

# Tortious Liability Of Passing-Off Under Protection Of Trademarks.

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## ABSTRACT

The illegal use of products, services, or goodwill connected to another person's business that results in deception is known as passing off. There is unfair competition and confusion in the market when one party sells their commodities as if they were the goods of another. When someone falsely advertises products or services as their own and harms the rightful owner of the trademark, this is known as passing off. Passing off, as opposed to trademark infringement, preserves unregistered trademarks and their goodwill.

This study enunciates the concept of passing off under intellectual property (IP) industry by emphasising mainly into the area of tortious liability of the same under protection of trademarks.

**Keywords-** Passing-off, trademark, intellectual property, tortious liability, misrepresentation.

**INTRODUCTION:** The law of passing off is based on common law. It is a form of tort. Even if the wording of the passing off statute has evolved over the years, it has essentially stayed the same for more than a century. This law's primary goals are to protect the public and a company's goodwill and reputation from being undermined by dishonest rivals. The issues relating to infringement of registered trade mark is basically discussed frequently. In the event of an unregistered trade mark, however, Section 27(2) establishes the passing off remedy. A criminal prosecution or a passing-off lawsuit are the only ways to safeguard an unregistered trade mark that has been utilised. In order to constitute passing off, it is not necessary that fraudulent intention should exist. When there is a representation that the defendants' products or business is related to or connected to the plaintiff's products or business, a passing off action will be brought. Thus, law relating to passing off plays a very significant role in case of unregistered trade mark. In order to understand it in a much better way, this study focuses on discussing the same in detail.

**MEANING OF PASSING OFF:** The act of passing off goods involves a trader attempting to deceive consumers into thinking that his products are the same as those of another merchant. An example of this would be putting a mark such as 'Colmate' on a toothpaste product that looks similar to toothpaste in order to pass it off as 'Colgate'.<sup>1</sup>

"No man is entitled to represent his goods as being the goods of another man, and no man is permitted to use any mark, sign or symbol, device, or other means, whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is the ultimate customer", this was laid down in the case of *Singer v. Loog*, [(1881)18Ch D 395 at 412].<sup>2</sup>

<sup>1</sup> B.L. Wadehra, *Intellectual Property*, New Delhi, Universal Law Publishers, 2007, p. 175.

<sup>2</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 212.

Anybody who passes off their products or business as and for the products or business of another individual is breaking the law and may face legal consequences. In a passing-off action, the plaintiff must demonstrate that<sup>3</sup> -

- (i) the defendant made a false statement to potential or actual customers of goods or services he supplied in the course of his business;<sup>4</sup>
- (ii) the defendant made a false statement intended to harm his business or goodwill;<sup>5</sup> and
- (iii) the plaintiff's goodwill or business was harmed.<sup>6</sup>

The meaning of passing off can be understood properly by referring to the decision laid down in the case of *Parker-Knoll v. Knoll International*, [(1962) RPC 265 at 278 (HL)]. The broad principle of passing off is: "In the interest of fair trading and in the interests of all who may wish to buy or to sell goods the law recognizes that certain limitations upon freedom of action are necessary and desirable. In some situations, the law has had to resolve what might at first appear to be conflicts between competing rights. In solving the problems which have arisen there has been no need to resort to any abstruse principles but rather to the straightforward principle that trading must not only be honest but must not even unintentionally be unfair."<sup>7</sup>

### ESSENTIALS OF PASSING OFF:

In the case of *Erven Warnick v. Townend* (Advocate)<sup>8</sup> Lord Diplock outlined the necessary elements that must be fulfilled in order to establish a legitimate cause of action for passing off as follows:

1. Misrepresentation<sup>9</sup>,
2. produced by an individual when engaging in trade<sup>10</sup>,
3. to potential clients of his or his final clients who purchase products or use his services<sup>11</sup>,
4. that is intended to harm another trader's company or goodwill (in the sense that this is a reasonably foreseeable result)<sup>12</sup>, and
5. which, in the case of a *quia timet* action, will likely do genuine harm to the trader's business or goodwill or which does so already.<sup>13</sup>

Lord Fraser of Tullybelton in the same case viewed the necessary criterias in a different form as follows<sup>14</sup>: The plaintiff must show:

1. that the kind of commodities to which the specific trade name pertains is what he sells in England, or that part of his business<sup>15</sup>,
2. that in the eyes of the public, or a portion of the public, in England, the trade name sets apart that class of goods from other like items and that the class of goods is well defined<sup>16</sup>,
3. that goodwill is associated with the name due to the reputation of the items<sup>17</sup>,
4. that the plaintiff, as a member of the class of individuals who sell the goods, is the owner of the significant goodwill in England<sup>18</sup>, and
5. that the defendants' sale of products is misrepresented by the trade name to which the goodwill is linked has caused him to suffer, or is very likely to cause him to suffer, significant harm to his property in the goodwill.<sup>19</sup>

This is regarded as the modern formulation of the law of passing off.

### APPLICABILITY OF LAW OF PASSING OFF:

The scope of protection available under the law of passing off is significantly wider than under the law of registered mark; this is because the law of passing off applies whenever there is the possibility of confusion

<sup>3</sup> Lord Diplock in *Erven Warnick v. Townend*, cited in *Law Relating to Intellectual Property Rights*, Allahabad, Central Law Publications, 2008, at p. 154.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Law Relating to Intellectual Property Rights*, *ibid.*

<sup>7</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 214.

<sup>8</sup> (1980)RPC 31 (HL), cited in *Intellectual Property*, by P. Narayanan, *ibid* at p. 215.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 215.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

between marks or get-up, or where there is the possibility of identity confusion through the unauthorised use of similar marks or get-up.<sup>20</sup>

The reason for this is that passing off can be used to protect almost any type of distinguishing name, mark, logo, or get-up used to identify a firm or business as well as products and services, since the primary factor in passing off is whether deception or confusion is likely to occur.<sup>21</sup>

Occasionally, a product's identity might become so closely linked to its appearance that it becomes the means by which it is recognised and set apart from all other items.<sup>22</sup> Therefore, it could be considered passing off if someone else adopts an appearance for his items that could lead to confusion among the public regarding its identity.<sup>23</sup>

This rule is applicable to businesses that do not deal in commodities as well. In summary, passing off one's products or business as and for the products or business of another person, by any means necessary to achieve the desired outcome, is a violation that can lead to legal action. The legislation of passing off now covers occupations and non-trading activities.<sup>24</sup> In fact, it is used nowadays to describe a wide range of unfair competition situations in which the actions of one party have harmed the goodwill connected to the actions of another individual or group of individuals. Fraudulent intention is not necessary to constitute passing off.<sup>25</sup>

The concept of passing off law has been expanded and utilised in a variety of business contexts beyond traditional trading, such as associations for professionals, child care centres, exhibition planning, and services of all kinds, including beauty pageants. The main idea behind all such activities is damage or the possibility of injury.<sup>26</sup>

The type of property that is protected in passing off cases is goodwill that has been associated with the plaintiffs' enterprise, with the name, mark, or outfit serving as the goodwill's emblem or means of transportation.<sup>27</sup>

#### **“Passing-off” under the LAW OF TRADE MARKS [Sec. 27(2)]:-**

Sub-section 2 of Sec. 27 of the Trade Marks Act, 1999, provides for action for passing-off of unregistered trade mark. It is as follows<sup>28</sup>:

‘Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or as remedies in respect thereof.’<sup>29</sup>

Thus, the Trade Marks Law provides for an action for passing-off to protect the registered as well as unregistered trade mark. In *Cadila Health Care Ltd. v. Cadila Pharmaceutical*,<sup>30</sup> the Supreme Court held that “Sub-section (2) of Sec. 27 of the TMM Act, 1958 provides that the Act shall not be deemed to affect right against any person for passing-off goods as the goods of another person or the remedies in respect thereof.”<sup>31</sup> In other words, in the case of an unregistered trademark, passing-off action is maintainable.<sup>32</sup>

Thus, according to sub-section (2) of Sec. 27, where the action for infringement is maintainable to protect only those trademarks which are registered under the Trade marks Law, the action for passing-off is maintainable in case of registered as well as unregistered trademarks.<sup>33</sup>

#### **PASSING-OFF: its tortious liability:-**

The expression ‘passing-off’ has not been defined in the Trademarks Act 1999. Passing-off is, basically, a concept, which originated in **tort** and extended to trademarks.<sup>34</sup> The present law of passing off in India is shaped by various judicial pronouncements. English cases have made significant contributions to the law of passing-off in India as Indian Courts have followed English cases in a large number of judicial pronouncements in trademark law.<sup>35</sup>

<sup>20</sup> B.L. Wadehra, *Intellectual Property*, New Delhi, Universal Law Publishers, 2007, p. 175.

<sup>21</sup> B.L. Wadehra, *Intellectual Property*, New Delhi, Universal Law Publishers, 2007, pp. 175-176.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid* at p. 176.

<sup>24</sup> *Ibid.*

<sup>25</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, pp. 212-213.

<sup>26</sup> *Ibid* at p. 214.

<sup>27</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 213.

<sup>28</sup> Meenu Paul, *Intellectual Property Laws*, Faridabad(Haryana), Allahabad Law Agency, 2004, p. 344.

<sup>29</sup> *Ibid.*

<sup>30</sup> AIR 2001 SC 1952, cited in *Intellectual Property Laws* by Meenu Paul, *ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Supra* note 2.

<sup>34</sup> Avinash Shivade, *Intellectual Property Manual*, New Delhi, LexisNexis, 2004, p.505.

<sup>35</sup> *Ibid.*

In *Lakshmikant V Patel v. Chetanbhai Shah and Ors*,<sup>36</sup> the Supreme Court has explained the object of granting injunction in case of passing-off actions. According to the Supreme Court, passing-off action consists of the following<sup>37</sup> three elements:

- (1) Reputation of goods;
- (2) Possibility of Confusion;
- (3) Likelihood of damages to the plaintiffs.

A false representation made by the defendant serves as the foundation for a passing-off action, and this must be established as a matter of fact in each individual instance. It's possible that it was expressed in explicit terms, which is not common.<sup>38</sup> The more frequent scenario involves an implicit representation when a brand, trade name, or get-up is used or imitated and becomes connected in the public's or a specific public group's minds with the goods of another.<sup>39</sup> In such cases, **tortious liability for passing-off** action arises and the issue that needs to be resolved is whether, in light of all the relevant facts, the defendant's use of the mark, name, or get-up in question in connection with his goods impliedly represents those goods to be the plaintiff's goods, the plaintiff's goods, or goods of a specific class or quality; alternatively, it could be asked whether the defendant's use of such mark, name, or get-up is intended to deceive.<sup>40</sup> However, it would be impossible to list or categorise every scenario in which a guy could fabricate the untrue statement that is relied upon. [Lord Parker in *Spadling v. Gamags* (1915)32RPC 273 at 284(HL)]. The representation need not be made fraudulently.<sup>41</sup> It suffices if it has been made, whether through fraud or not, and damages will most likely follow.<sup>42</sup>

The degree to which the use of specific words, songs, or images contributes to passing off must always be determined by the evidence; the easier it is to prove something, the more straightforward the phraseology and the closer it is to a description of the product being sold. However, if the proof establishes the case, the law will take effect, [Lord Halsbury in *Camel Hair Belting* case (1896)13 RPC 218 at 224(HL)]. These principles apply not only to passing-off goods but also to passing-off of business.<sup>43</sup>

In an action for passing-off, it is not open for a defendant to contend that his business is being carried out at a different place than that of the plaintiffs. Physical distance between the business of the plaintiff and the defendant does not affect the merit in the case of a passing-off action by the plaintiffs.<sup>44</sup>

In *Lakshmi V Patel v. Chetanbhai Shah and Ors*,<sup>45</sup> the plaintiff had initiated an action for passing-off against the defendants seeking an injunction restraining defendants from using the name 'QSS Mukta Jeevan Color Lab'. The plaintiffs themselves were running their business in the name of 'Mukta Jeevan Color Lab' since 1982.<sup>46</sup> Subsequently the defendants who were initially running their business in the name of Gokul Studio changed it to 'QSS Mukta Color Lab' in which 'QSS' stood for 'Quick Service Station'.<sup>47</sup> It was contended on behalf of the defendants that the business was being carried out by the defendants at a distance of 4 to 5 kilometers from the plaintiffs' business.<sup>48</sup> This contention was accepted by the trial court and the High Court. However, the Supreme Court held:

"It is difficult to subscribe to the logic adopted by the trial Court, as also the High Court, behind the reasoning that the defendant's business was constituted at a distance of 4 or 5 kilometers from the plaintiff's business and, therefore, the plaintiff could not have sought for injunction. In a city a distance of 4 or 5 kilometers does not matter much. In the event of the plaintiff's having acquired goodwill as to the quality of service being rendered by him, a resident of Ahmedabad city would not mind travelling a distance of a few kilometers for the purpose of availing of better quality of service."<sup>49</sup>

In *B.K. Engg Co. v. Ubhi Enterprises*,<sup>50</sup> the argument of the defendants was that the plaintiffs carried out business in Delhi and the defendants were carrying on business at Ludhiana and that there was no chance of

<sup>36</sup> AIR 2001 SCW 4989, cited in *Intellectual Property Manual* by Avinash Shivade, *ibid*.

<sup>37</sup> *Supra* note 1.

<sup>38</sup> *Ibid*.

<sup>39</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 214.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid*.

<sup>42</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 214.

<sup>43</sup> *Ibid* at pp. 214-215.

<sup>44</sup> AIR 2001 SCW 4989, cited in *Intellectual Property Manual* by Avinash Shivade, New Delhi, LexisNexis, 2004, at p. 506.

<sup>45</sup> Avinash Shivade, *Intellectual Property Manual*, *ibid*.

<sup>46</sup> *Ibid*.

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid*.

<sup>49</sup> AIR 2001 SCW 4996, cited in *Intellectual Property Manual* by Avinash Shivade, New Delhi, LexisNexis, 2004, at p. 506.

<sup>50</sup> 1985 PTC 1, cited in *Intellectual Property Manual* by Avinash Shivade, *ibid*.

confusion. The Delhi High Court rejected this contention relying on *C & A Modes v. CA Waterford Ltd*<sup>51</sup> and held: 'Goodwill does not necessarily stop at a frontier'

In *Westinn Hospitality Services Ltd. v. Caesar Park Hotels and Resorts Inc.*,<sup>52</sup> however, the Chennai High Court held that as the trademark of the plaintiffs 'Westinn' had no reputation in India, the plaintiffs were not entitled to injunction restraining the use of the said trademark by the defendants.

Deceptive similarity in an action for 'passing-off':-

Regarding the factors to be considered in case of an action for either the passing-off of an unregistered trade mark, full Bench of the Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*,<sup>53</sup> held as follows:-

'Broadly stated in an action for passing-off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity, the following factors to be considered<sup>54</sup>:

- (a) The nature of the marks, i.e., whether the marks are word marks or label marks or composite marks, i.e., both word and label works.
- (b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.
- (c) The nature of goods in respect of which they are used as trademarks.
- (d) The similarity in nature, character and performance of goods of the rival traders.
- (e) The class of purchasers who are likely to buy the goods bearing the marks they require; on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.
- (f) The mode of purchasing the goods or placing orders for the goods.
- (g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.'<sup>55</sup>

Deceptive similarity includes 'phonetic' and 'visual similarity':- The Supreme Court in the last four decades has laid down the principle of "similarity of broad and essential features of the two competing marks" to conclude the deceptive similarity, between the two competing marks in case of 'infringement' and 'passing-off.'<sup>56</sup>

The S.C has also made it clear that similarity of broad and essential features between the two competing marks includes phonetic and visual similarity between them.<sup>57</sup> By phonetic and visual similarity between two marks means similarity between them with reference to the ear as well as eye. As in *K.K. Krishna Chettiar v. Sri Ambal and Co.*,<sup>58</sup> the Supreme Court held that "the resemblance between the two marks must be considered with reference to the ear as well as the eye."

In the *Dychem* case, the Supreme Court had observed that examining the markings collectively was the appropriate course of action and that it was important to examine the parts that were not common.<sup>59</sup> However, at the same time one should not disregard the parts, which were common. The Supreme Court held that the decision in the *Dychem* case did not lay down the correct law.<sup>60</sup>

The Supreme Court observed that weightage to be given to each of the factors determining deceptive similarity, would depend on facts of each case and the same weightage cannot be given to each factor in every case.<sup>61</sup> In cases involving passing-off it is not essential that the field of activity of both the traders should be common.<sup>62</sup>

In *Honda Motors Company Ltd. v. Charanjit Singh*,<sup>63</sup> the plaintiffs were the well-known Honda Motors Company involved in the manufacture of automobiles and power equipment. The defendants had started using the same mark of HONDA for their business of pressure cookers.<sup>64</sup> The Delhi High Court reviewed several cases on the subject and held that considering the reputation of Honda Motors Company, use of the word HONDA by the defendants for their pressure cooker amounted to passing-off.<sup>65</sup>

<sup>51</sup> 1978 FSR 126,138, cited in *Intellectual Property Manual*, *ibid*.

<sup>52</sup> 1999 PTC 142, cited in *Intellectual Property Manual* by Avinash Shivade, New Delhi, LexisNexis, 2004, at pp. 506-507.

<sup>53</sup> Meenu Paul, *Intellectual Property Laws*, Faridabad(Haryana), Allahabad Law Agency, 2004, pp. 346-347.

<sup>54</sup> *Ibid*.

<sup>55</sup> *Ibid*.

<sup>56</sup> Meenu Paul, *Intellectual Property Laws*, Faridabad(Haryana), Allahabad Law Agency, 2004, pp. 348-349.

<sup>57</sup> *Ibid*.

<sup>58</sup> AIR 1970 SC 146, cited in *Intellectual Property Laws* by Meenu Paul, Faridabad(Haryana), Allahabad Law Agency, 2004, at p. 349.

<sup>59</sup> *Ibid*.

<sup>60</sup> Avinash Shivade, *Intellectual Property Manual*, New Delhi, LexisNexis, 2004, p. 507.

<sup>61</sup> *Ibid*.

<sup>62</sup> Avinash Shivade, *Intellectual Property Manual*, New Delhi, LexisNexis, 2004, p. 507.

<sup>63</sup> (2003) 26 PTC 1, cited in *Intellectual Property Manual* by Avinash Shivade, *ibid*, p. 508.

<sup>64</sup> *Ibid*.

<sup>65</sup> *Ibid*.

### Some other selected cases in order to understand the tortious liability for passing-off action are as follows:

1. The appellant was prohibited from using the trade name "MANIKCHAND" due to a passing-off action, and the Supreme Court supported the respondent's claim to use the trade mark "MALIKCHAND"<sup>66</sup> for pan masala based on past use. In this instance, the defendant-appellant began marketing his goods (pan masala and gutka) under the name "MANIKCHAND" in 1988, whereas the plaintiff-respondent had been using the trade mark "MALIKCHAND" since 1959.<sup>67</sup>
2. In *Midas Hygiene Industries v. Sudhir Bhatiya*,<sup>68</sup> The Supreme Court granted the appeal and determined that the defendant respondent's use of the name "MAGIC LAXMAN REKHA" was an attempt to pass off the goods by utilising the plaintiff's trademark "LAXMAN REKHA" in good faith. The Court further decided that an injunction cannot be denied based only on a delay.<sup>69</sup>
3. In cases relating to internet domain names, the liability is somewhat different.<sup>70</sup> In *Yahoo Inc. v. Akash Arora*,<sup>71</sup> defendant's internet domain name 'YAHOO INDIA' was found deceptively similar to plaintiff's domain name YAHOO. The defendant was restrained from using YAHOO INDIA. Similar to this, in *Rediff Communication Ltd. v. Cyberbooth*,<sup>72</sup> the court ordered the defendant to stop using the domain name "RADIFF," which the plaintiff had attempted to have registered as a trade mark.<sup>73</sup> Thus, these are some of the cases with the help of which the liability for passing-off action can be better understood.

**RELIEFS:-** There are also provisions for some reliefs in passing off actions. They are laid down under Section 135 of Trade Marks Act.<sup>74</sup> The following<sup>75</sup> are the reliefs available in an action for passing off:-

1. an injunction with conditions;
2. the plaintiffs may choose to get an account of profits or damages; and
3. a directive for the removal or erasing of the offensive labels and marks.

In the case of innocent passing off, if the defendant had ceased to use the mark when he became aware of the plaintiffs' mark, no damages (other than nominal damages) or an account of profits will be granted. But the other reliefs will be available.<sup>76</sup>

It must be noted that, the law of passing-off has been applied to names of exhibitions, professional names, pseudonym or nom-de-plume, publication of songs, title of periodical publication, book or song, false claim to prizes and medals, names of characters in fiction, musical acts, beauty contests, theatrical sketches or plays and cinematographic versions, escort agencies and so on.<sup>77</sup> But, mere copying a rival trader's ideas is not susceptible to a passing off action and hence, no liability arises in such cases.<sup>78</sup>

### CONCLUSION:

Thus, this discussion reveals that a comprehensive framework has been evolved to protect both registered and unregistered trademarks. As long as he does not do anything more than confuse his business with that of another, a man is free to operate under his own name. But, if he does it dishonestly, then liability arises and he will be restrained absolutely from carrying on his business. Thus, this shows that liability for passing off arises in order to protect trademarks. As we know that, the action against passing-off lies in instituting a suit. Hence, suit for passing off arises when the defendant uses any trade mark which resembles the plaintiffs' trade mark. But, it must be noted that, an honest trader will not be prevented from trading under his own name but will be prevented from placing his name upon his goods as a trademark or selling them under his name if it would result in passing-off i.e., if it resembles with another person's trademark. Therefore, all this discussion shows the relevancy of passing-off under the Trade Marks Law and reveals that, action for passing-off arises under the law of trade marks when trade mark of one was used by another.

<sup>66</sup>*Dhariwal Industries v. M/s M.S.S. Food Products*, 20005 (2) Scale, 407; cited in *Law Relating to Intellectual Property Rights*, by M.K. Bhandari, Allahabad, Central Law Publications, 2008, p. 155.

<sup>67</sup> (2004) (2) Scale, 231; cited in *Law Relating to Intellectual Property Rights*, by M.K. Bhandari, *ibid* at p. 156.

<sup>68</sup>*Ibid*.

<sup>69</sup>*Ibid*.

<sup>70</sup>*Ibid*.

<sup>71</sup> 1999 PTC (19) 201, cited in *Law Relating to Intellectual Property Rights* by M.K. Bhandari, Allahabad, Central Law Publications, 2008, p. 156.

<sup>72</sup> AIR 2000 Bom 27, cited in *Law Relating to Intellectual Property Right*, by M.K. Bhandari, *ibid*.

<sup>73</sup> *Ibid*.

<sup>74</sup> Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 235.

<sup>75</sup> *Ibid*.

<sup>76</sup> P. Narayanan, *Intellectual Property Law*, Kolkata, Eastern Law House, 2001, p. 235.

<sup>77</sup> P. Narayanan, *ibid*.

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