

Free essay on intellectual property law

[Business](#), [Company](#)



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Introduction

Intellectual property law has been one of the driving factors of innovation in the nineteenth century. Most notably, it is known for the straight stance it takes on the violators of other people’s intellectual works. Intellectual property can be defined as all works of art, notably brought to protection by the inventor for the purposes of ensuring no other person will benefit contrary to the initial mission of the invention (Bentley, 2008).

The legal case in the submission

Howard, being an avid lover of sea and its showings has been maintaining a collection of sea items that has been of great interest to him. This involves photographs he instructed Simon to take on his behalf for the purposes of satisfying hi desire of having such. We are also notified that not all of the photos were taken recently, since Howard’s grandfather, was also sharing the same interest and took some of the photos. It is from these that Howard gained significant interests for boats, a dream he pursues to adulthood The

collection of all the materials archived by Howard is finally converted into digital form, for purposes well known by him (Bentley 2008).

Julian, who has been for as long time admiring to make a software for aiding his children learn easily has just bought one of the DVD's with the aim of using for guidance in the making of the publications for assisting his children know more about ships (Alpin, 2003).

Legal interpretation of the above events

Howard's grandfather has been photographic oceanic vessels for his reasons of keeping tabs about the developments in the sea vessels. This vessels have been invented by other developers, who for their own reasons and out of their successive innovations has made them remain afloat in their respective businesses. It has not been directly said in the explanation that the collection of all the vessels that had been photographed by Howard's grandfather were registered trademarks by the owners. This represents a case where Howard risks entering in a legal battle with the owners of the said vessel (Alpin, 2003).

Ideally any innovator considers having his original work registered as a trademark for the purposes of keeping those who want to produce unofficial copies of the same work without the authorization of the patented owner can be brought to book. Hence in this case, if the people who originally invented these trading items see such assets being exposed to public, they have the right to demand courts of law to keep Howard and Techno Ltd at bay with regard to producing the related boats (Alpin, 2003).

In addition to the above, the aforesaid companies also have the right to prove in the courts of law that they suffered financial loss due to the

Howard's decision to publish the aforesaid vessels giving the other innovators a chance to use part of the knowledge applied in producing this vessels unauthorised. In the said circumstances, the judges will have to grant them a compensation package with regard to the extent of the financial loss suffered (Alpin, 2003).

However, there are cases where the companies said to have initially invented the said assets will have no grounds to sue Howard and his production line over what he has been doing.

Here are some of the cases.

- For law of trademarks as well as other intellectual property rights to take place, there has to be a prove that the assets in question are in continuous use economically and that he plaintiff has been relying on them for one reason or the other in the day to day operations of the business. legally, it will make no sense for a company that was initially producing vessels and for one reason or the other grounded bringing a case that the currently invention has been taken from their patented work. The statutory period to prove that the company has been employing the patented vessels in the generation of revenues has to be evident for the case to be listened further by the juries in question (Alpin, 2003).

Furthermore, it should be noted that Articles 6 and 7 of the Law on Control of Directive Limiting the right of the holder of a mark under Article 5, to prohibit third parties from using the mark. In this regard, among other things, provides that paragraph 6 of the trademark owner can prevent third parties from using the mark, which is important to show the intended purpose of the product, use it provides in accordance with honest practices in industrial or

commercial matters. Article 7 provides that the owner is not entitled to prohibit the use of the mark in relation to goods which have been put on the market in the Community under that trade mark owner or with its consent, unless there is a valid reason for appeal to most commercial products (Mercer, John 2010).

Under the provisions of the directive, it is assumed that the trademark which is infringed on has been known by a certain percentage of the public.

According to the provisions, though it cannot be concluded that the trademark must have been known by a given percentage of the relevant public, a degree of a certain level of knowledge is required and must be reached when an earlier mark is recognized by a significant part of the public. Under this provision of the articles, the products that Scenting Ltd made comparisons with are considered to have a reputation since even the company itself, by making comparisons of equivalence, admit that they enjoy a higher level of public recognisance and thus have a reputation.

According to this provision, Howard guilty of trademark infringement (Mercer John 2010)

- There has to be a strong proof that with the discussed infringement of the law of trademarks and intellectual property, the points of differences are not the obvious or common developments which can be undertaken by other companies. In simplest terms, taking a group of producers of a certain property, there will be some common areas where their works will bear some level of resemblance. However, there are other areas, which are considered core to the specific brand under judgement that will distinguish each brand from the other, forming the unique areas where a customer will prefer one

product and not the other. Hence for any company bringing a legal action against another one for said infringement, it has to be an area which forms the core of the plaintiff's business and not the general areas which are common to all producers (Alpin, 2003).

Under the same articles, there is a provision for the enhanced protection of trademarks with reputation. Under article 5(2), there is a provision for states of the European Union to provide extended protection for trademarks that have a reputation where the use of a sign takes an unfair advantage or is detrimental to the character of the trademark. Under this provision, the use by scenting Ltd of the equivalence of the trademarks of another company will be considered as infringement of the trademarks of another company. Defending its actions of this will be in vain since if this provision is followed, then defendant will be found to have infringed on the trademark of another company which enjoys a higher reputation in the market, which in itself an act of free riding (Mercer, John 2010).

Under the provisions of the directive, it is assumed that the trademark which is infringed on has been known by a certain percentage of the public.

According to the provisions, though it cannot be concluded that the trademark must have been known by a given percentage of the relevant public, a degree of a certain level of knowledge is required and must be reached when an earlier mark is recognized by a significant part of the public. Under this provision of the articles, the products that Scenting Ltd made comparisons with are considered to have a reputation since even the company itself, by making comparisons of equivalence, admit that they enjoy a higher level of public recognisance and thus have a reputation.

According to this provision, Scenting Ltd is guilty of trademark infringement (Mercer, John 2010).

- Like any other case presented before a jury, the plaintiff has to prove beyond reasonable doubt that as a result of the actions that were perpetrated by the defendant, he suffered financial loss which could have otherwise not occurred since it was illegal to do such. In this case, the actions of the defendant might have in one way or the other injured the rights of the plaintiff with regard to the product protected by the copy right law. In such a case, the jury who has been assigned the case will have no option other than ordering the payment of damages but the defendant (Mercer, John 2010).

The position of Techno limited.

Techno limited has been hired by Howard to produce a digital version of his working that stretches back to the days his grandfather. In such case, it has been confirmed that before commencing production of the agreed work that everything has been original work of Howard and all his sources. As such Techno ltd ha exonerated itself and the from all the legal battles that may be directed to the activities to claim damages. On other grounds, Techno ltd has been involved in the production of the digital version of the photographs as per order and specifications directed by Howard (Mercer, John 2010).

The relationship between Howard and Techno ltd will be that of an agent and a master. In the case, a master will be the person who has issued directives on how he or she requires a part of job been done. I such a case, Techno will produce the said digital versions of the work depending on the orders they receive from the master, Howard.

In the same way, in case of any legal battle, Techno Ltd will not be answerable to any charges fronted against the work by any third party. This is so because the agent is deemed to work to the exact requirements of Howard, leaving the authoriser the sole individual answerable to the said charges (Mercer, John 2010).

However, for any employee from Techno Ltd who acts on his personal capacity to produce products other than what is required of his/her employer by Howard, he/she will be answerable on individual capacity, and not his employer. This is the fate that awaits Boffin if goes ahead to produce his version of products for personal benefit (Mercer, John 2010).

For Julian she is not guilty under laws of copy right and trademarks since every production has been in line with the `new' protected owner Howard, and bearing in mind that every production was done under his authority, there is no case of secondary prosecution.

Relying on the provisions, it should be stressed that the law has defined and marked as belonging to one or other specific provisions of Article 5, if not necessarily a criterion for evaluation as to whether the application in question is valid. The directive and Article 6, Article 12 give control provisions to limit the effects of the registration of the mark. These provisions relate to use in accordance with honest practices in the name of (a) a third party or address, (b) data display, and (c) for the purposes specified symptoms of goods or services, in particular as accessories or parts (Mercer, John 2010).

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