

IP INFRINGEMENT

When any of the rights granted by the IP regime are violated, the aggrieved party has 2 non mutually exclusive remedies- Civil Remedies & Criminal Remedies. Even though these civil and criminal remedies are distinct and independent, they can be availed simultaneously.

In this context, the principal function of the judiciary is to provide legal remedies against infringement of personal and property rights of persons. Infringement of intellectual property rights is considered as tortious invasion of property.

The courts in India have the power to grant reliefs in cases pertaining to the violation and/or infringement of intellectual property rights. The judiciary not only does the adjudication of the intellectual property matters but it also interprets several IP statutes for a better understanding.

➤ **Civil Remedies:-**

Civil remedies can be enforced by filing a suit for infringement and/or passing off in the competent courts. Following reliefs of civil nature can be granted:-

- **Injunction:-** An injunction is the prohibition of an action by a party to a lawsuit. If the plaintiff establishes that the prima facie case is in his favour, an injunction is granted.
- **Anton Pillar orders or Ex-parte orders** - Anton Pillar orders permit the plaintiff's counsel to enter the infringer's premises and seize evidence of infringement. This order is passed when there is a serious danger of removal/destruction of the infringing articles. Such an order is granted on an ex-parte application. Infringing goods are delivered to the plaintiff or destroyed if the orders of delivery-up and destruction are passed.
- **An award of costs and damages-** An award of cost and damages are two mutually exclusive remedies. Damages are granted to compensate the losses incurred by the plaintiff on account of the defendant's infringing act, whereas actual amounts of profits are handed over to the plaintiff as the second measure.
- **Tracing orders** - Under tracing remedies, an infringer can be ordered to provide details like from where he got his supplies of infringing goods. Failure to provide such information is taken as contempt of court.

➤ **Criminal Remedies**

The criminal remedies available to owners of trademarks, copyright & patents are as follows:-

- Trademarks- Chapter XII of the Trademarks Act, 1999 deals with offences, penalties and procedures pertaining to trademark infringement. Here on account of trademark infringement, the punishment can go as high as imprisonment up to 3 years with or without fine. The fine ranges from 50,000 to 2 lakh rupees. This term and fine can be increased as per the provisions of the Section 105 of the Trademarks Act, 1999.
- Copyrights - Section 63 of the Copyright Act, 1957 deals with 'Offences of Infringement of copyright or other rights conferred by the act'. It mentions about imprisonment for a term not less than 6 months which may extend up to 3 years and fine not less than 50,000 rupees which may extend up to 2 lakh rupees, as punishment if found guilty in a copyright infringement case. This term and fine can be increased according to the provisions of Section 63A of the Copyright Act, 1957.
- Patents- Indian Patent Act, 1970 also considers falsification of entries in register, claiming patent rights in an unauthorized way etc. to be punishable criminal offences. Such penalties are mentioned under Chapter XX of the Indian Patents Act, 1970.