

Speech of the Director on the occasion of Inauguration of the three day Workshop on Intellectual Property Crimes, Trademark Infringement and Counterfeiting at CBI Academy.

(August 20, 2014 at CBI Academy, Ghaziabad)

I am delighted to welcome all of you to this three day's Workshop on Intellectual Property Crimes, Trademark Infringement and Counterfeiting which is being organized in association with World Intellectual Property Organization. I congratulate Mr. Rajeev Sharma, Joint Director (BS&FC) and other officers of CBI for the keen interest they have shown in organizing this training, for the benefit of Nodal Officers enforcing Intellectual Property Crimes, officers of State EOWs, State Police Organizations and officers from CBI. I also welcome Ms. Louise Van Greunen, Director, IP Division and Mr. Thomas Dillon, Counsellor, both from WIPO, Geneva who have envisaged a lot of interest in associating with CBI Academy in organizing this Workshop.

2. This three day Workshop aims at providing skill sets for enforcement of IP Crimes in India under the ambit of Indian Laws. As part of the capacity building exercise of CBI Academy, this Workshop is the culmination of our concern for enforcement of this crime which has deep seated economic implications, but is often neglected by law enforcement agencies. CBI Academy has, in the past, conducted a similar Workshop in 2011. In 2012, we had conducted an International Training & Capacity Building Seminar on Trafficking in Illicit Goods in association with INTERPOL. Thus, this is an ongoing exercise to fulfill the objectives of CBI as part of its Training Policy to provide leadership and direction to police forces in India in the field of training and adoption of best practices in investigation.

3. In common terminology, to counterfeit is to sell or market a non-genuine product as a genuine. Generally, such products are sold under the name of a famous manufacturer and an unwary consumer is misled to believe that the product originates from the same manufacturer. It is nothing but cheating a consumer and making him believe that he is buying the original branded product from the same source of manufacture as he imagines. The various statutes governing Intellectual Property Rights recognize such activity as an offence and provide for stringent punishments.

4. Counterfeiting causes huge losses to the State in terms of revenue by way of taxes on goods. An FICCI survey estimated the annual loss to the Indian exchequer by way of taxes – both direct and indirect - to be roughly more than Rs. 26,000 Crores. Losses of companies to counterfeits is roughly around 4 to 10 per cent of their annual revenue in profits but more importantly companies have more to lose in the sense that they risk losing their credibility in the eyes of the consumer. On the human side, every year many lives are lost to fake drugs and medicines.

5. It is evident that counterfeiting of products continues to be a bane to the Indian economy as well as the world-wide image of the country. Globalization has brought the positives of increased commerce and opened India up for direct foreign investment, which is excellent for the country's economy. However, India's status as a low-cost manufacturing base may also be seen by counterfeiters as a prime location for the production of counterfeit goods both for domestic sale and export.

6. The Legislative policies have also seen a considerable change and more importantly the Courts in India too have geared up to the need of protecting Intellectual Property Rights of right holders but more in the

interest of protecting the unwary and unsuspecting consumer who would be the eventual victim.

7. The Indian IP Crime scenario is primarily dominated by counterfeit products such as auto parts, Fast Moving Consumer Goods like cosmetics and toiletries, fake medicines and surgical equipment and pirated digital and printed media. These include printed books, pirated software, pirated music and films. Online piracy has reached alarming proportions which are bleeding the legitimate industry of their rightful revenue. The losses are colossal not only of the right holders but also in terms of taxes for the government.

8. Law Enforcement Agencies have always encountered difficulties in enforcement of IP Crimes due to several factors. IP Crimes are victimless crimes and are investigated on the basis of complaints filed by the right holders as well as the industry in general. IP Crimes are low risk high-gain crimes with a very low detection rate as compared to other conventional crimes in India. The National Crime Records Bureau's statistics show that from 2008 to 2013, counterfeiting comprised only 0.1 percent of total Penal offences. The rate of crimes also remains constant between 0.2 percent and 0.3 per cent, the charge-sheeting rate gives some encouraging results which increased from 48.9% in 2008 to 61.2% in 2013. However, the conviction rate almost remains constant between 36.1% and 38.3%. Given the magnitude of counterfeiting and piracy in India, the NCRB figures indicate that IP Crimes are not getting the attention they deserve from Law Enforcement Agencies. Another factor which contributes to low detection rate is lack of knowledge of IP laws by Law Enforcement Officers, besides priority is given to heinous crimes vis-à-vis IP Crimes, lack of awareness of the general public and scarce manpower in their enforcement also contributes to the general neglect by their Law Enforcement Agencies.

9. Over the years, trademark infringement and counterfeiting have emerged as an organized crime having its footprints in several countries. It is very common for counterfeited products to be manufactured in one country, shipped through several countries and sold in a third country. This makes investigation tedious and difficult because while catching retailers in the country of sale is easy, the real culprits who manufacture and distribute such products remain at large. Thus, the real actors in this crime remain scot free. A multidisciplinary approach is required to tackle such crimes. The Investigating Officer should be well versed with the laws in question, he should be aware of the legal procedures involved. In such crimes right holders cooperation should always be solicited and they should be asked to join in the investigation. Identifying a fake product from a genuine requires inputs from forensic science labs, trademarks registry and at times detailed lab tests. Repercussions on their usage by the public especially health and medical products should also be probed. In case of online trafficking IOs need to harness Cyber tools to track down the culprits. When investigation involves other countries, Interpol assistance should be sought; evidence can be gathered through LRs or through the platform of MLATs if it exists. As with other organized crimes recent studies have shown that racketeers often launder their illegal money through hawala channels. Many a times trafficking in pirated and counterfeited goods gets linked to other organized crimes like drug and arms trafficking. Thus as I have reiterated above, the IOs should be thorough and able to tackle the crime through multiple jurisdictions and have a multidisciplinary approach.

10. The Courts in India are well aware of what counterfeiting is and have changed their procedural working and now allow more flexibility with respect to IP litigation. High Courts have now started giving ad-interim ex-parte injunctions as well as inspection and sealing orders with respect to matters relating to intellectual property. The proactive role of courts in India can very well be seen in one of the recent judgments involving two big two-

wheeler manufacturing companies, namely Bajaj Motors and TVS which were locked in a battle involving patent of their respective engine technology. The Hon'ble Supreme Court while observing the seriousness of the issues involved had passed the order as thus: "*In our opinion, in matters relating to trademarks, copyright and patents the proviso to, Order XVII Rule 1(2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit.*"

11. The words of the Hon'ble Supreme Court explains the urgency in tackling IP Crimes and gives them the priority they deserve. Needless to mention, that Law Enforcement Agencies have a long way to go in enforcing such crimes. Capacity Building is one of the measures by which we can infuse professionalism in the investigation of such crimes.

12. It is in the above background that an urgency was felt by CBI to organize the three day Workshop in association with WIPO for Law Enforcement Officers of the Country. This Workshop takes into account every aspect of enforcement of IP Crimes and we have associated people of great eminence in this field as speakers, not to mention, the eminent faculty from WIPO. I am sure that all of you will be greatly benefited by this Workshop and when you go back to your workplace you would be better equipped to handle such crimes. I wish you a pleasant stay at CBI Academy.

Thank You
