UNDERSTANDING INTELLECTUAL PROPERTY AND COMPETITION LAW HAND-IN-HAND

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INTRODUCTION

"Intellectual property" and "competition law" include a wide range of topics and weredeveloped to achieve various objectives. Understanding the specific purposes of the two laws is critical. Competition law governs market behaviours that have the effect of limiting competition and thereby impede market functioning. While intellectual property law was created to preserve intellectual property under the sole control of the right holder, intellectual property right refers to the owner's only right. It entails investments in intellectual property and business practices. On the other hand, by stimulating competition among a large number of suppliers of advanced goods, services, and technology, it promotes the interests of markets and customers.

Intellectual property can be found everywhere. Intellectual property refers to the outcome of new inventions, goods and technologies being protected to succeed in the marketplace. In addition to offering security, intellectual property can aid small, medium, and large firms in making a profit. Intellectual property (IPR) offers creators and innovators protection for their works on the market and canoccasionally monopolize that market, which is against competition law.

The goals of competition law are to promote and foster possibilities for honest competition among market competitors as well as to safeguard the interests of consumers. It is a subset of economic law that controls how firms and other market participants behave and makes sure that providers of goods and services engage in fair competition. Its objectives are to improve the market for consumers, stop anti- competitive consequences, and encourage honest and ethical competition.

IS MONOPOLY CREATED BY THE FAILURE TO LICENSE INTELLECTUAL PROPERTY?

Regarding intellectual property, only those who have been granted a license may access the data. Market monopolies and anti-competitive activity are caused by intellectual property rights. The main difficulty in assessing the link is between intellectual property and competition law is whether it is permissible to grant permission to a third party to use protected subject matter without obtaining licenses from the IP Owner. The answer is that the link between intellectual property and competition law encourages innovation and consumer welfare. However, the nature of both rules generates contradictions with one another. Because competition legislation promotes fair competition in the market, whereas IPR promotes monopoly, which diminishes market competition. A third party may have the right toexploit a protected asset for competitive purposes in a monopolistic market. As a result, under some national laws, a unilateral refusal to grant a patent (sometimes known as a "rejection of agreement") may be sufficient grounds for forced licensing.

"Despite the fact that Article 31(b)[1] of the TRIPS Agreement does not invoke voluntary refusal of a license as a precondition for a compulsory license, the WTO Secretariat has explicitly acknowledged the possibility of determination (refusal to sell) on which to grant such licenses."

Similarly, in the case of *"Entertainment Network (India) Limited v. Super Cassette Industries Ltd.",*[2] the court claims that the two statutes are in conflict. Even if the copyright holder has complete exclusive rights to his work. The court stated that the monopoly would be limited if it interfered with the normal functioning of the market. This is then illegal under competition law. Without a doubt, intellectual property owners reap the benefits of their efforts by getting royalties from licenses granted. It is well accepted in developed countries that intellectual property rights do not always convey commercial dominance. It is widely assumed that intellectual property law and competition law are complementary, with both promoting innovation and competition. However, under competition law, safeguard intellectual property rights.

[1] https://www.wto.org
[2] https://iiprd.wordpress.com

DOES THE MANDATORY LICENSE COVER ANTI-COMPETITIVE BEHAVIOR?

Mandatory licensing can be used to fight anticompetitive behaviour within the scope of intellectual property rights and competition law. In general, however, this is not the case. Compulsory licensing is a method of increasing market competitiveness. In some situations, intellectual property law allows the granting of a license to use another person's patented innovation without the patent owner's consent. Following the issuing of the necessary licensing, the licensee may produce the patented innovation in exchange for a reasonable royalty payment. These licenses are granted in accordance with TRIPS Agreement Article 31(k).[3]

The TRIPS Agreement is an international agreement governed by the World Trade Organization (WTO) that specifies basic requirements for the various categories of intellectual property that Members must incorporate into their legislation. Their domestic legislation. In terms of competition law, the TRIPS Agreement provides more benefits than requirements. The TRIPS Agreement can assist us in striking the necessary competitive balance to encourage both innovation and economic growth.

The following are the TRIPS Agreement's guiding principles regarding the intersection of intellectual property rights and competition law:

a) Each country's decision to reserve competition policy in respect to competitionlaw. It is up to them to protect their intellectual property rights.

b) There must be compatibility between the TRIPS Agreement's competition policyfor IP rights and the TRIPS Agreement's principles.

c) The major concern of members is to identify and counteract practises that limitthe spread of protected technologies.

It should be noted that the influence of compulsory licensing on competition will be decided by the market structure and the specific level of competition. Because of the patent holder's reputation and significant market position, the licensee's marketshare may be limited, if not

[3] https://www.wto.org

negligible in some cases. Additional regulations that foster successful competition should be implemented in addition to mandatory licensing. It is critical, in particular, that the holder of the necessary license is allowed to export, as stated in "Article 31(k) of the TRIPS Agreement - the holder of the mandatory license is allowed to export in order to gain effect." proportional economy.

CONCLUSION

In today's economy, intellectual property and competition work in tandem to achieve the ultimate objective of safeguarding consumer welfare. Intellectual property supports invention, which in turn promotes market competitiveness. Without a doubt, the two laws' goals and intentions are consistent. Both of these regulations benefit customers while also encouraging innovation. However, this does not imply that IPR has a monopoly on the market. These two laws are intended to encourage innovation and fair competition.

Following a thorough study, it is obvious that-

1. The technology market is not in competition with the product market. As aresult, it serves to protect the interests of both technology users and product manufacturers.
2. Refusing to license intellectual property does not imply establishing a market monopoly. However, it promotes technology.
3. Compulsory licensing is not an anti-competitive arrangement in the sense of limiting competition. However, it can be used to increase market competitiveness.