



Protecting trademark rights

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MANY infringements related to intellectual property rights (IPRs) (i.e. patents, industrial designs, trademarks, copyright and related rights, trade-secrets, geographical indications (GI), plant varieties protection (PVP), and layout designs for integrated-circuits) are snowballing in Bangladesh. It is popularly believed that the continuity of the alleged offences is creating national and transnational

trademark related rights which are governed by the Trademarks Act, 2009 (previously it was the Trade Marks Act, 1940).

In the case of *Anil Kumar Ghosh v Shamir Kumar Ghosh*, 54 DLR (2002) 273, the petitioner was doing his business of manufacturing and marketing of Gawa Ghee adopting a trademark including the words 'Baghabari Special Khati Gawa Ghee' together with a picture of a cow on the label with a distinctive colour combination. The opposite party secretly

under Sections 8 and 10 of the then Trade Marks Act, 1940, the High Court Division (HCD) very lucidly concluded that the marks were so resemble to each other. Thereby, the subsequent two trademarks were declared as illegal. Again, their registrations were cancelled and the petitioner got the registration of his trademark as his right will sustain as a first user.

On the other hand, in the case of *Pakistan Soap Factory Ctg v Messrs Chittagong Soap Factory Ctg*, 22 DLR

'1947' should not be used as a trademark. The respondent argued that it would create confusion among the customers portraying that the mark '1937' had been used for long time and it is very popular. The Court showed that the third digit in the appellant's trademark is "4" while it is "3" of the respondent's one. Besides, the pronunciation of "37" and "47" are different. Moreover, the shapes of the soaps are similar but sizes are not same. Therefore, the general public even the non-English knowing people would easily be able to differentiate these two trademarks. Hence, following Section 10 of the Trade Marks Act, 1940, the Court held that the commodities of two separate firms when identified by numerals, little difference in the numerals makes all the differences and therefore, create no confusion among the consumers.

From the above discussion, it is apparent that decision of the Courts in particular cases may differ on the basis of the representation of the trademarks and other relevant circumstances. However, the concern as well as impact of brand duplication is always same in every case which is creation of visual deception among the customers in the ground of original one. The spelling of the brand name, its shape, design, colour, even trademark itself, etc. are copied so considerably that if a customer is unmindful, he will do mistake in identifying the copied one against the original one. Often, it can be found that intention behind using similar trademark would be passing off inferior quality products in the name of superior quality products. In this way, infringement of trademark standards may create a barrier against foreign investment in our country. At all, the ending sentence can be drawn by saying that the original manufactures of any product lose their customers from both home and abroad in the long run because of their unawareness and negligence concerning duplication of trademarks.

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threats to intellectual property rights as well. However, this write-up endeavors to portray the issue of infringement of trademark rights only which is defined as a word, symbol, or phrase used to identify and distinguish particular manufacturer or seller's products. The objective of this write-up is to develop awareness among retailers and customers about the impacts of duplication of trademarks. For this purpose, I will focus on discussion of certain well-established cases and precedents as domestic safeguards against infringement of

filed an application for registration of the trademark together with the words 'New Baghabari Khati Gawa Ghee' as one with similar design and look as the Petitioner had in his trademark. In the meantime, another mark got its registration with the words '1. No Baghabari Khati Gawa Ghee' with same design and get up. 'New Baghabari Khati Gawa Ghee' and '1.No Baghabari Khati Gawa Ghee' were so alike that they were likely to deceive and cause confusion among the consumers. As a result, considering the matter of losing potential customers of the Petitioner and

(1970) 400, the appellant Pakistan Soap Factory adopted the number '1947' as a trademark for ball shaped washing soap while the respondent Messrs Chittagong Soap Factory adopted '1937' as their trademark. The later mark was also used for ball shaped washing soap manufactured by the respondent factory. The appellant factory applied to the Registrar for registration of the trademark. At that time, the respondent factory claimed that they were already owners of a registered trademark which was similar to the appellant's one and so,

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