



AWARDING COMPENSATORY DAMAGES IN INTELLECTUAL PROPERTY CASES ON ASSUMPTIVE BASIS

INTRODUCTION

The topic of compensatory damages in IPR cases has been a hot-button issue for years. In fact, it's the subject of countless articles and blog posts. So what exactly are compensatory damages? And why are they so important in an IPR case?

Compensatory Damages are actually a crucial element of Intellectual Property Rights cases. They are awarded to compensate a Plaintiff for economic losses and other harms caused by a defendant's infringement of their intellectual property rights.

OBJECTIVE OF GRANTING COMPENSATORY DAMAGES

The objective of compensatory damages is to restore or reinstate the injured person to the original position which they were in before the infringement, following the principle of *Restitutio ad integrum*, or *restitutio in integrum*.

In the matter of *Microsoft Corporation vs Deepak Raval* [MIPR 2007 (1) 72]] before the Hon'ble High Court of Delhi, the Court held that “the award of Compensatory Damages to a Plaintiff is aimed at compensating him for the loss suffered by him”. Further, in *Microsoft*

Corporation vs Ms.K.Mayuri & Ors, MIPR 2007 (3) 27, Hon'ble High Court of Delhi held that the justification for award of compensatory damages is to make up the loss suffered by the Plaintiff. Compensatory damages may be paid where the acts and commissions of the Defendants violate the established rights of the Plaintiffs.

Furthermore, the purpose of awarding compensatory damages is to deter future infringements of intellectual property rights. This is done by making it financially expensive for potential infringers to pursue such illegal acts. Compensatory damages are also awarded to encourage people to respect the intellectual property rights of others and to promote innovation to boost the Indian economy.

TRADITIONAL AND CONSISTENT APPROACH FOR AWARDING COMPENSATORY DAMAGES

The traditional and consistent approach for awarding compensatory damages is that the Plaintiff is required to actually prove the losses he has suffered on account of infringement done by Defendant. In the event of no loss being shown or no evidence with regard to the damages being led, the Courts usually do not grant compensatory damages in the favor of Plaintiff.

The Hon'ble High Court of Delhi in the matter of *Indian Performing Right Society Ltd. vs. Debashis Patnaik and Ors.*, MIPR 2007 (1) 323 held that burden of proving damages as well as the facts which caused

the damages is upon the Plaintiff who has to adduce the best evidence in support of his case. The onus on the Plaintiff to prove damages is not rendered lighter because the defendant does not appear and is *ex parte* or does not contest the case. Infact, in the said case, the Court observed that Nominal damages are usually awarded where a legal right of the plaintiff is found to be infringed and there is, however, no proof of actual loss. There may be another situation where nominal damages may be awarded which is a case where loss is shown, but there is no evidence as to its exact quantum.

Thereafter, in a series of cases, Hon'ble High Court of Delhi has granted notional damages to Plaintiff wherein there was no proof of actual loss or where loss is shown but there is no evidence as to its exact quantum.

AWARDING COMPENSATION ON ASSUMPTIVE BASIS

While in order to grant the compensation, there must be a set principle or guideline to be followed to keep up the standards and equity in all the matters where the compensation amount has to be granted. However, the court has adopted an approach to grant compensatory damages on an assumptive basis on a case-to-case basis. The following judgments enumerates the trend set by court:

In the matter of Microsoft Corporation v. Kamal Vahi and Ors., CS (OS) No.817 of 2004, Hon'ble High Court of Delhi awarded compensatory damages based on a calculation of a percentage of revenue that would have been earned if the defendants had not indulged in the infringing activity.

The Hon'ble High Court of Delhi in the matter of M/S General Electric Company vs Mr. Altamas Khan & Others, CS(OS) No. 1283/2006 decided on 18.12.2008 granted compensatory damages based on certain assumptions of sales. In the said matter, Hon'ble High Court of Delhi was of the view that the Defendants had a margin of 22 to 25% at least on each Dehumidifier i.e. of over Rs.5,000/- on each Dehumidifier and therefore, on that basis, a compensatory damages to the tune of Rs.10,00,000/- (Rupees Ten Lakhs Only) was granted in the favour of the Plaintiff.

In one another matter titled as Microsoft Corporation vs. Yogesh Papat & Anr., 118 (2005) DLT 580, Hon'ble High Court of Delhi on certain assumptive basis calculated the financial loss caused to the Plaintiff by the infringing activity of the Defendant and granted an award to the tune of Rs.19,75,000/- (Rupees Nineteen Lakhs Seventy Five Thousand Only).

CONCLUSION

The traditional and consistent approach taken by Courts is that the Plaintiff is required to prove the actual damages incurred by it because of infringing activities of the Defendant. Infact, wherein the Plaintiffs have failed to prove the actual loss, Courts have granted notional damages in the favor of the Plaintiff. However, in certain cases, mentioned above, Courts have granted compensatory damages even in the absence of strict proof and on the basis of certain assumptions. Therefore, Courts can grant compensatory damages on an assumptive basis.

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