

INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

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TYPES OF PROPERTY

- Immovable;
- Movable; and
- Intellectual property

Immovable and movable property are traditional properties which are governed by different laws, the said properties are physical in nature.

Intellectual property (IP) is a category of property that includes intangible creation of human intellect. IP refers to creation of the mind, such as inventions (scientific); literary and artistic works; designs; and symbols, names and images used in commerce.

IP rights are the rights given to person over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

Intellectual property are increasingly becoming valuable business assets. IP for the purposes of taxation is classified as an intangible fixed asset acquired or created, for use on a continuing basis in the course of business activities.

Creation, development, acquisition, utilization and sale of IP assets cause various interactions with different forms of taxation, and have significant tax consequences.

As intellectual property assets gain significance as a source of wealth and income generation for today's business, it is imperative to consider the tax treatment of IP.

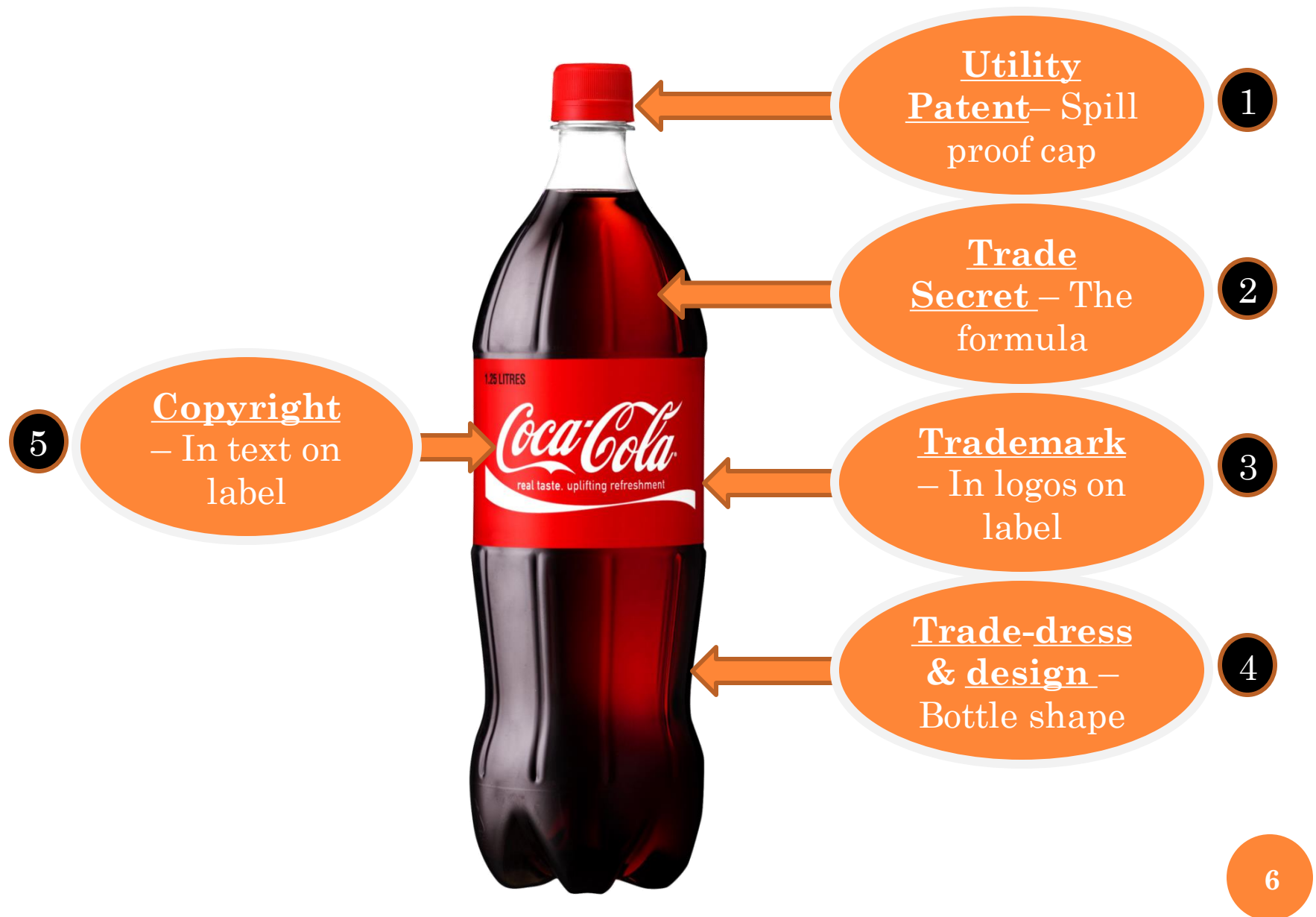
IP transactions (assignment, transfer, mortgage) can transpire without any physical movement of goods.

Now....

WHAT IS INTELLECTUAL PROPERTY ?

APART FROM COLD-
DRINK THIS BOTTLE IS
FULL OF
**INTELLECTUAL
PROPERTY ...!!!**







TRADE MARK

TRADEMARK MEANS A MARK WHICH IS CAPABLE OF DISTINGUISHING THE GOODS/SERVICES OF ONE BUSINESS TO OTHER BUSINESS.

○ A Trade Mark is :-

- Word → Bairathi
- Firm Name → Tirupati Industries
- Slogan → पहले इस्तेमाल करें फिर विश्वास करें
- Symbol → 
- Design → 
- Domain Name → www.internationaldogbazaar.com

And any other designations that **identifies and distinguishes** the source of product and services

○ According to Indian Trademark Act, 1999

"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.

JUDICIAL INTERPRETATIONS RELATED TO Trademark/Firm Name

- **Shri Tirupati Industries Vs Tirupati Industries**
 - 2013 AIR (Raj.) 15
 - In this matter Hon'ble Justice P.S. Asopa held both firm names are similar under the Trade Mark law , merely difference of “Shri” doesn't constitute difference between both firm names, an ordinary person would be confused .
- **International Dog Bazaar Vs International Dog world**
 - 2016 (66) PTC 30 [Raj.]
 - The defendant substantially adapted deceptively similar firm name “International Dog World”, it is wholly unjustified – Injunction Granted – defendant restrained not to use such name including abbreviated name “IDW” and Domain Name.

JUDICIAL INTERPRETATIONS RELATED TO Trademark

○ Khannan Polymers Vs Bairathi Shoes Co. Pvt. Ltd

- 2011 (45) PTC 572(Raj.)

- BERATI
BAIRATHI

Are Deceptively and Phonetically Similar



- Navyug commercial Vs Maheshwari Tea company
 - 2013 (56) PTC 596[Raj]

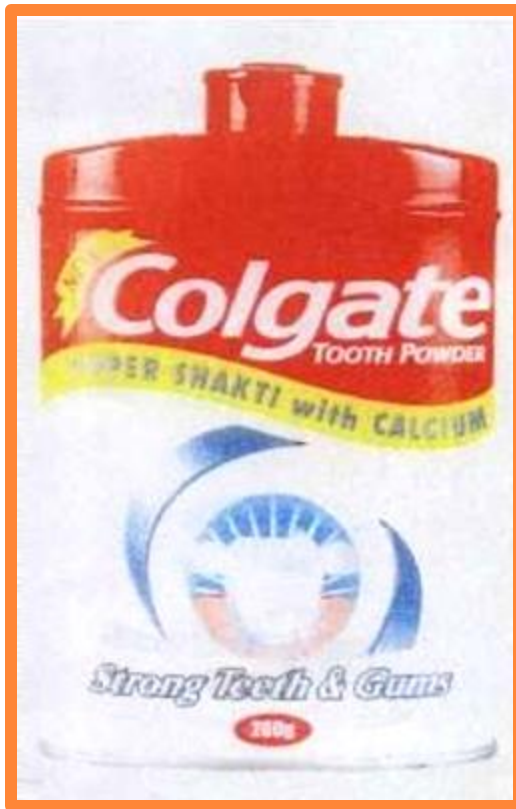


- Maheshwari Tea company Vs Vijay Tea Co.
 - Date of decision
 - 26 May 2016



- Colgate Vs. Anchor
- 2003 (27) PTC 478

Colgate Palmolive
Company and
Another



Vs.

Anchor Health
and Beauty Care



JUDICIAL INTERPRETATIONS RELATED TO Service mark

- Sanskriti School, Ajmer



VS



New Delhi



Jaipur



Telangana



A Jaipur based company M/s. S.G. Sales Corporation using trademark “**Austin**” in respect of plywood, subsequently Calcutta based company M/s. B.S. Progressive Pvt. Ltd. filed suit, in which both parties entered into compromise and the said trademark was sold to the Calcutta based company for **Rs. 5,00,00,000 (FIVE CRORES).**

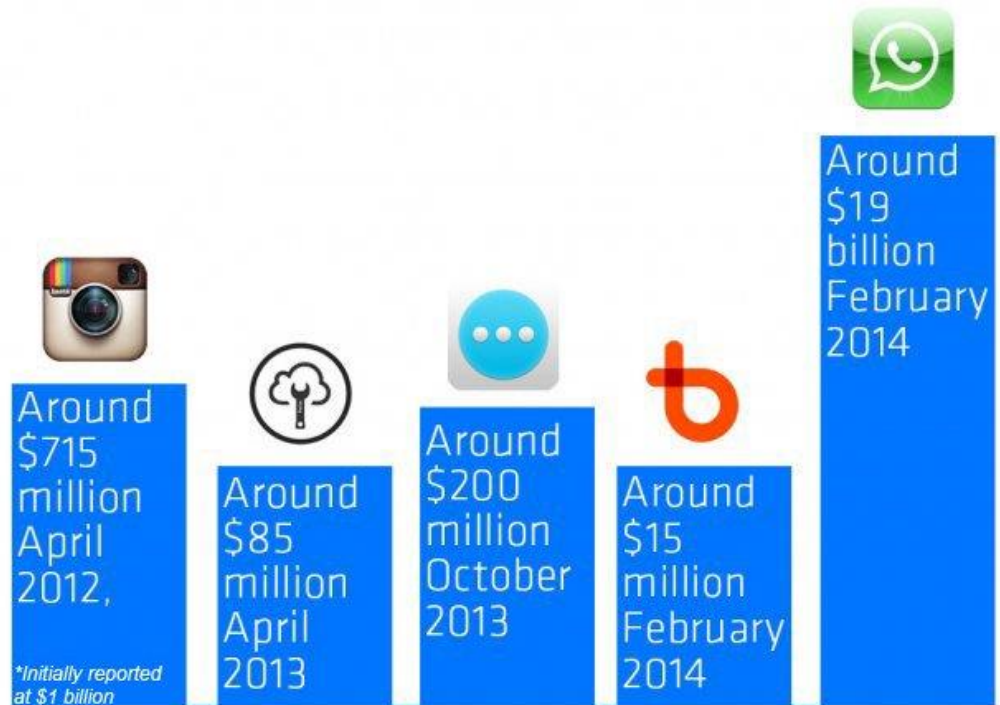
B.S. Progressive Pvt. Ltd. V/S S.G. Sales Corporation

Calcutta high court decision (case no. 452/2013)

SALE OF IP



Acquired



Acquired



**For Rs.
1651 cr.**

INTELLECTUAL PROPERTY TAXATION UNDER THE INCOME TAX ACT , 1961

- Intangible assets like IP have been recognized as a depreciable asset for the purpose of computation of income.
- Intellectual property rights and income tax
 - **Sec 9(1) (vi) provides for taxation of income by way of royalties.**
 - Where the transfer is made for a lump sum consideration once for all – will result in capital gains assessable to tax.
 - Where the transfer is made for a limited period as recurring payments, based on the trading results of the user of the intellectual property - revenue receipts.
 - **Section 32 (1)(ii) - Depreciation of assets**
 - Depreciations are allowed in the know how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of a similar nature, being intangible assets.
 - **Section 35 AB- Deduction on expenditure on know-how**
 - Any lump sum consideration for acquiring any know-how for the use of his business, one sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance amount shall be deducted in equal installments for each of the five immediately succeeding previous years.

➤ **Section 80 QQB- Income from Copyrights**

- Any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book or of royalties or copyright fees - a deduction to the **amount Rs. 3,00,000** on such amount.
- And for recurring receipts not being a lump sum amount **15% of amount of sale in previous year of such book would be avoided** .

➤ **Section- 80 RRB - Royalty for patents**

- Deduction is allowed to Indian resident equal to the **whole of such income or three lakh rupees (Rs.3,00,000)**,_whichever is less.

COPYRIGHT

Copyright is legal means of protecting an author's work, it shall subsist throughout India in the following classes of works:-

- Original literary, dramatic, musical and artistic work;
- Cinematograph films; and
- Sound recording

The purpose of copyright law is to promote the progress of useful arts by protecting the exclusive right of authors to benefit from their works of authorship.

Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such.

Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

The patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent. The protection is granted for a limited period, generally 20 years from the filing date of the application.

Industrial Design

An industrial design constitutes the ornamental aspect of an article.

An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color.

Industrial designs are applied to a wide variety of products of industry and handicraft items, jewelry, electronic devices, textiles, furnishing, household items, tools and hardware, clocks and watches and all other industrial goods and products. The protection is granted for a limited period, generally 15 years from the filing date of the application.

Examples of Industrial Design.....



THANK YOU