

Role of Judiciary in effective enforcement of IPRs

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INTRODUCTION

1. The law of Changes
2. Small C's and Big C's
3. Fairness vs Predictability
4. Specialisation vs Generalisation
5. Some cases
6. Conclusion

The law of Changes

- Everything Changes except this law
- Structured Process : **Consistency** at first, **Curiosity** to solve a problem encountered, **Creativity** at work, **Change** achieved
- Curiosity- asking questions, examining options
- Changes – without fear of consequences

Small C's and Big C's

- Small changes impacting IP :
 - Fees of Local commissioners to be standardised
 - Insisting on demystifying techniques like Power point, video's, models, note of arguments
 - Encouraging mediation and settlements
 - Insistence that wrongdoer pays back - damages or alternate form eg Baba Spitoon case, Ralph Lauren – Community service, Microsoft seminars, Ray Ban

Big Changes – forming an IP culture

- Based on a zero tolerance for Counterfeiting cases
 - Anton Piller Orders – over 36 years
 - John Doe orders – where defendants unknown but event links them (eg **Ten Sports** case during World Cup Football)
 - Mareva Injunctions, Norwich Pharmacal orders
 - Lock breaking powers (**Levis** case)
- Criminal Contempt – sealing of defendants premises (**LV case**)
- Above results achieved due to combination of Four elements :
 - Respect for IP
 - Recognition of the need for deterrence
 - Ability to look at foreign cases for solutions
 - Changes ..tweaking to suit local circumstance

Big Changes

- Commercial Courts Act – strict timelines and Summary procedure (**Sugen** Case)
- eCourts
- Video conferencing (**Scrabble** and **Dupont** cases)
- Yet to be achieved –
 - Defreezing Finals (**Philips** case) and
 - Time limits for arguments (eg as in **Merck vs Glenmark**)

Fairness vs Predictability

- Judge Rader – Balancing competing interests in society sometimes leads to difficulties eg need Bright line rules to applyeven a bad clear rule is preferable to a poorly drafted one
- Opposite view that sometimes Court reforms don't look at all factual patterns – hence need for flexibility (eg **WWE** case – online business model)

Specialisation vs Generalisation

- Commercial courts have a hybrid character – specialist because of volume of IP work and generalist because of other type of cases
- Isolated IP court may become like IPAB – not desirable...with a tunnel vision
- Often in the Pareto principle the 20 not the 80 leads to the creative solution So looking all around is an acceptable approach

Some cases

- Shape marks eg Birkin Bag of Hermes , Range Rover cars, EPI leather, Ferrero Rocher chocolates, zippo lighters
- Parallel imports – Samsung and Philip morris
- Well known trademarks – whirlpool and even colour combinations like John deere (Trans border reputation)
- Domain names – Yahoo vs Akash Arora
- Moral Rights – Amarnath sehgal case
- Music – MBPL valuation, IPRS, PPL, ISRA
- Metatags and hyperlinks – Scrabble case
- Phishing – Nasscom case

Cases

- Patent cases – Novartis, Roche vs Cipla , Merck vs Glenmark
 - Glaxo, Enercon, Nitto Denko, Evogene
- Trade secrets – John Brady
- GI cases – Pochampally
- Damages – Cartier and 240 cases
- Long arm jurisdiction and privacy – phoolan devi in Bandid Queen

Conclusion

- Mindset : what is worth Copying is worth protecting
- Dishonest trading by defendant must be stopped –yet no tolerance for suppression by plaintiff
- Speed and simplification dominate
- Will experiment with new wrongs using old torts like trespass, nuisance etc
- Will fashion new and unique remedies
- The damages and discovery jurisprudence likely to grow