

A Review on Trademark and Its Enforcement Provisions under TRIPS

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ABSTRACT- The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for the protection and promotion of Copyright Protection (IP) rights in World Trade Organization member nations includes trademark provisions (WTO). Implementation and compliance with TRIPS trademarks and enforcement clauses (15-21, 41-61) are two separate things, e.g., adoption of law and its application, therefore more work is needed to ensure successful functioning of IP rights in participating countries. TRIPS are really the only intergovernmental organization with comprehensive procedural safeguards for IP rights enforcement in member states. This paper utilizes a qualitative study approach to examine TRIPS rules dealing with trademark and their enforcement processes (41-61) in participating nations. Member nations' trademark infringement mechanisms must be appropriate, timely, and not difficult, exorbitant, or labor intensive. Signature style enforcement procedures must also be based on due process of the law and a fair trial, allowing accused persons to sue for damages and compensatory damages for losses suffered at the hands of infringement of trademark, obtain injunctions to prevent future encroachment, and punish fraudulent practices with long prison sentences. TRIPS trademark and prosecution clauses must be observed by participating nations due to obstacles in administering enforcement requirements, such as a paucity of IP expertise, IP professionals, vast borders, a lack of resources, and so on. This must be addressed out in effort to enhance and safeguard reasonable trade activity in participating nations, a protracted undertaking that must be accomplished by beneficial initiatives in light of Weekends away trademark and enforcement regulations.

KEYWORDS- Intellectual Property, IP Rights, Trademark, Trade Related, World Trade Organization.

I. INTRODUCTION

TRIPS trademark enforcement since registration of an international convention and effective implementation are completely different entities, TRIPS [1] trademark enforcement rules must also be executed in participating countries. As a result, participating countries must educate relevant government authorities on IP and induct further IP experts who can really disseminate information through trainings, lectures, conferences, and

advertisements in print and broadcast media, as well as debates and question sessions. In addition toward the TRIPS principles [2], comprehensive enforcement requires time and positive moves in the appropriate path, therefore member countries need help and monitoring. This article looks at the TRIPS copyright and implementation rules that must be followed by countries involved, as well as some other suggestions for enhancing trademark and prosecution systems in countries involved. Two main international institutions, the World Trade Organization (WTO) and indeed the World Intellectual Property Organization (WIPO), seek to promote and protect trademarks all across world [3]. TRIPS contains specific trademark requirements as well as comprehensive IP infringement requirements within member countries, also including responsibilities, civil process, collated and analyzed, temporary processes, boundary measures, and punishment of offenders. Trademark enforcement mechanisms in participating countries must not be difficult, night before going to bed, or predicated on unfairness[4].

Trademarks are a part of intellectual property (IP), which is the branch of law is concerned with intangible constitutional protections like technologies, literary and creative works, trademarks, and commercial reputation like trademarks. A trademark is a logo, name, symbol, aroma, or sound that distinguishes one company's goods or services from that of another. It must be both original and non-descriptive; nevertheless, when the property owner/user fails to act quickly to halt infringement, it loses its uniqueness. In order to promote and protect good trade methodologies and completely eradicate false trade descriptions for economic growth of the country, national governments must use appropriate, less time - consuming process, less expensive, and much less complicated signature style way to examine to protect and promote perfectly valid trademark shareholder interests [5]. TRIPS trademark enforcement rules must be enacted in member countries to protect the legitimate interests of trademark owners and consumers. It's a long process, and there's a large gap between how much needed and what was really done, which should have been closed by productive behaviors that TRIPS-affected national governments must take. States parties shall follow due process and offer a fair trial in all hallmark enforcement cases [6]. Even though only yet another mode of ADR, "consultation," is currently available under article 64 for the resolving

disputes among participating countries, and various modes of ADR are not available for the negotiated settlement of tortious interference disputes in member countries, various patterns of ADR, such as dispute resolution, negotiations, negotiation, and counselling, must be given access to opposing parties of infringement of trademark in member countries[7]. TRIPS were incorporated into the General Agreement on Tariffs and Trade (GATT), which again was signed in 1994 under the auspices of the United Nations Trade Organization (WTO) and have become effective on January 1, 1995. The important WTO and TRIPS regulations dealing regarding trademarks and enforcement of those laws (41-61) are explained in more detail in this article, which finishes with suggestions.

A. Organization for Economic Cooperation and Development (OECD)

The World Commerce Body (WTO) is an intergovernmental organization whose aim is to promote free movement of labour alone without involvement of governments. There must have been eight stages of discussions up to the ratification of the Madrid Agreement at the completion of the Uruguay Round in 1994. The idea of constructing an Independent Trade Organization (ITO) was never accomplished until 1995, when the World Trade Organization (WTO) was established under the GATT [8]. The World Trade Organization (WTO) intended to safeguard and stimulate economic and trade activities in participating countries by limiting government barriers to trade. With 163 members and 21 observers actively requesting for registration, it is the world's most important intergovernmental organization. Other WTO objectives include lowering living costs through trade liberalization, improving the standard of living, resolving commercial disputes through negotiations and some other forms of Alternative Dispute Resolution (ADR), reducing tensions between the u.s. among participating countries, designed to stimulate economic growth, lowering operational expenses internationally, and encouraging good governance [9]. The Conference Of the parties, which must be held every three years at the very least, brought meeting trade ambassadors from all Signatory countries. WTO's highest-level decision-making body is the General Council, meetings on a regular basis in Lausanne to carry out its tasks. It represents the interests of the Ministerial Conference, which is in charge of overseeing the WTO's day-to-day operations, evaluating national governments' national trade agreements, including resolving disputes. The Ministerial Committee, which is comprised of ambassadors across all member countries, is expected to address at least once every month. The Central Committee is in charge of three primary organisms: the goods trade commission, the services trade commission, and the TRIPS council [10].

B. Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS)

The Uruguay round of the GATT, which began in 1986 and concluded in 1994, produced The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a treaty that addresses trade-related aspects of intellectual property rights. The United States advocated

including Intellectual Property (IP) [11] in response to the backlash from either the pharmaceutical sector, whose personnel were also present all throughout discussions. Because intellectual capital was just a new subject in multilateral negotiations, developing economies were reluctant to the incorporation of fundamental IP criteria somewhere at international level [12]. TRIPS, on the other hand, was included in the GATT and is today recognised as the third pillar of something like the trade agreement, which incorporates both commercial activity and communications. Long arguments and disagreement even during Uruguay Round resulted in a variety of ambiguities in TRIPS as a result of different perspective from the US and European countries. Because even when immunity has always been granted, fortune is given, particularly unique arrangements can be made due to privilege, opportunity is derived from either a general international convention, or blessing is given by an individual country to another constituent person in respect of IP protection just before to the GATT's entry into force, preference given by an individual country to this other member court in relation of Patent rights affects all those other member states [13]. Member states are free to take whatever actions are necessary and reasonable to protect the public health and food, promoting community interest, and avoid the abuse of property rights and practices detrimental hinder economy and global technology acquisition. The basic purpose of Intellectual property rights (ipr compliance and protection seems to be to promote, transfer, promote distribute technological development for the benefit of producer and consumer, as well as to contributing to alleviation of poverty via roles and responsibilities.[14].

C. Trademark

A trademark is a symbol, sign, name, word, sound, or scent that may be used to distinguish the products or services of one firm from those of others the possessor of a trademarks has the only right to do something and to use it to identify goods and services. Trademarks must be both unique and non-descriptive, and they lose their distinctiveness when trademark owners/users fail to take timely action against trademark infringement. Traditional or non-traditional trademarks exist. Signs, phrases, labels, emblems, and forms are examples of traditional trademarks[15]. Personal names, company names, letters, numerals, figurative elements, color combinations, and sign combinations are all examples of signs and words. Smells and sounds are non-traditional trademarks, for example, the scent of a tennis ball's grass and the sound of a mobile phone, a Nokia ringtone. TRIPS also cover certification marks and collective marks [16]. Certification marks are being used to authenticate products and services who are only registered for one project. Trademarks are also characterized as guarantee indications since the administrator of something like the trademark guarantees certain products or services to the purchaser through the guarantee and certification mark. Ordinary trademark licensing is permitted with the exception of commerce itself in terms of licensing. A trademark may be transferred to that other individual, but the assignments must not be prohibited by other requirements, including use of the property in association with another property, the use of the property in a

particular style, and use of the intellectual in a method that directly threatens signature style ability [17].

D. Trademark Enforcement

The civil process, administrative procedure, temporary measures, border measures, and criminal procedure are all needed for trademark enforcement in member nations under TRIPS Part III. The Paris Convention was the first intergovernmental pact to incorporate actions that are relevant, while TRIPS is the first agreement to have extensive IP legal mechanisms in member countries

TRIPS' normal standards must be followed by member states in order for effective measures against an infringement of IP rights to be taken while founding principles of constitutional protections and fair trial are upheld [18]. Participating countries must eliminate sowing distrust to legitimate business, provide protections in place against harassments of something like the methodology by taking steps to protect the complainant and delivering him with confidentiality, empower knowledgeable school officials to order practical steps in the event about an encroachment of IP law, that include a largely determined in their national legislation to allow copyright holder to take proper legal proceedings. Due process requires that a case ruling in an individual country be rendered on the merits, in public, explained, and backed up by evidence, but that it be made available to participants without undue delay. Except perhaps in cases of criminal acquittal, each final civil or governmental judgement should indeed allow the aggrieved person must seek judicial review [19]. TRIPS have no bearing on the authority of participating countries to enforce their own legal provisions. Member nations are not obligated to apportion resources to deal simultaneously with the administration of ordinary national legislation and the implementing of TRIPS. In participating countries, the civil mechanism for trademark compliance must be available to offended party so that they may promptly seek remedy through into the civil procedure there in case of intellectual property infringement. Member countries are likely to enact legislation guaranteeing the recognition of the distribution network and the taking of legal proceedings if trademark infringement is discovered. Border barriers remedies encompass product annihilation and disposal from outside the flow of commercial activity to effectively prevent damage to the copyright owner at the competitive marketplace [20].

Border controls should be constructed in such a way that assures proportionality, no inducement for the perpetrator, no additional detriment to the copyright owner, and does not undermine the constitution of something like the member state. In old boyfriend instances, the appropriate government may act without receipt of such notice to halt cooperation and exchange based on prima facie proof of infringement of trademark, and the individual in question may be invited to comply with necessary authorities [21]. National governments must produce substantial initiatives to strengthen border signature style implementation by hiring more IP consultants, educating immigration authorities in the IP profession, particularly in intellectual property law and intellectual properties, trying to eliminate corruption, wanting to hold seminars, training courses, and

presentations, and hiring knowledgeable, truthful, but instead trustworthy personnel.

For counterfeit brand products, border measures must be available, although they may not be for infringing items destined for export, commodities in transportation, simultaneous imports which were not subject to infringement of trademark, or De Minimis importation carried in backpacker's baggage. In most circumstances, De Minimis imports are unrestricted, however certain countries have policies based on the principle of zero tolerance. Participating countries must select a customs organization that will receive application form competent authorities and act in compliance with existing regulations of the government. The applicant must definitively prove that trademark violation occurred that under country's laws, and also provide a complete description of the items. Following that, the appropriate authorities will communicate to the applicants on the acceptance or rejection of the registration, as well as the number of years they will take a stand against misdemeanor trademarks items [22].

II. DISCUSSION

TRIPS is the only intergovernmental pact that has comprehensive IP enforcement procedures in national authorities. The trademark infringement methods in member countries would have to be adequate, responsive, and not difficult, costly, or night before going to bed. According to the Agreement On trade - related, a right holder must initiate efficient and reasonable civil court procedures against the infringing of TRIPS-covered IP rights. Documentation, the right to question, and the prosecutor's indemnity are included in the. TRIPS requires WTO members to provide proprietary rights to authors and certain other copyright holders, as well as related rights holders such as performers, sound recording producers, and broadcasting organizations; geographic location evidence suggesting; industrial property; computer chip layout designs; intellectual property rights; new planting materials; trademarks; business names; and unpublicized or confidential intangibles. TRIPS also specify how the agreement will be enforced, as well as procedures and resolution of disputes. All copyrighted works must be preserved and administered in a way that encourages innovativeness, transfer, and communication for the financial assistance of companies and consumers of technology and knowledge, as well as a proportion of duties and responsibilities.

III. CONCLUSION

The World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO) are the two basic humanitarian bodies now fighting to promote and protect trademarks and some other kinds of trade secrets (IP) throughout the world. The Trips Agreement and the Bernabeu Protocol represent two important trademark agreements administered by that of the World Intellectual Property Organization (WIPO). Part III of TRIPS contains extensive provisions on trademark enforcement processes, whereas Article 9 of the International Treaties, the first multinational convention, focuses with customs procedures for trademark registration in member states.

TRIPS' implementation provisions encompassed general guidelines, civil process, collected and processed, temporary measures, border indicators, and punishment of offenders. TRIPS specifically address trademark classification, source material, and rights conferred on competent authorities, as well as trademark protection term and scope, licensing, and other difficulties. Trademark infringement mechanisms in participating countries must be appropriate, transparent, and rapid, and so must be based on a proper trial and right to due process, with the entitlement to notice and opportunity observed in judicial proceedings before with the final ruling.

Administrative institutions of participating nations are carried out in compliance with civil application requirement and interim procedures regulations, but they are optional. Because that begins with registration of the mark and concludes with property opposition procedures and many other related matters before even the relevant executive agency, administrative procedural is the most powerful technique in trademark compliance. As a result, ability to come up regulations in administrator trademark monitoring procedures must also be stipulated in member countries' applicable national legislation. Member countries are having critical systems border restrictions successfully, therefore they must recruit IP professionals to train immigration personnel in the field of IP and distribute knowledge to the general public through conferences, workshops, conventions, and advertisements. Furthermore, dishonesty must be eliminated, more people with suitable IP training must always be recruited, and member countries must work together to enforce trademarks efficiently via border checks. Finally, different modes of ADR are obligated for the resolution of signature style disputes between citizens of member states, such as arbitration, consultation, negotiation, and consultation, so proper guidelines in this area are ended up needing for in-expensive, efficacious, acceptable, and less night before going to bed modes for the negotiated settlement of trademark controversies by avoiding procedural law technicalities.

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