

IP Hotline

July 29, 2005

PIRATED SOFTWARE, NOT CHEAP ANYMORE

In a landmark judgment, the Delhi High Court has awarded damages to the tune of Rs. 1,795,000/- (approximately USD 44886) against defendants for copyright infringement in the matter of Microsoft Corporation v Yogesh Papat. The suit was filed in the year 2003 and was finally heard in early 2005.

BRIEF FACTS OF THE CASE

In this matter Microsoft (Plaintiff) alleged that the defendant was loading the software of Plaintiff, without its licence or permission, on the hard disk of computers being sold by them and in this manner were causing financial loss to the Plaintiff. The defendants were in the business of selling assembled computers. In the absence of appearance by the defendant the case was heard ex-parte.

EVIDENCE

An employee of Microsoft purchased a computer from the defendant and the hard disk was subjected to examination by a technical expert. This examination revealed loading of pirated Microsoft software into the hard disk of the computer sold by the defendants. Plaintiff produced its evidence through affidavits, which went unchallenged since the defendant did not enter its appearance before court.

Summary of Reliefs Sought against Defendants:

- (a) Permanent injunction restraining defendants from infringing Plaintiff's copyright;
- (b) Permanent injunction restraining defendants from infringing Plaintiff's registered trademark;
- (c) Permanent injunction restraining defendants from passing off of counterfeit/unlicensed software and products as genuine products of the Plaintiffs;
- (d) Delivery up of infringing material;
- (e) Rendition of accounts of profits illegally earned by the defendants.

ORDERS GRANTED

Under the Copyright Act, 1957 and Trademarks Act, 1999, in case of infringement the civil remedies available to the plaintiff are injunction, delivery-up and damages or rendition of accounts of profits.

In the present matter the court issued decree in terms of prayers (a) to (d) above i.e. injunctive relief and order for delivery up and decree for damages. Court observed that Plaintiff would also be entitled to damages for the reason that it would be futile to direct the defendants to render accounts for the reason that the defendants have been carrying on business surreptitiously.

To compute the damages claimed by Plaintiff the Court took into consideration that the defendant was carrying on his business for the past four years commencing from April 1, 1996. The court assumed that the defendant sold approximately 100 computers a year at the cost of Rs 27,050 and arrived at estimate net revenue loss of Rs 61.6 lakh for Plaintiff after deducting dealers' profit of Rs 2.40 lakh. On the basis of the annual returns of the plaintiff, average profit having been worked out over the last 4 years, damages for loss of profit of Rs. 19.75 lacs was awarded to Plaintiff. The Court justified the assumptions considered for computing financial losses as the defendant chose to remain ex-parte .

EXECUTION

If the defendant fails to pay up the damages as per the order of the court, Microsoft can initiate execution proceedings against the defendants.

PUNITIVE DAMAGES

In another case, Time Incorporated v. Lokesh Srivastava and Anr., the Delhi High Court has awarded punitive damages against the infringers of trademark and copyright of Time Incorporated. The court has distinguished between compensatory and punitive damages and has recognized the need for grant of punitive damages in matters relating to infringement of intellectual property.

The judgments in both cases mentioned above were passed *ex parte* and the infringement suits were filed by companies, which were well known and had tremendous reputation among its customers.

Till recently Indian courts have been slow and conservative in granting damages in intellectual property matters. It remains to be seen as to whether the courts adopt the same approach as in the above cases in fully contested matters. The amount of damages would depend upon facts of each case including the nature of IP infringed, reputation of the plaintiff, availability of evidence and nature of infringement. The approach of the courts

Research Papers

Compendium of Research Papers

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Opportunities in GIFT City

March 18, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

Enforceability of unstamped or inadequately stamped Arbitration Agreements

January 10, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Cyber Incident Response Management

February 28, 2024

Webinar : Navigating Advertising

demonstrated in these cases is a ray of hope for the IP holders.

- **Gowree Gokhale & Vikram K Raj**

Source: 1. Microsoft Corporation v. Mr. Yogesh Papat, MANU/DE/0331/2005
2. Time Incorporated v. Lokesh Srivastava, MANU/DE/0104/2005

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.