

## SUPREME COURT ON INJUNCTIONS

India is known to be country with an over burdened judicial system. In many courts a simple trial could take upto ten years. For such a country interim injunction (temporary restraining orders) is the only real remedy available, especially in cases involving intellectual property (IP).

Virtually all IP cases filed in India are concluded after the completion of the interlocutory or interim injunction proceedings. If an interim injunction is granted, there is hardly a defendant who would want to contest the suit for ten years. The same is true for a plaintiff who does not succeed in getting the temporary restraining orders. Parties accordingly negotiate a settlement before trial.

As is the case in other countries, the grant of interim injunctions is very largely dependent upon the speed with which one approaches the courts. Unnecessary delays have so often resulted in denial of grant of such temporary restraining orders.

In a far reaching decision dated January 22, 2004 in *Midas Hygiene Industries P.Ltd. v Sudhir Bhatia & Anr.* (Civil Appeal No. 107 of 2002) the Supreme Court of India has categorically held that **in cases of infringement either of trade mark or copyright normally an injunction must follow. Mere delay in bringing the action is not sufficient to defeat grant of injunction in such cases.** Coming down heavily against dishonest trading, the court held that the grant of injunction becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.

With these observations the court set aside the order passed by the Division Bench of the Delhi High Court and restored the order passed by the Trial Court (Single Judge of the Delhi High Court) passing temporary restraining orders. The court held that the Division Bench was entirely wrong in vacating the injunction merely on the ground of delay and laches.

LALL & SETHI  
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DELHI • MUMBAI • BANGALORE

INDIA

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While these observations handed down by the Apex Court of the country, will no doubt have a far reaching impact on IP litigation in the country, it is our advise to clients to commence proceedings against violators of their rights, at the earliest opportunity.

To cite an example, each Judge of the Delhi High Court, every day has a list of cases ranging for 50 to 70 cases. To get a hearing it is therefore important to establish to the Judge that the matter is of such an urgent nature that it should be taken up in priority. In such a scenario, even a few months delay in approaching the court becomes a reason for the court to reject a priority hearing. The matter could drag for months, if not years, without even a hearing.

The Delhi High Court is perhaps the best court to initiate any form of IP litigation in the country. Delhi is a city where there is maximum IP litigation, resulting in the Judges of the Delhi High Court being the most familiar with the law. Perhaps more decisions on the subject are handed down by the Delhi High Court, than all other courts combined, in the rest of the country. It is perhaps also the most liberal court in granting ex-parte orders in appropriate cases. The other courts which are recipients of IP litigation are the Bombay, Madras and the Calcutta High Courts.

On the procedure front, the matter is first heard by a Single Judge of the High Court. The decisions and orders of the Single Judge can be appealed to a Division Bench (Two Judges) of the same court and finally an appeal can be preferred to the Supreme Court of India in the form of a Special Leave Petition.

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