

# **THE INDUSTRIAL PROPERTY TRIBUNAL**

# INTRODUCTION TO INTELLECTUAL PROPERTY LAW

## WHAT IS INTELLECTUAL PROPERTY ?

Intellectual Property is a type of intangible personal property that generally comprises matters created by the exercise of the human intellect. The law grants rights in this type of property according to the nature of the property involved.

### *Common Features of IP Rights*

- *divisible*
- *territorial*
- *independent of each other*
- *can be bought and sold*
- *anti-competitive*
- *provisional*

# HISTORICAL EVOLUTION AND JUSTIFICATION OF IP RIGHTS

- Protection of intellectual property is based on the desire to ensure a rich, diverse and competitive market place. Giving inventors, scientists, writers, artists, business persons and other enforceable property rights holders on their creation makes it possible for creators to recoup their investment in the creative process, encouraging them to devote their time and efforts to developing new works, products and services;
- Copyright initially focused on the prevention of unlawful physical copying of printed material but it has now evolved into the realm of technology and is now used to protect a plethora of subject matter from broadcasting to the electronic reproduction of the source code of a computer program within a microprocessor.
- Patent laws encourage discovery and invention of new and improved products, processes and other contributions to society, while ensuring the possible public access to information regarding those new products and processes;
- Trademark law encourages development and maintenance of high-quality products and services in order to engender customer loyalty;

# HISTORICAL EVOLUTION AND JUSTIFICATION OF IP RIGHTS

- Strong, effective intellectual property protection is the cornerstone on which an attractive investment climate is built, and produces long-run economic benefits;
- Industrial Property legislation stimulates innovation by providing an environment in which innovation is rewarded; encourages development of lower cost methods of production and distribution of existing products; invites the introduction of new, safe and effective products, technology and services; stimulates development and in-country markets through the adaptation and improvement of existing products and technology; and encourages the transfer of technology.
- Dissemination of information (for all purposes, from science to education to commerce) is enhanced. However, because pirates and counterfeiters neither respect nationality nor pay taxes, effective enforcement of intellectual property rights is crucial and has been made stringent in the Protection Against Unfair Practices Act 2002;

# **IP RIGHTS PROTECTED IN MAURITIUS AND THE LEGAL FRAMEWORK**

- **COPYRIGHTS**
- **MARKS**
- **INDUSTRIAL DESIGN**
- **PATENTS**
- **PROTECTION AGAINST UNFAIR PRACTICE**
- **CONCURRENCE DELOYALE**

# IP RIGHTS PROTECTED IN MAURITIUS AND THE LEGAL FRAMEWORK

## A. COPYRIGHT

### *Definition*

- Copyright is defined as an economic right subsists in a work” (section 2 Copyright Act 1997)

Two elements of definition:

*“work” – section 2*

- an artistic, literary or scientific work, or a derivative work, which is protected in accordance with section 3;
- ❖ Derivative work means a translation, adaptation, arrangement or other alteration of a pre-existing artistic, literary or scientific work and it includes the following:
  - ❖ a collection or compilation of pre-existing works of expressions of folklore or of mere facts or data;
  - ❖ *an anthology, an encyclopaedia or a data base; or*
  - ❖ any other work, which, by reason of selection and arrangement of its contents, is original.

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## *Protection of Copyright*

- It is protected as of right as the economic right is presumed to exist in the work and therefore there is no requirement for registration in order that it is protected.

## *Rights of Owner of Copyright*

Exclusive right of a copyright owner to carry out or authorise the following:

- reproduce the work;
- distribute to the public of the original and each copy of the work by sale, rental or otherwise;
- perform the work in public
- communicate the work to the public;
- broadcast the work;
- import copies of the work, even where the imported copies were made with the authorisation of the author or other owner of the copyright;
- translate the work; or
- adapt, arrange or transform the work;

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## *Duration of Protection (section 12)*

The economic rights relating to an audiovisual work shall be protected until the expiry of-

- 50 years from the making of the work; or
- where the work is broadcast or communicated to the public during the period specified in paragraph (a) with the express authorisation of its maker, 50 years from the end of the year during which the authorisation was granted.

The economic rights relating to a photographic work or a work of applied art shall be protected until the expiry of 25 years from the making of the work.

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## B. MARKS

### *Definition*

- A ‘mark’ is “any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise from those of other enterprises” (section 35(b) PIDTA)
- A “collective mark” is “any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services, of different enterprises which use the sign under the control of the registered owner of the collective mark” (section 35(c) PIDTA).

### *Protection under the PIDTA*

- With the exception of well-known marks, a mark must be registered with the Controller of Industrial Property Office in order that it is protected.

# IP RIGHTS PROTECTED IN MAURITIUS AND THE LEGAL FRAMEWORK

## ***Requirements for registration (section 36(2) PIDTA)***

- *must be capable of distinguishing the goods or services of one enterprise from those of other enterprises*
- *must not be contrary to public order or morality*
- *must not be likely to mislead any person, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics*
- *must not be identical with, or an imitation of, contain as an element, an armorial bearing, flag and other emblem, a name of, or official sign or hallmark adopted by, any State, intergovernmental organisation or organisation created by an international convention, unless authorised by the competent authority of that State or organisation;*
- *must not be identical with, or confusingly similar to, or constitute a translation of, a mark or trade name which is well known in Mauritius for identical or similar goods or services of another enterprise;*
- *must not be registered in Mauritius for goods or services which are not identical or*

# IP RIGHTS PROTECTED IN MAURITIUS AND THE LEGAL FRAMEWORK

- *similar to those in respect of which registration is applied for, provided in the latter case, that use of the mark, in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use;*
- *must not be identical with a mark belonging to a different proprietor and already on the Register of the Controller of Industrial Property Office, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or where it so nearly resembles such a mark as to be likely to deceive or cause confusion*

## ***Effects of Registration (section 36(1) PIDTA)***

- Registration confers the exclusive right to use of a mark as from the date of registration.

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## *Duration of Registration (section 41 PIDTA)*

- Registration is valid for a period of 10 years from the filing date and may be renewed for consecutive periods of 10 years.

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## C. INDUSTRIAL DESIGNS

### *Definition (section 27 PIDTA)*

- An Industrial Design is defined as “*any composition of lines or colours or any three-dimensional form, or any material, whether or not associated with lines or colours*” that displays the following characteristics:
  - ❖ gives a special appearance to a product of industry or handicraft;
  - ❖ can serve as a pattern for a product of industry or handicraft;
  - ❖ appeals to and is judged by the eye; and

provided the sole purpose of the industrial design is not to serve or obtain a technical result.

### *Protection under the PIDTA*

- An Industrial Design must be registered under the PIDTA in order that it is protected.

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## ***Requirements for registration of an Industrial Design (section 28)***

- it must be new i.e. it must not have been disclosed to the public, anywhere in the world, by publication, in tangible form or by use in any other way, prior to the filing date or, where applicable, the priority date of the application to registration; and
- it must not be contrary to public morality.

## ***Effects of Registration (section 32)***

- A registered industrial design confers exclusivity of exploitation as from the date of registration i.e. marketing, selling, importing articles bearing or embodying a design which is a copy, of the registered industrial design.

## ***Duration of Registration (section 33)***

- Registration is valid for a period of 5 years from filing date and is renewable for a further period of 5 years.

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## D. PATENTS

### *Definition (section 27 PIDTA)*

- A '*patent*' is defined as the title granted to protect an invention which in turn means an idea of an inventor which provides the solution to a specific problem whether it be for a product or a process.

### *Protection under the PIDTA*

- In order to be protected a patent must be registered.

### *Requirements for registration of a patent*

- *the invention must be 'new'*
  - ❖ i.e. not been anticipated by prior art and therefore must not have been disclosed to the public anywhere in the world by publication in tangible form or by oral disclosure prior to the filing or the priority date of the application claiming the invention

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- *it must involve an inventive step;*
  - ❖ i.e. it would not have been obvious to a person having ordinary skill in the art having regard to the prior art relevant to the application
- *it must be capable of industrial application*  
i.e. it must be capable of being used in any kind of industry
- *It must not be contrary to public order or morality*

## ***Effects of Registration***

- A registered patent confers exclusive rights of exploitation to the owner.

## ***Duration of Registration***

- Registration shall be valid for 20 years after the filing date of the application.

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## D. UNFAIR PRACTICE & CONCURRENCE DELOYALE

These are not IP rights but rather a method of redress available under the legal framework

### *Unfair Practice*

- This is governed by the protection Against Unfair Practices (Industrial Property Rights) Act 2002
- Unfair Practice prevails where there is an act which in the course of an industrial or commercial activity misleads or is likely to mislead the public with respect to an enterprise or its activities, in particular the products or services offered by such enterprise.
- It is punishable by an action, amongst others, for damages before the Supreme Court

### *Concurrence Deloyale*

- This is a codified offence actionable before the Supreme Court.

# JURISDICTION OF THE INDUSTRIAL PROPERTY TRIBUNAL

- **Establishment** – The Patents, Industrial Designs and Trademarks Act 2002 (“PIDTA”) – section 9(1)
- **Jurisdiction** - Section 10(1) PIDTA
  - ❖ appeal against decision of Controller of Industrial Property Office (section 10(1)(a));
  - ❖ application for a ruling on the interpretation of any provision of industrial property enactments (section 10(1)(b));
  - ❖ application under section 23(1)(b);
  - ❖ application for an order of invalidation (sections 25 (patent), 34 (industrial design), 42 (mark), 44(4) (collective mark)).

# INNOVATION & THE IP TRIBUNAL

## THE WAY FORWARD

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# THE INDUSTRIAL PROPERTY TRIBUNAL

*Thank You*