

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH

**LAW ANALYSIS**

# Protecting trademark rights

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ANY 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,

**WRITING FOR EQUALITY**

## Expansion of ACC's power



ADIB SHAMSUDDIN

ANTI-CORRUPTION Commission (ACC) can now arrest civil servants without permission from the government under the draft of *Sorkari Kormochari Ain*. The ministerial cabinet has come off from its previous stance, which in 12 July 2015 had proposed of a draft provision that required prior approval from the government before such an arrest could be made, spewing a lot of criticism. Law minister Mr. Anisul Huq remarks that 'after the changes, there is now no reason to question why civil servants are being exempted from ACC laws'. (*Daily Prothom-Alo*, 7 September 2016).

The previous provisions were created keeping in mind to avert harassment of civil servants while they are undertaking their duties and obligations. In conjunction with administrative reforms and a permanent pay scale commission, the prior law had also set out a provision for the arrest of public servants: if a government official is to be arrested for a criminal conduct while at his official capacity, the arrest has to be first approved by the court. However, once the charge sheet is accepted by the court, no such bar for detaining the individual would be present.

The draft bill sparked outcries from organisations such as Transparency International Bangladesh (TIB), who referred the proposed law as repugnant to the constitutional right of 'Equal treatment before the eyes of the law'. Subsequently, this law would only promote corruption and encourage officials to abuse their vested powers, many said. Eminent lawyer Dr. Shahdeen Malik, had expressed his share of concern over the reform. In his eyes such provision would be retrospective, much like the medieval times, when officials could not be held accountable for misdeeds. He had added that if implemented, such arrangement would contravene the concept of democracy and serve to disrupt social balance. The then ACC chairperson Mr. Mohammad Boduijman contented that ACC law will preside over any other law. Contrastingly, the Bill in question also proposed itself to be prioritised over any other existing laws.

Article 27 of the Constitution of Bangladesh deals with the notions of equality before law and equal protection of law. Nevertheless, the new provision aims to create a special entitlement for civil servants, thus creating social disparity and

constitutional segregation.

In a prior instance, a similar provision safeguarding civil servants was passed in the Parliament in 2013. According to the Anti Corruption Commission (Amendment) Act 2013, for a corruption case to be put forward against a civil servant, it had to be priorly approved by the government. In *State v Human Rights and Peace for Bangladesh (HRPB)* (2013) the High Court Division of Bangladesh declared the law to be in direct conflict with constitutional arrangement. The judgment of the case stated that such a reform of the law would create a division between the masses and the corrupted, only to serve as a shield for the latter. But even after a precedent being set by the Court in a similar issue, the draft went on to be approved by the ministerial cabinet.

The Delhi High Court has restored the powers of Delhi Government's Anti Corruption Branch to probe and prosecute all government corrupt employees, within the jurisdiction of Delhi. The verdict, though a direct embarrassment for the Central Government, was a decisive victory for the people of the national capital. In the USA, a few months back, an Oklahoma lawmaker had proposed a bill, which aimed to exempt lawmakers from prosecution of nearly any crime that is normally handled by the local level. The power for prosecuting State officials was suggested to be granted exclusively to the State's Attorney General. The suggestion was met with vehement criticism; the District Attorney expressed concerns that the bill would create a different class of citizens disrupting the due process of law.

In pursuance of greater accountability and transparency, the changes made in the law are simply laudable. As noted above, both domestic and common law precedents point to the unfairness of safeguarding civil servants, as an unconstitutional or perhaps even immoral act of superseding people mandated powers. There is no doubt that the prior position would have been in direct conflict with the fundamental pillar of rule of law and prosecution of an individual should be decided by the gravity of actions, definitely not by his identity or position.

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**LAW NEWS**

## SDGs for global peace

SINCE 1981, the International Day of Peace is yearly observed around the world on 21 September. In 1981, the United Nations (UN) General Assembly declared this day as a day dedicated to strengthening the ideals of peace, both within and among all nations and peoples. Two decades later, in 2001, the General Assembly unanimously voted to designate the day as a period of non-violence and cease-fire. Since then the theme for 2016 is "The Sustainable Development Goals: Building Blocks for Peace."

The 193 Member States of the UN unanimously adopted the 17 Sustainable Development Goals (SDGs) at an historic summit of the world's leaders in New York in September 2015. The new ambitious 2030 agenda calls on countries to initiate efforts to achieve these goals over the next 15 years. The objectives of the SDGs are to end poverty, protect the planet, and ensure prosperity for all.

According to the UN, the 17 SDGs are integral to achieving peace in our time, as development and peace are interdependent and mutually reinforcing.

On the eve of observing the International Day of Peace, the UN Secretary-General Ban Ki-moon comments "the 17 SDGs are our shared vision of humanity and a social contract between the world's leaders and the people. They are a to-do list for people and planet, and a blueprint for success."

Sustainability addresses the fundamental needs of the present without compromising the ability of future generations to meet their own needs. Modern challenges of poverty, hunger, diminishing natural resources, water scarcity, social inequality,



environmental degradation, diseases, corruption, racism and xenophobia, among others, pose challenges for peace and create fertile grounds for conflict. Sustainable development contributes decisively to dissipation and elimination of these causes of conflict and provides the foundation for a lasting peace. Peace, meanwhile, reinforces the conditions for sustainable development and liberates the resources needed for societies to develop and prosper.

Every single one of the 17 SDGs is a building block in the global architecture of peace. It is critical that we mobilise means of implementation, including financial resources, technology development and transfer, and capacity-building, as well as the role of partnerships. Everyone has a stake and everyone has a contribution to make.

On 16 September 2016 morning, the Secretary-General inaugurated the celebration of the day in the Peace Garden at UN Headquarters by ringing the Peace Bell and observing a minute of silence. Women Nobel Peace Prize laureates and the UN Messengers of Peace were invited to participate in the ceremony. The UN Education Outreach Section arranged a global student video conference on the same day, from 9:30 a.m. to 12:30 p.m., also at UN Headquarters.

COMPILED BY LAW DESK (SOURCE: INTERNATIONALDAYOFPEACE.ORG).

**FOR LAW STUDENTS**

## Legal internships

SHEIKH AMENA JAHAN

LAW schools train us to think like lawyers, whereas law chambers demand us to be one. There is a gulf of difference between the two because the pillars of legal education are based on two layers of foundation: definition and application. In law schools we learn the importance of legal definition and in law chambers we learn how to apply those definitions to a certain scenario. Now the question remains whether a law student should wait until they are a graduate to apply for a position at a law chamber, the answer is 'no'. The reason being although formal legal education ends at law school but the best way to learn is by practising under the supervision of fully fledged lawyers. Thus, for undergraduate law students it is pertinent to do internship/pupilage to attain an edge to their persona as a legal professional.

However, speaking from personal experience scoring an internship offer is not as easy as it may appear. After appearing for my second year examination I decided to work for a law chamber as a pupil for a few months. That decision led me to attending a career fair organised by the institute I was studying in. Unlike single interviews career fairs are even more nerve wrecking as there, one has to give numerous interviews and then to add insult to injury if one is an undergraduate student their experience and motive will often be questioned. Therefore, the best way to prepare for such interview roulette is to prepare in three steps: first, draft a full proof curriculum vitae and cover letter; secondly, know how to handle tough questions and last; but not the least, be presentable.

The importance of good curriculum vitae cannot be downplayed because it represents who you are! From educational background to any past experience and also any particular skill a candidate might have which could add value to the work of a law chambers can be



exhibited through a single piece of document. It is very important to proof read it as much as possible, even better if you can take someone else's advice on it, preferably a mentor. There should be consistency throughout the curriculum vitae and it should be drafted in the most professional manner, bearing in mind that this document will also convey how good you are at using IT facilities. As for the cover letter, it should convey how you have known about the law chambers, why you are interested in them and why they should take you in as a pupil or intern.

Although it might seem that your curriculum vitae should do all the speaking for you but in reality the questions posed by interviewers play a crucial role in the process of recruitment. It is very important to know about the law chambers you are being interviewed by, that includes the founder of the chambers to their field of expertise in addition to any significant milestone that chambers might have achieved. Some general questions will often be asked, for example, why do you want to be a lawyer? Remember that, the interviewers will ask these questions to all the candidates expecting a out of the box answer. To just reply, because I like law or because my family wants me to be one, is rather mundane. The answer to such a frequently asked question should be interesting enough to captivate the interviewer and make an impression on him/her. So, it is important to be candid and most importantly convincing and fluent while answering such general question. Sometimes they will also ask you question they know you have no knowledge of, just to see if you can keep your calm in a stressful situations. Most importantly, if you don't know an answer to a law based question, never say 'I don't know'. Understand that, the interviewer doesn't want you to know everything; he/she wants to see how you handle a difficult question in a stressful environment.

In addition, present-ability cannot be scarified either. In a profession like law, where words are worth millions the person who pronounces it should also appear important. As for undergraduate students seeking pupilage wearing suit is a safer option. Be humble with the colour you choose, the attention of the interviewer should be on your skills and not be demanded on your clothes. Appearing tidy, meticulous and proficient not only adds value to your curriculum vitae but also makes a great impression on the interviewers.

To extrapolate the important bit of interviews conducted by law chambers is, to exhibit that you are eager to learn, contribute to chamber work and look dapper while doing so.

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