



**ANALYSING THE ROLE PLAYED BY COPYRIGHTS AND TRADEMARKS IN
RELATION TO BUSINESS TRANSACTIONS**

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ABSTRACT

Intellectual property (IP) is a crucial aspect of modern business transactions. It comprises patents, copyrights, trademarks, and trade secrets. This article focuses on the roles played by copyrights and trademarks in business transactions. Copyrights and trademarks are used to protect creative works and brand identity, respectively.

They are critical tools for businesses to secure their competitive advantage, reputation, and revenue streams. By securing exclusive rights to their creative works and brand identity, businesses can prevent others from profiting off their intellectual property. The significance of Intellectual Property (IP) is paramount in contemporary commercial dealings. In light of the ongoing transition of the global economy towards knowledge-based sectors, safeguarding and administering intellectual property (IP) have assumed greater significance.

The present discourse undertakes an examination of the import of intellectual property (IP) in commercial dealings, delving into its function in augmenting competitiveness, promoting innovation, safeguarding investments, and facilitating efficacious collaborations. In the contemporary fiercely competitive business environment, enterprises endeavour to attain a competitive advantage.

Keywords: Intellectual property, patents, copyrights, trademarks, and trade secrets.

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INTRODUCTION

The protection of Intellectual Property (IP) rights, including patents, trademarks, and copyrights, represents a crucial means for companies to establish a distinctive identity for their products or services in relation to those of their rivals.¹ Through the acquisition of exclusive rights over their innovations and creative works, enterprises can safeguard their market share, cultivate brand recognition, and establish a distinctive identity. The safeguarding of intellectual property (IP) guarantees that enterprises can uphold a competitive edge by obstructing others from duplicating or emulating their unique offerings.

The concept of Intellectual Property (IP) is crucial in promoting innovation in commercial dealings. Intellectual property laws incentivize innovation by affording creators and inventors exclusive rights to their inventions and creations, thereby establishing a legal framework for individuals and organisations to safeguard and commercialise their ideas.

The provision of protection incentivizes investment in research and development (R&D) and provides inventors with the chance to reap financial benefits from their innovations. Intellectual property rights enable the conversion of inventive concepts into concrete products and services, thereby providing a return on investment that is advantageous to both innovators and the wider community.

The protection of Intellectual Property rights serves as a stimulant in the attraction of investments. Investors typically require assurance regarding the safeguarding of their invested capital and the presence of a distinctive value proposition within the invested business.

The protection of intellectual property (IP) is a valuable asset that enhances the perceived value of a company, rendering it an appealing investment prospect. Patents serve not only as a safeguard for inventions but also as a foundation for licencing arrangements, collaborative endeavours, and technology exchanges. The possession of a strong intellectual property (IP) portfolio can bolster the reputation of a company and inspire trust among prospective investors, thereby facilitating financial support and promoting commercial transactions.

In contemporary business environments, the establishment of collaborations, partnerships, and strategic alliances is deemed indispensable for achieving growth and attaining success. The

¹ CN Saha, S., 'Bhattacharya Intellectual property rights: An overview and implications in pharmaceutical industry' [2011] 2(2) J Adv Pharm Technol Res. 88-93.

facilitation of collaborations is significantly influenced by the presence of Intellectual Property rights.

Through the facilitation of patent, copyright, and trademark licencing, enterprises can establish mutually advantageous collaborations.² Cross-licensing arrangements facilitate the exchange of intellectual property assets between companies, thereby fostering innovation and mitigating the likelihood of legal conflicts. In addition, safeguarding intellectual property guarantees the confidentiality of proprietary data and confidential knowledge during cooperative endeavours, thereby establishing a basis of confidence among commercial associates.

COPYRIGHTS

Copyrights are legal protections granted to creators of original works of authorship. They apply to literary, musical, artistic, and other creative works. Copyright owners have the exclusive right to reproduce, distribute, and perform their works. They also have the right to create derivative works based on their original creations.³

In business transactions, copyrights play a critical role in protecting creative works. Businesses use copyrights to protect their written content, software, videos, and other creative assets. Copyrights are also important in licensing and distribution agreements. They enable businesses to control how their works are used and monetized by others.

For example, consider a software company that develops a new software application. The company can secure a copyright for the source code and other creative elements of the application. By doing so, the company can prevent others from copying, distributing, or modifying the software without permission. This exclusive right allows the company to monetize the software through licensing agreements or by selling it outright.

In addition to protecting creative works, copyrights are also important in business transactions involving mergers and acquisitions. During such transactions, businesses must carefully assess their intellectual property assets, including copyrights. They must ensure that they have clear ownership right.

² Stephen Ezell and Nigel Cory, 'The Way Forward for Intellectual Property Internationally' (2019) IITF <<https://itif.org/publications/2019/04/25/way-forward-intellectual-property-internationally/>> accessed 18 May 2023.

³ Peter Hirtle, 'Copyright Term and the Public Domain in the United States' (Cornell University Library, 17th May 2023) <<https://guides.library.cornell.edu/copyright>> accessed 18 May 2023.

TRADEMARK

Trademarks are symbols, designs, or words used to identify and distinguish the goods or services of a business. They help businesses establish brand recognition and customer loyalty. Trademarks are essential for businesses to differentiate themselves from their competitors and build a positive brand reputation.

In business transactions, trademarks play a crucial role in protecting a company's brand identity. Businesses use trademarks to protect their logos, product names, and other brand identifiers. Trademarks prevent others from using similar marks that could confuse consumers and dilute the value of the original mark.⁴

For example, consider a consumer electronics company that develops a new smartphone. The company can secure a trademark for the product name, logo, and other brand identifiers. This exclusive right allows the company to prevent others from using similar names or logos for their products. By doing so, the company can protect its brand identity and prevent customer confusion.

Trademarks are also important in licensing and distribution agreements. They enable businesses to control how their products and services are marketed and sold. Trademarks can be licensed to third-party manufacturers, distributors, or retailers. This allows businesses to expand their reach without losing control over their brand identity.

In addition to protecting brand identity, trademarks are also important in business transactions involving mergers and acquisitions. During such transactions, businesses must ensure that they have clear ownership rights to their trademarks. They must also ensure that their trademarks are transferable to the acquiring entity.

ROLE OF IP IN BUSINESS TRANSACTIONS

The principal advantage of copyright lies in its cost-effectiveness, as it does not entail any expenses for acquisition or upkeep. India has entered into numerous international agreements, such as the Berne Convention, which has been endorsed by 179 countries. India is a constituent of the World

⁴ JC Lai, JL Williams, 'Finding Your Identity and Partner in a Trade Mark? Consumption, Innovation and the Law.' [2022] 53(8) IIC Int Rev Ind Prop Copyr Law. 1201-1227.

Intellectual Property Organisation (WIPO) also.⁵ Copyright laws have attained global recognition and are acknowledged by a majority of UN-recognized nations.

It is advisable for entrepreneurs to guarantee that the contractual agreements governing their organization's workforce encompass an intellectual property clause that stipulates the retention of all work performed or delegated by an employee during their tenure with the company. The utilisation of a trademark presents numerous benefits, thereby rendering it a versatile tool with extensive business applications. The provision of exclusive rights to a product or specific types of services is conducive to the development of market confidence and brand equity, in addition to establishing a reputation for uniqueness among consumers.

The primary benefit lies in its ability to differentiate the products and services offered by various organisations. It is also possible to acquire, exchange, or transfer it between enterprises. This holds significant value as a commercial asset. This refers to a form of intangible asset that holds a certain level of monetary value. The function of providing protection and enhancing value is crucial in the context of intense competition.

India has ratified the World Trade Organization's (WTO) agreement, which encompasses the Trade-Related Aspects of Intellectual Property (TRIPS). India became a signatory to the Madrid Protocol in 2013, thereby granting global recognition and acceptance of trademarks to all member countries.⁶ The utilisation of trademarks serves as a deterrent to the distribution and purchase of unauthorised, unlawful, or fraudulent merchandise or provisions.

COPYRIGHT AND TRADEMARK RELEVANCY IN BUSINESS TRANSACTIONS

- *The relevance and role of Trademark in Business Transactions*

Trademarks serve the purpose of distinguishing the goods and services of a particular enterprise from those of others. Within the commercial sphere, a Transaction Trademark is commonly recognised as a brand name or simply a brand. The scope of the Trademark encompasses a variety of elements such as words, logos, phrases, symbols, taglines, and slogans.

⁵ Ruth L. Okediji, 'THE INTERNATIONAL COPYRIGHT SYSTEM: Limitations, Exceptions and Public Interest Considerations for Developing Countries' (2006) 15 ICTSD < https://unctad.org/system/files/official-document/iteipc200610_en.pdf> accessed 18 May 2023.

⁶ WIPO, 'India Joins the International Trademark System' (WIPO, 8 April 2013) < https://www.wipo.int/pressroom/en/articles/2013/article_0008.html> accessed 18 May 2023.

The trademark is typically discernible on both the product and its packaging. The acquisition of a trademark is a crucial aspect in obtaining licensure for a business. A trademark is considered to be the most significant and valuable commercial asset that a company can possess. The act of identifying and distinguishing a company and its products or services in the marketplace from those of its competitors is a crucial aspect of business strategy. Consequently, it is advisable for all entrepreneurs to implement appropriate measures to safeguard and utilise crucial trademarks.

- *Relevancy and role of Copyright in Business transactions*

Copyright is a form of intellectual property right that provides safeguard to creators of "original works of authorship," encompassing literary, theatrical, musical, and artistic expressions. The legal framework of copyright typically confers upon the copyright proprietor the exclusive entitlement to utilise and replicate the copyrighted material, create derivative works, disseminate copies of the copyrighted material, publicly perform the copyrighted material, and publicly exhibit the copyrighted material for an indeterminate duration.

The utilisation of copyright can serve as a means to restrict unauthorised usage of a company's distinct creative outputs, such as promotional materials, sales brochures, instructional manuals, website content, images, and movies, without obtaining prior consent. As the proprietor of the copyright, one has the authority to regulate the reproduction, dissemination, and public display of their work. It is noteworthy that one has the ability to prohibit any individual, including competitors, from capitalising on their copyrighted materials or those that bear a significant resemblance to them.

CONCLUSION

In conclusion, copyrights and trademarks play critical roles in modern business transactions. Copyrights protect creative works, while trademarks protect brand identity. These intellectual property assets are essential for businesses to establish a competitive advantage, reputation, and revenue streams. By securing exclusive rights to their intellectual property assets, businesses can prevent others from profiting off their creativity and brand identity.

This exclusive right allows businesses to monetize their assets through licensing agreements or by selling them outright. In addition, intellectual property assets must be carefully assessed during mergers and acquisitions to ensure that ownership rights are clear and transferable to the acquiring entity.