi, JJ.).

Case No. 9

**Criminal liability : discontinuance of user.
Trade Marks Act, section 2(1) (v).**

It is clear from the definition of 'trade mark' in section 2(1)(v), Trade Marks Act, that for the purpose of chapter 'X' of the Act which deals with the criminal offences, registered as well as unregistered trade marks are covered. An offence under sections 78 or 79 therefore relates to a trade mark, whether it is registered or unregistered. The abandonment of a trade mark by a registered user can only furnish a ground for a person to make an application under section 46 to have the trade mark removed from the registers. It does not entitle him to use a trade mark, whether it is current or has been removed from the register or has been abandoned, or even if it has never been initially registered but has acquired the currency of a trade mark.¹

1. **The State of U.P. v. Ram Nath** A.I.R. 1972 S.C. 232 (P.Jaganmohan Reddy and D.G.Palekar, JJ.).

Case No. 10

**Infringement: Complaint.
Trade Marks Act, sections 78 and 79.**

A person who is not merely the dealer in "beedis" manufactured and sold by the registered owner of the trade mark, but also the constituted attorney of that owner, can make a complaint of infringement of that trade mark by the accused, being a complaint under sections 78 and 79 of the Trade Marks Act and section 420 of the Indian Penal Code (obtaining property by cheating). The Magistrate cannot dismiss the complaint, or refuse to issue process, on the ground that the complainant is not the registered owner of the trade mark.¹

1. **Vishwa Mitter v. C.P.Poddar, A.I.R. 1984 S.C. 5** (D. A. Desai and Amarendra Nath Sen, JJ.).