

Copyright/Trade Marks Act Infringement Conventions and Indian Law

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ABSTRACT: This research paper is based on Secondary Data Analysis of Pune District court various orders/ judgments related with Prosecution against COPYRIGHT/TRADEMARKS INFRINGEMENT in Pune District.

I. INTRODUCTION:-

Under the Trade Marks Act/ Copy Right Act, both Civil and Criminal remedies are simultaneously available against infringement and passing off. However, after studying all the cases that were disposed off by the courts under Pune District till December 2019, it revealed that none of the accused has been convicted under the relevant Sections of the Trade Marks Act/ Copy Right Act, and other legalities. It has further noted that all the accused have been acquitted by the court.

II. BACKGROUND:-

Researchers attached to Hamra Vishwa Foundation concluded that nobody is getting convicted despite FIRs being filed. Most of the court orders mention that the authorities failed to prove seized property was infringement of Copy Right / Trade Marks Act because

1. Complainant is not expert to say whether seized articles are original or duplicate.
2. Prosecution has not sent the seized material to company for verification as to duplication or genuinity of the accessories.
3. Prosecution could not bring on record how the accessories are duplicate.
4. Witness / complainant failed to secure the presence.
5. Complainant not produced original power of attorney.
6. Complaint is not expert.
7. Seized muddemal is not produced before the court.
8. Failed to examine the investigating officer (io).
9. No shop act license is either seized or produced on record

10. Informant claim is silent about analysis, comparison and his ultimate conclusion in respect of the duplicate goods. He admit having not received any such expert training.
11. Neither informant nor accused claim in respect of the seized muddemal articles.
12. There is no evidence on record to show that accused is the owner of the shop.
13. Opinion of registrar is not obtained before making search and seizure as mandatory as per trade marks act section 115(4) seizure is conducted without warrant and not by officer not below the rank of deputy superintendent of police.
14. Panch witness of seizure panchnama has been turned hostile and support to prosecution.
15. Accused is charged for the offence p/u/s 63 of copyright act section 63 of the copyright acts denotes that any person who knowingly infringes or abates the infringement of copyright or other right conferred by this act, shall be punishable. The perusal of the section shows that accused must have knowingly infringed the copyright and it must be proved that he was found in possession of duplicate water filter denoting bajaj trademark.
16. Some time accused acquitted due to hostile of witness and panch witness and etc.

As the government is failed to prove the seized property was infringement of CopyRight / TradeMarks Act due to which 99% accused are acquitted. Which result in growth of black market distribution /selling /manufacturing / and storing of infringement of CopyRight and TradeMarks Articles/products.

Methodology:- Disposed Case Status Search by CopyRight / TradeMarks Act Type on official website of District Court till December 2019, after search we download all disposed cases and analyse it individually

III. RESULTS:-

Most of the time police officers are failed to submit sized articles to court custody due to which the Court gives direction to disposed of such seized articles because of failure of prosecution. Further CopyRight / TradeMarks Act crimes escape legal net in the city and Nearly 100% accused are acquitted.

IV. CONCLUSION:

Due to lack of proper investigation under CopyRight / TradeMarks Act crimes escape legal net in city which increase in unfair trade has been through infringement of Copyrights/trademarks and thereby misleading the peoples.