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EDITORIAL



In the ever-evolving world of intellectual property, the role of the Department for Promotion of Industry and Internal Trade (DPIIT) IPR Chair is pivotal in shaping the future of innovation and creativity. As a thought leader in the field, the DPIIT IPR Chair is dedicated to fostering a robust intellectual property ecosystem that supports and nurtures new ideas and technologies.

At its core, the DPIIT IPR Chair focuses on strengthening the intellectual property framework, offering guidance, and promoting best practices to ensure that creators, entrepreneurs, and businesses can fully harness the potential of their intellectual assets. Through its initiatives, the DPIIT IPR Chair plays a crucial role in enhancing the understanding of IP rights, streamlining processes, and advocating for policies that encourage innovation.

In an age where ideas are as valuable as gold, intellectual property (IP) rights have become the cornerstone of innovation and creativity. The landscape of intellectual property is constantly evolving, driven by rapid technological advancements and the globalization of markets. This makes staying informed about IP laws and best practices more important than ever. Proper IP management not only protects your work from infringement but also enhances its value and facilitates partnerships, funding opportunities, and market expansion.

Therefore, DPIIT IPR Chair at Chanakya National Law University has started a blog post.

In this blog, the authors have explored the latest trends and updates in IP law such as personality rights in the online fantasy sports, shared insights from industry experts on topic like trade secrets in food manufacturing industries, and provides practical advice on trademark filing process, on how to navigate the complexities arising due to NFTs, digital artistic creations, AI generated products, Deepfakes; to seek IP protection.

The goal is to empower the readers with the knowledge you need to safeguard your innovations and make the most of your intellectual assets. Because in the realm of innovation, knowledge is power, and protection is key.

BLOG POST
(July-December, 2023)

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FROM APPLICATION TO REGISTRATION: STEPS OF TRADEMARK FILING

Jaya Hari Rasika J.¹

Abstract

The present write up starts with the basic objective of Trademarks Act, 1999 and the essential purpose behind it of being able to protect one's hard-built reputation and goodwill in the market through their Trademark. Later that, the process of the Trademark filing from the inception of approach of client, up till registration of the Trademark and record of it in the register is explained crisply in the below paragraphs.

Keywords: Trademarks, Filing, Registration, Goodwill, Trademarks Act.

Introduction

The basic objective of the Trademarks Act, 1999 is to safeguard the face value of a commercial entity through which they project their products and services before the market and through which they gain recognition, reputation and trust between their customers, users, and traders. Hence, it is fundamentally important for each Trademark to be distinct enough in order to not allow association or confusion between Trademarks on account of similarity, and to ensure that no other entity rides on the coat-tails of others hard-built goodwill. There are various remedies available for an aggrieved person or entity to protect their goodwill earned out of their Trademark and to prevent others from taking unfair advantage of their Trademark.

Trademark Filing

The following paragraphs brief out the steps involved in Trademark filing and the essential information concerned with in each step.

¹ Pursued B.B.A. LL.B. (Hons.) in The Tamil Nadu Dr. Ambedkar Law University School of Excellence in Law.

Background Check and Verification:

Ensuring the availability of a Trademark by checking that no similar Trademarks exist in the market shall be the foremost and primary step to take when a Trademark is to be filed. Firstly, when a client approaches with a Trademark to be filed, one has to go for a “Public Search”² which is available in the official website³ of the Intellectual Property in India. Doing a Public Search lets one know about the degree of entitlement of registration of a new Trademark application.

There is a register maintained by the Trademarks Registries in India within which every Registered Trademark in India is recorded. The public search provides the list of available names in the market based on the selected class and name/word/mark entered by us.

There are a total of 45 classes where the first 34 classes deal with different goods categorized under each class, whereas classes 35-45 deal with different services. This facilitates us to pick and create a new and innovative Trademark that is distinct enough, thereby dodging objections and oppositions. There are various types of Trademarks such as word mark, device mark, sound mark, color mark etc., where the first two types of word and device marks are frequently and prominently adopted in practice.

TLA (The Letter of Acceptance) Hearing

When an opposite Trademark has been chosen, that is to be deemed to qualify for application and registration, then the online filing can be done through the ‘Comprehensive E-filing’⁴ as available in the website by a qualified Trade Mark Attorney/Agent. The Trademark filing also requires the respective attorney’s/ agent’s digital signature with authorized access to it. This application process is done through Form-1/Form-A and it requires the details of the proprietor of the Trade Mark as well as the Attorney/Agent details.

Before going further, there is a ‘Status’ for every Trademark application based on the stage it is in. This gets updated as the Trademark sails through the process of application. The statuses can be ‘*Objected*’, ‘*Accepted and Advertised*’, ‘*Opposed*’, ‘*Registered*’, ‘*Removed*’, ‘*Refused*’, ‘*Abandoned*’, or ‘*Withdrawn*’. Though some of these statuses may appear synonymous, each means different stationing of the Trademark at different stages of process. Whereas,

² Public Search of Trademarks, Intellectual Property India, available at: <https://tmrsearch.ipindia.gov.in/tmrpublicsearch/> (last visited on August 07, 2024).

³ Official Website of Intellectual Property India, Department for Promotion of Industry and Internal Trade, available at: <https://www.ipindia.gov.in/index.htm> (last updated on 12.08.2024).

⁴ Online Filing of Trade Mark, Controller General of Patents, Designs, & Trade Marks, available at: <https://ipindiaonline.gov.in/trademarkefiling/user/frmloginnew.aspx> (last visited on August 08, 2024).

'Registered' is when the Trademark has ripened into a fruit after going through all the stipulations and conditions put forth by the Trade Mark Registry.

Within two days from application of a Trademark, one will know the Application number of the applied Trademark, which is assigned for every Trademark application, and the 'Status' at this stage shows as "*Formality Check Pass.*"

This application undergoes a round of scrutiny by the Trademark Registry. If the application clears all the stipulations of the Registry, it gets '*Accepted Straightaway*'; or else there shall be an 'Examination Report' by the Registry conditioning their 'Objections', which can be statutory based or can be technical. These objections shall be addressed by justifications and submissions by the Trademark holder within a month which is called as the 'Reply to Examination Report'. After analyzing this reply, if the Registry is satisfied, the Trademark gets accepted, or else there will be 'Notice of Show Cause Hearing' issued to the respective person or their agent, notifying that there will be oral hearing held along with which written submissions shall be submitted. After scrutinizing both oral and written submissions, the orders shall be passed by the Registry which shall be either positive or negative. In the latter case the mark goes for being '*Refused*' which means it is not eligible for Registration and the same is not appealable.

Entry into the Journal

Once the mark gets qualified by the Registry, it goes for advertisement in the Trademark Journal, which is when the status changes to "*Accepted and Advertised.*" This journal that is available on the official website displays the accepted Trademarks before the open market for everyone to view and oppose if anyone feels that the mark is confusingly or deceptively similar to theirs. The limitation period for the same is 4 months, failing of which the Trademark gets successfully '*Registered.*'

The War Zone: The Opposition Section

If a Trademark is opposed by another entity on the ground of similarity and identicalness, they shall notify the Registry of their intention to oppose the particular person. On receipt of this notification, which is called the 'Notice of Opposition' by the Opponent (The entity who opposes), the Registry sends a forwarding letter to the Applicant (The entity whose Trademark is opposed).

Within 2 months from the receipt of this forwarding letter the Applicants ought to file 'Counter Statement' which contains their responsive arguments and submissions against the contentions raised in the Notice of Opposition.

Post this, an affidavit and documentary evidence in support of the Notice of Opposition shall be submitted by the Opponents within 2 months from the date of receipt of Counter Statement. This is as per Rule 45 of the Trademark Rules. Subsequently the affidavit and documentary evidence in support of the Counter Statement shall be filed by the Applicants within 2 months, which is according to Rule 46. After this there shall be a final pleading by the Opponents under Rule 47 which the concluding documents in support of their opposition.

The Final Hearing

The limitation periods for each pleading ought to be strictly conformed to, failure of which the application results in "*Abandonment*" of the Trademark. Once all the pleadings are complete, there shall be a hearing scheduled, where both parties appear and present their oral submissions. After hearing both sides' arguments, the hearing officer shall either adjourn the matter in case of any discrepancy or shall pass the orders favoring the side which owns the balance of convenience.

Conclusion

Apart from these Tribunal proceedings there are also other remedies available for challenging other Trademarks, such as 'Rectification Application' which allows for cancellation of a Trademark after it gets registered. It is called 'Rectification' because it rectifies the register of Trademarks by cancelling the Trademark if the Applicant justifies their case. There is also a common law remedy of Passing off which can be availed by the aggrieved person, depending on the circumstances. To conclude, the Trademark laws are adequate in papers, but the discrepancies and delays arise only in the practical implementation which must be hastened by proper compliance of the time frames both by the Trademark holders as well as by the administration.



DPIIT-IPR CHAIR, CNLU-PATNA

BLOG POST (July-December, 2023)

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LEGAL SAFEGUARDS AND INTELLECTUAL PROPERTY RIGHTS SURROUNDING NON-FUNGIBLE TOKENS (NFTS) AND DIGITAL ARTISTIC CREATIONS

Akshat Gautam⁵

Abstract

Non-fungible tokens, or NFTs, are a revolutionary idea in the rapidly developing world of blockchain technology and digital assets. They are changing our understanding of ownership and value in the digital space. NFTs are distinct digital assets that stand in for ownership of a variety of virtual goods, such as virtual real estate, artwork, and collectibles. The legal environment surrounding NFTs and digital artworks is still developing, though, as with any new technology, so many artists and collectors are unsure of their intellectual property rights. NFTs are blockchain-based cryptographic tokens that signify ownership of distinct digital assets like films, music, and artwork. NFTs raise concerns about copyright infringement and intellectual property rights, even though they offer artists a fresh way to sell their works and collectors a way to verify ownership.

In the age of digital media, where distribution and replication are simple, copyright protection is critical for authors. This abstract explores the different ways that artists can incorporate watermarking, create licensing agreements, embed copyright information, and register their work as a means of copyright protection. In the developing NFT market, artists can protect the integrity of their work and assert their ownership rights by putting these tactics into practice. Proactive steps are essential to guarantee that artists in the digital age receive proper credit and recognition for their creative endeavours as the legal landscape changes.

Keywords: Digital assets, Blockchain, Copyright, NFTs (non-fungible tokens), Intellectual property rights.

⁵ 4th year student pursuing BBA LLB (Hons), Christ (Deemed to be University), Delhi NCR.

Protection of Copyright: An Essential Factor

The NFT and digital art ecosystem depend heavily on copyright protection because it protects creators' intellectual property rights and makes sure their creations are not used or abused without permission. The act of minting an NFT does not automatically grant the buyer or the creator copyright ownership. Rather, national laws pertaining to intellectual property control copyright protection.

In the majority of jurisdictions, an original work's creator is automatically granted copyright protection upon creation, negating the need for formal application or registration. A vast variety of creative works, including software and databases, as well as literary, artistic, musical, and dramatic works are covered by this protection.

It is crucial for digital artists and creators minting NFTs to realize that even after the NFT is sold, the creator's copyright is retained. An NFT basically gives the buyer ownership of the exclusive digital asset, but it does not grant them ownership of the underlying intellectual property rights pertaining to the work.

Keeping Digital Artworks Safe

1. Information about Copyright Embedded:

Artists can directly incorporate copyright information into the metadata of their digital artworks on certain platforms. The name of the creator, the copyright status, and the usage rights are examples of this metadata. Artists are able to declare their ownership and set restrictions on the uses of their work by incorporating this information.

2. License Contracts:

Artists can draft licensing agreements outlining the terms and conditions of use for their digital artworks before minting an NFT. These contracts may state whether the buyer is allowed to copy, exhibit, or alter the artwork. Artists can prevent unauthorized use and safeguard their intellectual property by laying out clear guidelines in advance.

3. Using a watermark

To prove ownership of a digital artwork, a visible or invisible mark is superimposed and called a watermark. Visible watermarks are easily recognized, but invisible watermarks are hidden within the data of the file and can only be found with specific software. Artists can prevent unauthorized use and track down the source of any infringements by watermarking their works.

4. Registration of Copyright:

Artists can register their copyright with the appropriate government agency in many nations, including the US. Copyright registration offers extra-legal advantages, such as the capacity to

sue for statutory damages and attorney's fees in case of infringement, even though it is not a requirement for protection. To learn more about the copyright registration procedure in their jurisdiction, artists should speak with legal professionals.

Obstacles and Things to Think About

Although the idea of copyright protection for digital art may seem simple, there are several issues and factors to consider due to the intrinsic characteristics of NFTs and their decentralized ecosystem:

Proof of Ownership and Authenticity: One of NFTs' main benefits is their use of blockchain technology to prove provenance and authenticity. Proving copyright ownership, however, can be more difficult because the underlying work can be shared or duplicated online with ease.

Limitations of Smart Contracts: Smart contracts, which are self-executing agreements with preset terms and conditions, normally oversee NFTs. The enforceability of these contracts in the real world may be impacted by jurisdictional issues and legal interpretations, even though they may contain provisions pertaining to copyright ownership and usage rights.

Derivative Works and Transformative Use: In the NFT and digital art spaces, the production of derivative works or transformative uses of copyrighted content can be ambiguous. Although fair use exceptions are permitted in some jurisdictions, there can be ambiguity regarding digital assets and blockchain technology.

Licensing and Royalties: To monetize their digital assets while maintaining copyright ownership, creators and collectors may want to investigate licensing arrangements and royalty structures as the NFT market develops. The legal frameworks governing these activities, however, are still developing and might need more explanation.

Guidelines for Artists and Collectors

The following best practices should be taken into consideration by creators and collectors as they navigate the complicated world of copyright protection for NFTs and digital artworks:

1. In the NFT metadata and smart contracts, clearly define ownership and usage rights and indicate the extent of the rights that are being granted to the buyer.
2. To make sure that applicable copyright laws and regulations are being followed, speak with intellectual property attorneys and seek expert advice.

3. Examine licensing alternatives and royalty schedules that fit the objectives of the creator and the planned usage of the digital asset.
4. Keep up with any updates to copyright laws and regulations pertaining to digital assets and NFTs, as well as the constantly changing legal landscape.
5. Encourage the development of a respectful and understanding community that values creative works and recognizes the significance of intellectual property rights.

The Prospects for NFTs and Copyright

It is probable that laws and policies pertaining to copyright protection will change as the use of NFTs and digital assets increases to meet the particular difficulties that these technologies present. Governments, industry participants, and legal professionals are putting a lot of effort into developing precise rules and regulations that will safeguard artists' rights and encourage innovation in the digital art and collectibles markets.

The creation of decentralized copyright management systems based on blockchain technology is one possible remedy being investigated. These systems could provide a transparent and immutable record of ownership, licensing, and usage rights, streamlining the process of enforcing and monetizing intellectual property rights in the digital realm.

Ultimately, continued cooperation between artists, collectors, technologists, and legal experts will determine how NFTs and digital artworks are protected by copyright in the future. We can make sure that the fascinating world of NFTs and digital assets remains a fertile ground for creativity and innovation while respecting and upholding the rights of artists and creators by remaining informed, embracing best practices, and actively participating in the discourse.

Conclusion

Artists must prioritise copyright protection and take precautions to ensure the security of their digital works. Artists can enforce their ownership rights and maintain the integrity of their work in the digital sphere by watermarking their creations, registering their copyright, negotiating licencing agreements, and inserting copyright information. Artists should keep up to date and modify their tactics as the legal environment around NFTs changes to adequately safeguard their intellectual property. Proactive steps are essential in this changing climate to guarantee that artists are fairly acknowledged and compensated for their creative work.



PATENT RIGHTS OF AI GENERATED PRODUCTS

S Abhipsha Dash⁶

Abstract

Human creativity and machine automation are becoming more and more entwined due to the rapidly developing field of artificial intelligence (AI). With AI's potential to create new things, an intriguing but confusing dilemma arises: who owns the patents? This abstract explores how intellectual property (IP) law is tangled up in this never-before-seen situation.

Human inventors are acknowledged by the conventional patent system as the legitimate owners of the exclusive rights to their creative works. But AI throws a monkey wrench into this well-known structure. Is an AI that lacks autonomous legal personality eligible to be called an inventor? Or should the rights go to the person who created the AI through programming, the person who gave the idea for the AI, or maybe even the company that owns the AI technology? The present legal environment is examined in this abstract, which also examines how current patent regimes relate to AI-generated products. It analyzes arguments for and against providing patent protection for these kinds of inventions, balancing worries about restricting competition and compromising human creativity against possible advantages like stimulating innovation.

Finally, in the age of AI-generated goods, this article provides as a guide through the complex web of patent rights. It opens new avenues for investigation into this developing legal landscape by calling on academics, industry participants, and legislators to work together to create a framework that supports AI innovation while maintaining the fundamental values of justice and moral IP behaviors.

⁶ BA LLB (2023-28), Symbiosis Law School Pune.

Keywords: Artificial Intelligence, Patent, Intellectual Property Rights, Legal Personhood, Technology

Introduction

Artificial intelligence (AI) has advanced at a rapid rate, giving rise to things that are generated by AI. This has raised significant concerns around ownership and intellectual rights pertaining to these products. The complexity and autonomy of AI systems increase, making it harder and harder to distinguish the contributions of human inventors and the degree to which their work justifies patent protection. This blog article delves into the intricacies related to the patent rights of artificial intelligence (AI)-generated goods. It does so by scrutinizing the extant legal framework, continuing discussions, and possible consequences for innovation and intellectual property rights. We hope to provide light on the changing patent rights situation in the field of AI-generated products by exploring this topic.

The Concept of AI-Generated Products

Products made or manufactured with artificial intelligence technologies are referred to as AI-generated products. These items can be real things like robots and self-driving cars, or software like chatbots and recommendation algorithms. A number of ethical and legal issues are brought up by the idea of AI-generated goods, especially in regard to patent law and intellectual property rights. Questions about who should be credited as the inventor or creator of these items and who should have the rights to patent and market them arise as AI technology grows more advanced and capable of producing original and creative outputs. A prerequisite for patent rights, according to some, should be human engagement and supervision in the creative process. On the other hand, others contend that artificial intelligence (AI) ought to be given legal personhood and recognized as the inventor of items developed by AI. The dynamic character of artificial intelligence (AI) technology and its influence on intellectual property rights require a reassessment and modification of current legal structures to adequately tackle these intricacies.

Importance of Patent Rights in AI era

Patent rights face new potential and difficulties in the AI era. The need to protect inventions and innovations in this industry is growing with the development of AI technologies. Because they give inventors a legal framework to protect their innovations, patents are essential for advancing and fostering research and development. Patents stimulate investment in artificial intelligence (AI) technologies by offering exclusivity for a restricted time, hence promoting

innovation and economic progress. Without patent protection, businesses and individuals might not be as motivated to devote resources to the advancement of AI technologies, which could lead to a slowdown in development. Additionally, patent rights allow creators to reveal their innovations, which fosters cooperation and knowledge exchange among scientists and programmers in the AI field. Patent rights are, therefore, vital in the AI era for fostering innovation, protecting inventors' rights, and encouraging the sharing of knowledge and advancements.

Challenges in Patenting AI-Generated Products

The problem of inventorship is one of the main obstacles to patenting AI-generated goods. Those who conceive of an innovation and help bring it to fruition are traditionally considered inventors. The distinction between human and machine creativity is hazy, though, when it comes to items produced by AI.

AI systems don't need direct human assistance to independently come up with fresh concepts and create original works of art. This calls into question whether the AI system itself ought to be granted patent protection and acknowledged as the inventor. Patenting inventions produced by AI is now severely hampered by the fact that most patent laws designate the inventor as a natural person. A solution to this problem has been suggested by some legal scholars: including AI systems into the definition of inventorship. But this plan brings up real-world and moral issues, such as accountability and liability issues. The burden of amending patent rules to address the issues offered by AI-generated products falls to legislators and legal experts as the field of artificial intelligence (AI) continues to grow.

Legal Framework

It is important to give considerable thought to the complex legal environment surrounding the patentability of AI-generated products. Determining who should be credited as the creator of inventions produced by AI is one of the main issues. Since patents are awarded to people who have significantly aided in the invention process, human inventorship is currently required under all patent systems worldwide. AI-generated goods, however, beg the question of whether the AI system itself can be acknowledged as the creator. Many arguments from many angles have been made, but this topic has not yet been settled. Because AI systems may autonomously produce new and non-obvious discoveries, proponents contend that they should be treated like inventors. Conversely, detractors contend that only human inventors need to be granted patent protection, since artificial intelligence (AI) systems are incapable of being creative or having a

subjective purpose to create. The patentability of goods created by artificial intelligence will remain unclear until a thorough legal framework is put in place.

Conclusion

To sum up, the legal domain of patent rights for artificial intelligence-generated products is intricate and constantly changing. The issue of who should be granted patent rights for items created using AI technology is still open, even though these technologies have the potential to produce lucrative and unique products. While some contend that the regulations in place now are adequate to handle the difficulties presented by AI-generated inventions, others support the creation of new legal frameworks or specialized regulations to guarantee equitable and efficient patent protection. It is critical for legislators, legal professionals, and industry stakeholders to think through the ramifications of AI technologies as they develop and find solutions that strike a balance between the interests of consumers, inventors, and society at large. It is possible to build a thorough and inclusive approach to patent rights for AI-generated products with more study and careful thought, which will promote innovation and the responsible application of AI technologies across a range of areas.

IN THE GAME OR OUT OF BOUNDS? PERSONALITY RIGHTS IN ONLINE FANTASY SPORTS IN INDIA

*Saksham Sharma*⁷

Abstract

Personality rights to publicity and privacy are gaining prominence in the contemporary world and are emerging as an important intellectual property requiring protection from infringement. One area where such rights are at the risk of violation is the world of Online Fantasy Sports (OFS), for such platforms are often found using various features of a player's personality as also statistics pertaining to them. This gives rise to the question of infringement of a player's right to privacy, as also their right to commercialise their identity.

The key determination is whether they have such exclusive rights over the information available about them in the public domain or otherwise, and if not, then to what extent do such rights exist. The present work seeks to answer such questions, while also determining the relevant test to be applied by the courts of law to ascertain the same, especially considering Hon'ble Delhi High Court's interlocutory order in the recent case of Digital Collectibles Pvt. Ltd. v. Galactus Funaware Technology Pvt. Ltd.⁸

Keywords: Attributes, False Endorsement, Online Fantasy Sports, Personality, Privacy, & Publicity.

Introduction

Personality rights encompass a set of legal principles that grant individuals control over the use of their names, images, and likenesses and are often regarded as the essence of an individual's personal identity. They are integral to the protection of one's privacy, personal dignity, and the ability to benefit from their own identity. As also observed by the Delhi High Court, in the

⁷ 4th Year BBA LLB (H), Symbiosis Law School, Pune

⁸ Digital Collectors Private Limited v. Galactus Fun'aware Technology, Private Limited, 2023: DHC:2796.

landmark *Titan Industries Case*⁹, they are also known as publicity rights and confer the control of commercial usage of one's human identity upon oneself.

Online Fantasy Sports (OFS) gaming platforms are digital platforms that allow users to participate in virtual sports competitions. Such platforms have emerged as a popular and innovative form of online entertainment, combining elements of sports and gaming. These platforms allow users to create virtual sports teams composed of real-life athletes, selecting players based on performance statistics and in many cases also encompass various aspects of players' personal identities, including their names, initials, physical features, attributes, likeness, and/or other pertinent information. This is where controversy arises, for usage of aspects of the personal identity of the concerned players has the potential to affect and infringe their personality rights, both in respect of privacy and publicity.

Question of Personality Rights of Players of Publicity and Privacy

Recently, the Delhi High Court faced such a scenario wherein an OFS platform gave rise to a suit for violation of personality rights, in the matter of *Digital Collectibles Pvt. Ltd.*¹⁰ While dealing with an interlocutory application seeking an interim injunction, the primary question before the court was whether the usage of attributes, likeness and personality of players coupled with their performance data, by the defendants would lead to an infringement of the personality rights of the concerned players or not.

In this respect, the court answered in the negative, and therefore refused to grant such injunctive relief, however, since the concerned interlocutory order is not a finality, the issue still remains unsettled and debatable. Therefore, there is a need to discuss and analyse the jurisprudence in this regard, to reach a holistic, appropriate and correct interpretation and position of law in the said respect.

Are Personality Rights in India?

The Supreme Court has expressed, in *Tata Press Ltd. v. MTNL*,¹¹ that India has finally begun to address the multi-dimensional aspect of personality rights and any sort of commercialization of the same by a person who is not authorized to do so can be seen to be amounting to embezzlement. Personality rights are generally recognized in the context of celebrities. In the

⁹ *Titan Industries v. M/s. Ram Kumar Jewellers*, (2012) 50 PTC 486.

¹⁰ *Digital Collectors Private Limited v. Galactus Fun'aware Technology, Private Limited*, 2023: DHC:2796.

¹¹ *Tata Press Ltd. v. Mahanagar Telephone Nigam Limited and Others*, (1995) 5 SCC 139.

*Titan Industries case*¹², it has been clarified that a celebrity can be seen as a person who may be well-known or famous and can also be talked about a lot or by many people.

The fact that players usually featured in OFS platforms fall within such definition is a view which requires no substantiation, for it is commonly accepted, if not universally. Therefore, there is a legal basis for the view that the concerned players, aspects of whose personality are being used in the concerned OFS platform have a personality right which is recognized in India. The scope and extent of the same may be ambiguous or undefined or unclear, however such rights do exist and are recognized by the courts of law in India.

Scope and Ambit of Personality Rights

To understand the concept of personality rights holistically, it is important to consider the approach to the same by courts of law in different countries, especially common law countries such as USA and UK, along with Indian Courts of law.

In the *Haelan Labs case*,¹³ it has been held that a person certainly has a right of publicity over their own photograph. In *Motschenbacher v. R. J. Reynolds Tobacco Co.*¹⁴ The court applied the test of confusion which provides that a violation of personality rights would occur if confusion were created in the minds of the public that the plaintiff is endorsing a particular service or product. Accordingly, it was held that since the plaintiff was a professional driver, the use of his car in a cigarette advertisement would create confusion in the mind of the public that the plaintiff was driving the car and thus amounts to a violation of personality rights. *Midler v. Ford Motor*,¹⁵ is an illustration of the fact that even a song sung by a “soundalike” which might give the impression that the plaintiff was singing for the defendant would amount to the defendant appropriating something which is not theirs and would create a false impression of endorsement by the plaintiff and this would again violate the publicity rights.

In *Keller v. Elec. Arts Inc.*,¹⁶ it has been clearly laid down that the use of likeness of a college athlete in a videogame by the defendant would not be entitled to the protection of freedom of speech and expression and instead would amount to breach of the defendant’s right to publicity. Since the first amendment to the US Constitution is generally considered to be in *pari materia*

¹² *Titan Industries v. M/s. Ram Kumar Jewellers*, (2012) 50 PTC 486.

¹³ *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866.

¹⁴ *Motschenbacher v. R. J. Reynolds Tobacco Co.*, 498 F.2d 821.

¹⁵ *Midler v. Ford Motor Co.*, 849 F.2d 460.

¹⁶ *Keller v. Elec. Arts Inc.*, 724 F.3d 1268.

to *Article 19*¹⁷ of the Constitution of India in respect of freedom of speech and expression, even in India, the same position of law will prevail.

While on a prima facie perusal, it may seem that the right to publicity is quite wide and almost exclusive to the concerned players/celebrities, a careful examination of these authorities reveals that it is actually quite limited, for there must be a sense of confusion which must be created in the minds of the public about the product or service being endorsed by the concerned player and/or celebrity. Furthermore, it must be kept in mind that even where publicity claims have been recognised and accepted by courts of law in USA, they generally emanate from statutory provisions, as against common law. Therefore, the right of publicity is very limited. To further understand this, it is expedient to discuss other authorities which clarify this position of law.

False Endorsement/Advertisement if details in Public Domain are used

In the landmark case of *CBC Distributors v. Major League Basketball*,¹⁸ the test of confusion was again given weight and it was held that violation of publicity rights cannot be claimed if the game created by the defendant is based solely on information available in the public domain about the players for it does not have the potential to mislead consumers to think that the game is endorsed by the concerned players. Likewise, in *Daniels v. Fan Duel. Inc.*,¹⁹ it was held that when a fantasy sports website displays informational and statistical data about college athletes, it does not constitute an endorsement of a specific product in a way that would infringe upon the athletes' right of publicity. This view is in line with the view taken by the court in *Cartoons LC v. Major League Basketball Players Assn.*,²⁰ that the rationale supporting the right of publicity may not be as strong as that for other types of intellectual property.

The courts of law in UK have limited the applicability of personality rights at common law to false endorsements/advertisements etc. In *Rihanna v. Arcadia Group*,²¹ it was held that when a celebrity wishes to control the use of their image, they must pursue alternative legal avenues such as breach of contract, breach of confidence, copyright infringement, or passing off and in applying the principles of passing off, the court determined that the utilization of Rihanna's image on the t-shirts suggested that they were officially endorsed and approved by Rihanna, thus constituting a passing off case. Thus, under English law, a celebrity does not possess the

¹⁷ The Indian Constitution, 1950, Art. 19.

¹⁸ *C.B.C. Distributors and Marketing v. Major League Baseball Advanced*, 505 F.3d 959.

¹⁹ *Daniels v. Fan Duel. Inc.*, 109 N.E.3d 390.

²⁰ *Cartoons, L.C. v. Major League baseball Players Ass'n.*, 95 F.3d.

²¹ *Robyn Rihanna Fenty and Ors. v. Arcadia Group Brands Limited and Anr.*, [2015] F.S.R. 14.

inherent right to prevent the use of their image unless it creates the impression that the celebrity has endorsed the products or has given their authorization for such use.

Position in India

The position of law in this regard in India is not very different from that in UK and recognises the test of confusion as applied by courts in USA. In the *ICC Case*,²² the Supreme Court took the view that personality rights can generally be dealt with under the tort of passing of in India and the elements of the same would not be fulfilled if there is no probability of the public being confused or misled into believing that the defendants relate to the ICC-organized Cricket World Cup.

In *D.M. Entertainment v. Baby Gift House*,²³ it was held that to establish a claim of false endorsement, an individual must demonstrate that the use of their identity created a likelihood of consumer confusion, leading them to believe that the person in question endorsed the product in question. In the *Digital Collectibles Case*,²⁴ the Delhi HC has opined that the observations made in *Titan Industries*²⁵ with regard to right of publicity were in the context of false endorsement and advertising. The court has further made it clear that utilizing celebrity names and images for purposes of lampooning, satire, parodies, art, scholarship, music, academics, news, and similar uses is permissible as expressions of the right to freedom of speech and expression under *Article 19(1)(a)*²⁶ of the Constitution of India and such uses do not infringe upon the tort of violating the right of publicity.

Personality Rights and Privacy

In the recent case involving *Sakshi Malik*²⁷, the court held that the concerned personality or celebrity having such personality rights has the discretion to exercise agency and control over the manner in which they are to be published. This was in line with the view take in Actor *Rajnikanth's Case*²⁸ that the right to publicity only vests in the person whose personality is concerned and him alone.

In USA, personality rights and specifically the right to publicity is recognised as a facet of right to privacy. However, while the apex court might have talked about the same in its landmark

²² *ICC Development v. ARVEE Enterprises and Anr.*, (2003) 26 PTC 245 (Del).

²³ *D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors.*, MANU/DE/2043/2010.

²⁴ *Digital Collectors Private Limited v. Galactus Fun'aware Technology, Private Limited*, 2023:DHC:2796.

²⁵ *Titan Industries v. M/s. Ram Kumar Jewellers*, (2012) 50 PTC 486.

²⁶ INDIA CONST. art. 19(1)(a).

²⁷ *Sakshi Malik v. Venkateshwara Creations Pvt. Ltd. & Ors.*, 2021 SCC OnLine Bom 352

²⁸ *Shivaji Rao Gaikwad v. Varsha Productions*, 2015 (62) PTC 351 (Madras).

ruling in *Puttaswamy Case*²⁹, it has not held the same position to be applicable in India. Therefore, personality rights of privacy in India are distinct from that of publicity, especially insofar as details available in the public domain are concerned. The converging point for the same is one where there is an impression of endorsement, advertisement, etc. which is false, as discussed hereinbefore. The only aspect where such rights would exclusively be vested in the concerned persons would be with respect to details which are not available in the public domain, for usage of the same would be a blatant violation of Right to Privacy.

Status of OFS Games in light of Personality Rights Jurisprudence in India

Upon due consideration of authorities from various jurisdictions, the Delhi High Court, while answering the questions raised in *Digital Collectibles*,³⁰ observed that Courts in United States have held that the use of a celebrity's name, image, and other publicly available information does not constitute an infringement of the right of publicity in the context of OFS Games, even though personality rights are statutorily recognised in multiple states. This gives weight to the view that in such cases even if even if the players' names, images and statistics are being used for commercial gain by the respondents, this would be protected under *Article 19(1)(a)*³¹ of the Constitution and would not amount to infringement of common law right of publicity.

Since such details are available in the public domain, the question of violation of right to privacy would not even arise, for exclusive licences can only be granted by players in respect of their personal details such as height, weight, etc. Therefore, the court refused to grant interim injunction and dismissed the interlocutory application seeking the same filed by the plaintiffs.

Conclusion

In conclusion, the legal landscape surrounding personality rights in the context of OFS gaming platforms in India remains evolving. While personality rights are recognised, their precise boundaries, especially in the context of OFS, remain somewhat unclear. The recent *Digital Collectibles case*³² has provided some clarity by emphasizing that the right to publicity is not absolute and depends on the presence of confusion and false endorsement.

When publicly available player information is used, courts have generally leaned towards protecting freedom of speech and expression under *Article 19(1)(a)*³³ of the Indian Constitution, leading to reluctance in granting injunctions. However, when private, non-public

²⁹ Justice K.S Puttaswamy v. Union of India, AIR 2017 SC 4161.

³⁰ Digital Collectors Private Limited v. Galactus Fun'aware Technology, Private Limited, 2023: DHC:2796.

³¹ INDIA CONST. art. 19(1)(a).

³² Digital Collectors Private Limited v. Galactus Fun'aware Technology, Private Limited, 2023: DHC:2796.

³³ INDIA CONST. art. 19(1)(a).

information is involved, players may have a stronger claim to safeguard their personality rights. Therefore, a well-defined legal framework may be necessary to address these issues more effectively as technology continues to advance, balancing the protection of individual rights with the promotion of innovation in the gaming industry.



AI'S BRUSH WITH COPYRIGHT: ANALYZING OWNERSHIP AND PROTECTION OF AI-CREATED CONTENT

Pathmanabhan Sooraj³⁴

Abstract

The use of artificial intelligence is becoming more widespread by the day; it creates a question of how IP Law should be enforced. This article in its inception will analyse the intersection between AI and how IP Law can have a conflict-free existence. This area is of recent origin and is in its infancy, which makes the need for a regulatory mechanism to be employed at the international level by the World Trade Organisation as well as at the national level. This article will examine the inventorial capacity of an AI System without human intervention, and policy aspects shall also be taken into consideration.

Keywords: Artificial Intelligence, Ownership, Novelty, Originality, Copyright

Introduction

The jurisprudence of whether works of AI can be patented is being developed in India, though in its nascent stage, it has only been limited to policy recommendations as of now. The case of *Thaler v. Vidal*,³⁵ which was decided in the United Kingdom's Supreme Court presents a rather important question of discourse, the Artificial Intelligence software was eligible to be called as an inventor under the Patents Act.³⁶ The plaintiff, Stephen Taylor, who is an AI computer scientist, is on an uphill journey to guarantee rights for AI inventors. Can an AI system with no human intervention have the capacity to be patented?

The Indian Patents Office recently raised its difficulty in recognizing AI as an inventor. *Thaler* had filed patent applications worldwide, including in India. The definition of a 'Person' according to the Patent Act is the main hassle for recognizing AI as an inventor. An argument

³⁴ 2nd Year, B.A LL.B (Hons), National University of Advanced Legal Studies (NLU Kochi).

³⁵ *Thaler v. Vidal*, 43 F.4th 1207 Fed. Cir. 2022.

³⁶ Patents Act, 1977. (Eng)

could be raised that a corporation as a non-living entity is given some rights; the same should be applicable to Artificial Intelligence. In the 161st Report of the Parliamentary Standing Committee on Commerce³⁷, the government accepted that *The Copyright Act, 1957*³⁸ and *The Indian Patents Act 1970*³⁹ are not well-equipped to facilitate inventorship, ownership, or authorship by AI.

Though such reports show the inadequacy of the current legislation to deal with the changing times, nothing substantial has been done to bring about a desirable change.

The Committee further recommended that algorithms or mathematical models that can be linked to a technical device should be adopted in India for patents as is being done in jurisdictions such as the EU and the US.⁴⁰

AI Artistry on Trial: Decoding Copyright Boundaries in the *Naruto v. Slater* Dispute

For an AI system to have inventorship of its own in the present times is nearly impossible even in progressive jurisdictions such as the EU, however, there are leeway to be explored. In the case of *Naruto V. Slater*,⁴¹ Interestingly, the court had to determine a similar problem in the case, disputing the animal's right to own copyright and sue for damages and injunctive relief if such copyright was violated. The plaintiff, Naruto, who is a monkey clicked a selfie which was later published by the respondent, Slater, and published in a book. Here the copyright was accredited to Slater and Wildlife, The People for Ethical Treatment of Animals (PETA) filed a suit in the federal court for Naruto to get the copyright for the picture. The 9th Circuit Court ruled in favour of Slater as Naruto did not file the case himself; therefore, PETA had no *locus standi*.

Perhaps an Artificial Intelligence system that is intelligent enough may fare better against copyright violations; recently, the AI Robot⁴² Do Not Pay was sued for not having a licence; this shows the hesitancy on the part of the public to attach copyrights to AI Systems. Creative works, including computer-generated ones qualify for copyright only if it is created by a

³⁷ Department Related Parliamentary Standing Committee on Commerce, *One Hundred and Sixty First Report Review of the Intellectual Property Rights Regime in India*, Iprlawindia (Aug. 26, 2023, 12:30PM), https://iprindia.org/wp-content/uploads/2021/07/GOI_IP-Review.pdf

³⁸ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

³⁹ The Indian Patents Act, 1970, No.39, Acts of Parliament, 1970 (India).

⁴⁰ *Id.* at 2.

⁴¹ *Naruto V. Slater*, 16 U.S. 2,41, 2018

⁴² Sara Merken, *Lawsuit pits class action firm against 'robot lawyer' DoNotPay*, Reuters (Aug. 26, 2023, 1:35 PM), <https://www.reuters.com/legal/lawsuit-pits-clgass-action-firm-against-robot-lawyer-donotpay-2023-03-09/>

human. a computer program that is primarily designed for machine learning and can autonomously compute decisions that are independent causes a dilemma.

Unveiling Novelty in AI Creations: Navigating Originality within Intellectual Property for Artificial Intelligence

Originality is an immutable part of Intellectual Property Law; the question of whether work which is created through analyzing throes of data by an Artificial Intelligence System satisfies originality requirements arises. Section 13(1) of the Indian Copyright Act 1957⁴³ states that copyright subsists in “original literary, dramatic, musical and artistic works.”

However, the Act fails to give any definition to determine the originality of a work. In the landmark Indian case of *Eastern Book Company & Ors vs. D.B. Modak & Anr*,⁴⁴ The Court held that for a derivative work to be granted copyright protection, it must be proven that it is more than merely a copy of the original. It must include the author's own skill apart from capital and work. The data analytics work done by an AI system could, in essence, be considered a work of its standing.

When it comes to originality, the Sweat of Brow Doctrine, as well as the Modicum of Creativity Doctrine, comes into focus. The former doctrine advocates that an author gains rights to a work when some amount of diligence is done; take the case of *Burlington Home Shopping v. Rajnish Chibber*,⁴⁵ where the Delhi High Court held that when there is a devotion of effort, time, labour or skill in creating a work, such work is copyrightable. An AI system that relies on a training program or an algorithm that uses hundreds or even thousands of snippets of data may gain protection under this doctrine.

On the other hand, The Modicum of Creativity Doctrine⁴⁶ stipulates that a minimum level of creativity should be applied in the work to make it copyrightable. In *Emergent Genetics India Pvt. Ltd. vs. Shailendra Shivam and Others*,⁴⁷ which dealt with the protection of DNA sequences to be protected as confidential information, the Court held that it was not an original piece of work citing the Eastern Book⁴⁸ Judgement, a minimum creativity requirement was not satisfied to gain copyright. When an AI uses machine learning algorithms, relies on an existing

⁴³ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

⁴⁴ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1 (India).

⁴⁵ *Burlington Home Shopping (P) Ltd. v. Rajnish Chibber*, 1995 SCC Del 746 (India).

⁴⁶ Jane C. Ginsburg, *No "Sweat"? Copyright and Other Protection of Works of Information after Feist v. Rural Telephone*, 92 Columbia Law Rev. 338, 338-88 (1992).

⁴⁷ *Emergent Genetics v. Shailendra Shivam*, I.A. Nos. 388/2004 (U/S. 39 R 1 & 2).

⁴⁸ *Id.* at 9

dataset of paintings and images, and supposedly uses its creativity to create an artwork, it may provide a certain level of creativity that could come under this doctrine.

It cannot be said that the work of an Artificial Intelligence System is entirely devoid of originality; even though it may make use of other copyrighted material to produce an output, the work, if created with its creativity and labour, could have a right of copyright attached to it.

Conclusion

The time is not too far when an Artificial Intelligence system will gain ownership rights for a work of its own; persons such as Stephen Taylor will rise in number and vouch for intellectual property to be attached to such systems without the touch of human creativity or originality. The report framed by the Indian Dept. of Commerce is a crucial turning point for the recognition of IP rights of AI in India, which accepts that AI-generated works and solutions should be permitted under the patent laws of India as it would further R&D and investment would be in greater terms once it is allowed. Copyright should be granted to AI systems with a regulatory framework; it is the need of the hour for the changing economy of our times. As discussed earlier, originality may present challenges for integrating AI and IP laws in India. However, in the context of the precedents analyzed, all hope is not lost, and there is a considerable chance for IP rights to be visualized for an Artificial Intelligence System.

ROLE OF TRADE SECRET IN FOOD MANUFACTURING INDUSTRIES

Ankit Gupta⁴⁹

Abstract

Trade secrets are essential intellectual property rights that protect businesses from competitors and maintain their unique tastes, textures, and quality. In the food industry, keeping trade secrets private helps businesses maintain their economic worth and success. Restaurants, chefs, and food brands can use trade secrets to safeguard recipes, such as non-disclosure and non-compete agreements, to maintain their monopoly and profit from inventions. Technology has become a trend in protecting trade secrets, with companies using blockchain technology to store and track data about their goods, access histories, and supply chains. Trade secrets can have an economic impact by creating obstacles to market access, resulting in less competition, higher costs, less innovation and prevention from theft. However, trade secret law does not cover all categories of knowledge related to health, and it is unlikely that the release of aggregated data will hurt competition. Trade secrecy has exceptions for public interest which helps to ensure that information can be disseminated to improve public health.

Keywords: Trade Secret, Food production, Competition, Economy, Public health.

Introduction

Trade secrets are the crown jewels of every firm. A trade secret is a sort of intellectual property right that guard businesses closely. It may be licensed to keep hidden from other and can be sold on its discretion. A trade secret, in a broader sense, is any knowledge undisclosed to its rivals that offers its owner an advantage over its competitors. If taking the instance of food, in this competitive world, the food sector heavily relies on trade secrets. They can consist of formulas for ingredients, production procedures, and recipes that give businesses a competitive edge. In the food industry, keeping trade secrets private helps businesses maintain their

⁴⁹ B.A. LL.B. (2021-2026), Lloyd Law College.

distinctive tastes, textures, and quality that sets them apart from rivals. Additionally, it enables them to profit from their inventions and keep customers. To maintain the economic worth and success of food enterprises, trade secrets must be protected.

Trade Secret in Food Production Industries

Trade secrets can be used to safeguard recipes. Restaurants, chefs, or food brands may want to ask the people who receive the recipe to sign non-disclosure and non-compete agreements and tell them that the recipe is a trade secret. In this context, franchise agreements will contain specific clauses. Chefs and restaurants should decide up front who will own any trade secrets in recipes. If the recipe is properly kept secret and not shared with outside parties, this type of protection can be incredibly effective and endure forever. To keep the throne of monopoly, there must be the trade secrets of the companies.

The industries like the food and beverage, their sector is continually changing. Thus, there will be adjustments made to how businesses safeguard their trade secret or intellectual property (IP). The increased use of technology to protect trade secrets across many industries, including the food and beverage sector, has become a trend in recent years, such as *Coca Cola, invented in 1886 by Dr. John S. Pemberton*. Food Companies are beginning to employ blockchain technology, for instance, to safely store and track data about their goods, access histories, and supply chains. This lowers the danger of trade secret theft or illegal access.

Meanwhile, trade secret helps to gain more profit to the companies because of their main trade ingredients. Taking the context of India, its laws does not explain and define the trade secrets. However, India still implies the practices of trade secrets. Food industries sometimes may hide the secret ingredients to prevent the rip off companies. Therefore, maximizing the profit is the only key role aim of the companies. Thus, there main objective is to supersede the market by giving the quality edibles and food.

Impact of Trade Secret in Food Industries

Trade secrets can have an economic impact by creating obstacles to market access. It might be difficult for a new rival to enter and compete effectively when a food industry has a distinctive trade secret. This can result in less competition, higher costs, and less innovation in the competitive market. For example, if a food manufacture possesses a secret formula for a product that cannot be easily reverse engineered, the manufacture can retain a monopoly on that product if the trade secret stays a secret, driving up consumer costs. This may hinder technical development by discouraging company collaboration. Interestingly, in the previous

five years, the US, Japan, and the EU have updated their trade secret regulations to, for example, increase safeguards and add civil and criminal sanctions for trade secret theft. When you consider that trade secret theft contributes for around 3% of global GDP, it's easy to see why modifications are being made.

However, recognizing that extensive investigations have found that trade secret law, properly interpreted, does not cover many categories of knowledge related to health and that close examination frequently exposes trade secret claims to be improper. When information is revealed can also have an impact on whether it hurts competition. For instance, it would be unlikely to result in a competitive disadvantage to release research and development costs after the relevant food product was released to market. Additionally, it is doubtful that the release of aggregated data will hurt business. A state can establish or enlarge defences against excessively broad trade secret rights in the three areas that need special consideration. First, nations should take precautions to prevent trade secrets from becoming entrenched as human rights or constitutional rights and resist efforts to codify stricter trade secrets law in international law, especially without sufficient and explicit safeguards. Second, states ought to minimize trade secret laws and let them to be disregarded in cases when there are clear benefits to the public's health. Third, nations ought to enact strong protections for informers.

Trade secrecy exceptions for public interest can aid in ensuring that information can be disseminated to improve public health. These exceptions can be codified in at least four different ways: first, states can adopt "balancing tests" that allow the release of trade secrets when the public interest outweighs private harm; second, states can adopt information exclusions from the scope of trade secret protections; third, states can adopt post-hoc techniques like intellectual property laws; and fourth, states can use post-hoc techniques like intellectual property "rights". The public interest may be served by progressive disclosure rules for specific health and safety information. It is possible to carefully balance business interests and public health issues by carefully adjusting the breadth and timing of these disclosure obligations.

Conclusion

Trade secret is important to promote the business in the food industries. It maximises the profit to the great extent and increases the monopoly in the market. In this competitive world, it could be necessary for the food industries to keep this secret to prevent their other competitors, as they might copy their ingredients to take a position in the market. However, the trade secret may make a harmful impact in the society regarded as public health. Consumers may face

problem to identify the main items in the food as seeking the sufficient information are the basic rights. It may take a huge problem for the state to prevent these methods. States might employ to shield themselves from overly broad trade secret regimes. States can protect the pressing public need for collaboration and transparency by guarding against the entrenchment of trade secret law as creating “rights” protected under international and domestic law, by protecting the public interest in confidential commercial information by allowing or mandating data sharing, and by strengthening whistleblower protections. Governments can expand access to medications and promote the right to health by doing so.



THE INTERSECTION OF GEOGRAPHICAL INDICATIONS AND INTELLECTUAL PROPERTY: A DEEP DIVE INTO PREVAILING LEGAL ISSUES

Priyadarshini Goenka¹

Abstract

Geographical Indications (GIs) stand as unique intellectual property rights, spotlighting the relationship between products and their places of origin, embodying traditions, skills, and localities. While GIs act as economic drivers, safeguarding cultural heritage and ensuring product authenticity for consumers, they grapple with multifaceted legal challenges in the ever-evolving intellectual property (IP) landscape. This discourse delves into pressing issues like the conundrum of dual protection under trademarks and GIs, the requisite for standardization and rigorous quality control to preserve GI integrity, and the complexities surrounding their infringement and enforcement. Furthermore, the analysis underscores the nuanced challenges of limiting GI usage, emphasizing the fine line between rightful attribution and undue appropriation. The interplay between GIs and trademarks, especially in terms of co-existence, further accentuates the intricate balance in IP law. As GIs gain global recognition, understanding and addressing these legal intricacies is pivotal for stakeholders, ensuring that both cultural preservation and commercial interests coalesce in harmony.

Keywords: Geographical Indications (GIs), Intellectual Property (IP) Landscape, Dual Protection, Standardization and Quality Control and Co-existence with Trademarks.

Introduction

In the realm of intellectual property, Geographical Indications (GIs) stand distinct, spotlighting the unique relationship between products and their place of origin. These GIs, which affirm a product's authenticity and intrinsic value based on geographical origins, play a pivotal role in safeguarding traditional knowledge and heritage. However, their interface with the broader intellectual property law framework brings forth a plethora of intricate challenges. From

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clashes with trademarks to enforcement quandaries, these issues underscore the complexities of ensuring that GIs not only protect regional identities but also harmoniously coexist within the global intellectual property ecosystem.⁵⁰

Definition and Recognition

The concept of Geographical Indications (GIs) is anchored in the idea of associating products with a particular geographical region, often signifying quality, reputation, or other characteristics unique to that area. However, the definitional landscape of GIs remains intricate due to variations in interpretations across global jurisdictions. The World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) lays down a definition of GIs. It describes them as “indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.” Yet, how this definition is perceived and implemented varies considerably among countries. For instance, in certain nations, GIs are distinctly recognized and treated as a unique intellectual property right, distinct from trademarks. This clear delineation ensures that GIs are granted protection specifically tailored to their unique nature, safeguarding the interests of local producers and communities. Conversely, in other jurisdictions, GIs fall under the broader category of trademark law, often classified as collective or certification marks. This conflation can sometimes lead to challenges, as the nuances and distinctiveness of GIs may not be adequately addressed within the traditional framework of trademark law. Such discrepancies in definition and recognition underscore the complexities in achieving a universally harmonized approach to GIs. As a result, producers and traders often have to navigate a patchwork of regulations, which can pose challenges, especially when seeking protection in multiple countries.

This detailed examination sheds light on the complexities inherent in the realm of GIs, emphasizing the importance of a nuanced understanding when delving into intellectual property law.

Dual Protection in Geographical Indications

The concept of Dual Protection emerges as a complex facet within the realm of Geographical Indications (GIs). Dual Protection pertains to the simultaneous protection of a product under both the GI and the trademark regime. While GIs are intended to safeguard the uniqueness of

⁵⁰ “Geographical Indications,” *available at*: https://www.wipo.int/geo_indications/en/index.html (last visited September 25, 2023).

products originating from a particular region, trademarks serve to distinguish the goods or services of one entity from others. Both systems coexist, but their convergence can lead to intricate legal landscapes. At the heart of the Dual Protection conundrum is the potential for overlap and conflict. A product might be registered as a GI due to its geographical origin and specific qualities, while concurrently, an entity might seek trademark protection for the same product, emphasizing its brand identity. This parallel existence raises questions: Can a single product enjoy protection under both regimes without causing market confusion? What takes precedence when there's a dispute – the collective heritage represented by a GI or the individual brand identity of a trademark? For producers, Dual Protection can offer enhanced market exclusivity, ensuring both the regional authenticity and the brand's individuality are maintained. However, for competitors and consumers, it may pose challenges. It can lead to market restrictions, potentially stifling competition. For consumers, discerning the genuine attributes of a product becomes intricate when it bears both GI and trademark labels. Jurisdictions vary in their approach to Dual Protection. Some provide a clear demarcation between GIs and trademarks, while others allow a more fluid coexistence. The challenge lies in striking a balance, ensuring that both systems, while cohabiting, foster fairness, clarity, and genuine market value.

This examination sheds light on the multifaceted nature of Dual Protection in GIs and the nuances that come into play in its implementation and interpretation.

Standardization and Quality Control in Geographical Indications

In the domain of Geographical Indications (GIs), the emphasis on standardization and quality control is paramount. GIs, by their inherent nature, are not merely markers of geographical origin; they are also badges of authenticity, quality, and unique characteristics attributed to that origin. Ensuring consistent quality and maintaining the features that make a product unique becomes essential to uphold the value and trust associated with a GI label. Standardization, in this context, implies the establishment of a well-defined set of criteria that a product must meet to qualify for a GI tag. These criteria might encompass aspects such as production methods, raw material sourcing, and specific characteristics that the finished product must exhibit. By setting clear standards, GIs help preserve the traditional methods and qualities that lend the product its distinctive reputation.⁵¹ Quality control, on the other hand, involves ongoing checks and measures to ensure that the products bearing the GI tag consistently meet the set standards. Without rigorous quality control mechanisms, there's a risk that products might deviate from

⁵¹ Jupi Gogoi, "Locked out, without a GI tag" *The Hindu*, 26 November 2017, section Comment.

the established norms, diluting the prestige of the GI and potentially misleading consumers. However, the process is not without challenges. Balancing the preservation of traditional methods with modern production techniques, ensuring widespread adherence to set standards among varied producers, and maintaining objective and effective quality control mechanisms require meticulous oversight. In the world of GIs, standardization and quality control are not mere regulatory hurdles but are integral to the very essence and credibility of the GI label. This elucidation underscores the significance and intricacy of standardization and quality control within the framework of Geographical Indications.

Infringement and Enforcement in Geographical Indications

The uniqueness and value associated with Geographical Indications (GIs) make them susceptible to infringement. Whether it's the unauthorized use of a GI by producers outside the specified region or the production of goods that fail to meet the established standards within the region, infringements can dilute the essence of the GI and mislead consumers about the product's origin and quality. Infringement typically takes two primary forms. One is outright counterfeiting, where products falsely claim a GI. The other, subtler form involves evoking the characteristics or reputation of the GI without directly using its name, which can still mislead consumers. Effective enforcement mechanisms are crucial for the protection of GIs. However, enforcement poses its challenges. Firstly, it requires clear legislative frameworks that define what constitutes an infringement and stipulate penalties for violators. Regular monitoring is essential to detect infringements promptly. This can be particularly challenging given the vastness of global markets and the myriad ways counterfeiters can imitate or misrepresent GI-tagged products. Another challenge lies in the international domain. While a GI might be protected in its country of origin, ensuring that protection in foreign markets demands international cooperation. Treaties, bilateral agreements, and adherence to international standards play pivotal roles in this respect.

This explanation sheds light on the complexities of enforcing GIs and the importance of robust mechanisms to counter infringements.

Co-existence with Trademarks in the Realm of Geographical Indications

Geographical Indications (GIs) and trademarks are both vital intellectual property tools, albeit with distinct objectives. While GIs identify a product's geographical origin and the qualities, reputation, or characteristics attributable to that origin, trademarks distinguish products or services of one enterprise from others. Their co-existence in the legal landscape can lead to potential overlaps and conflicts. One of the main challenges arising from this co-existence is

the possibility of a trademark getting registered before a GI. If such a trademark becomes well-established, it could complicate the subsequent registration and protection of a GI. Conversely, a well-established GI might hinder the registration of a trademark that closely resembles or evokes the GI, even if unintentionally. Another concern is consumer confusion. If a product bears both a trademark and a GI, consumers might be unsure about the product's true origin or the authenticity of its claimed qualities. This could dilute the very essence of GIs, which is to assure consumers about the geographical origin and the inherent quality of the product. To navigate these challenges, legal systems need to establish clear boundaries and precedence between GIs and trademarks. Some jurisdictions have implemented mechanisms where, under specific conditions, a GI can coexist with a prior trademark, and vice versa. Such mechanisms aim to balance the interests of trademark holders with the collective rights of producers in a GI region.

This elaboration underscores the intricacies of the relationship between GIs and trademarks and highlights the need for a balanced approach to their co-existence.

Economic and Commercial Exploitation of Geographical Indications

At the crossroads of tradition and commerce, Geographical Indications (GIs) represent not just a product's origin but also its embedded cultural, historical, and artisanal narratives. When effectively exploited, GIs have the potential to open lucrative commercial avenues, enhancing local economies and strengthening brand identities. Economically, GIs can be transformative for local communities. They provide an opportunity for artisans and producers to command premium prices, given the authenticity and quality assurance GIs offer. Furthermore, they can catalyze local tourism, with regions known for GIs becoming destinations for cultural and gastronomic tourism. Darjeeling for its tea or Champagne for its sparkling wine are classic examples of regions benefiting economically from their GI status. However, commercial exploitation isn't devoid of challenges. The very authenticity that GIs vouch for can be a double-edged sword. The stringent criteria that often define a GI product can limit scalability. There's also the danger of over-commercialization, wherein the quest for broader markets might dilute traditional methods, potentially jeopardizing the GI status itself. Another aspect to consider is branding. While GIs inherently provide a branding advantage, consistent and strategic marketing is crucial to fully realize their commercial potential. Regions need to invest in telling their unique stories, thereby connecting consumers globally with the local traditions and craftsmanship that the GI symbolizes. Furthermore, the global recognition of a GI plays a pivotal role in its commercial success. Without adequate international recognition, producers

might find their products facing stiff competition from counterfeit or misleadingly labelled products in global markets. In conclusion, while GIs hold immense economic promise, their commercial exploitation requires a judicious blend of upholding tradition, strategic marketing, and vigilant protection against potential dilution or misuse.

This narrative illuminates the economic potential of Geographical Indications, and the careful considerations needed for their successful commercial exploitation.

Conclusion

Geographical Indications, rooted in cultural legacy and regional distinctiveness, serve as vital markers in the world of intellectual property. While they bolster local economies and preserve traditional expertise, the intertwining challenges within the larger IP law matrix cannot be overlooked. Addressing issues ranging from trademark intersections to rigorous enforcement mechanisms is imperative to maintain the sanctity of GIs. As the global market continues to evolve, a balanced, informed approach will be paramount in ensuring that Geographical Indications remain robust protectors of regional identity, all while navigating the intricate tapestry of intellectual property rights.



AI AND DEEPFAKES: BRIDGING AMBIGUITIES IN PERSONALITY RIGHTS

*Naman Pratap Singh*⁵² and *Hammad Siddiqui*⁵³

Introduction

In a recent decision, the Bombay High Court granted ex-parte ad-interim injunction to protect the personality rights of singer Arijit Singh.⁵⁴ The court expressed concern over targeting of celebrities by unauthorized AI generated content. In today's technological age, media expansion has raised concerns about misuse of personal images and attributes without consent. Personality rights have become more important with the emergence of celebrity culture and the widespread impact of deepfake content on the social media. It secures individuals with exclusive authority to licence their identities for business use and are often shielded against unapproved commercial exploitation of their name, likeness, or other distinguishable personal characteristics by the right of publicity. Such rights grant control over one's image, performances, derivative works and protects reputation from misuse, recognizing the impact of past work on future opportunities. "Personality rights" are commonly referenced in two types of tort-based rights: privacy and publicity. Right to privacy guarantees that people are not subjected to unwelcome interference in their private lives and publicity rights enforce protection against unapproved commercial use of their image.⁵⁵

Various jurisdictions handle such rights as a single right that encompasses both elements or as two distinct rights, despite the fact that it contains both non-commercial and commercial aspects. In India, the terms "publicity rights" and "personality rights" are frequently used

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⁵⁴ Arijit Singh v. Codible Ventures LLP, 2024 SCC OnLine Bom 2445.

⁵⁵ Tabrez Ahmad and Satya Ranjan Swain, 'Celebrity Rights: Protection under IP Law', Vol 16, January 2011, pp 7-16, Journal of Intellectual Property.

synonymously. The business side of personality rights has become a hot topic recently, especially in India, as more difficulties have surfaced.⁵⁶ Though, Indian courts have acknowledged personality rights much earlier,⁵⁷ this right had already been recognised in other nations by the mid-20th century. Insufficient legislation in India have resulted in a lack of clarity and legal gaps in personality rights protection.

Legislative Protection

India lacks specific laws protecting personality rights, but courts derive protection from Article 19(1)(a) and Article 21. While extending safe harbour benefits to social media platforms, the Ministry of Electronics and Information Technology now requires them to control and delete deepfake content and misinformation and holds them accountable for noncompliance.⁵⁸ In Copyright Act, protection applies to literary, artistic, musical, and dramatic works, with performers' rights under Section 38 and moral rights added in 2012 amendment. Photographs considered artistic works under Section 2(c), are protected for photographers under Section 25 based on originality. Under the Trademark Act, names can be protected as trademarks but must show distinctiveness. Section 14 requires consent from living individuals or heirs to register a trademark linked to someone who died within 20 years of the application. Trademark law offers remedies for unauthorized use of an individual's likeness through the principle of passing off, applicable to unregistered trademarks or personas with public goodwill. Proving passing off involves showing that the persona has a secondary meaning and that unauthorized use causes confusion and damage. Trademark infringement actions can be pursued if a celebrity's name is registered and misused. The Copyright Act, 1957, considers using or altering copyrighted content to create deepfake material without permission as infringement under Section 51, allowing the copyright owner to seek civil and criminal remedies. However, publicity rights lack explicit protection. Sections 66D and 66E of the Information Technology Act of 2000 effectively handle concerns of impersonation and privacy violations with AI-generated voices. These sections provide a comprehensive account of both publicity and privacy rights.

⁵⁶ Agnes Augustian, *PROTECTION of PERSONALITY RIGHTS in INDIA: ISSUES and CHALLENGES*, Vol 1 Issue 1, pp. 44-53, IPRJMNUN (2023).

⁵⁷ *ICC Development (International) v. Arvee Enterprises and Anr* (2003) Delhi 405, (India) D.M Entertainment Pvt. Ltd. v. Baby Gift House and Ors. (2010) MANU Delhi 2043.

⁵⁸ Ministry of Electronic and Information Technology, Government of India, "Due Diligence by Intermediaries/Platforms under the Information Technology Act, 2000 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" (Advisory March 2024) < <https://www.meity.gov.in/writereaddata/files/Advisory%2015March%202024.pdf> > accessed 10 September 2024.

Judicial Trends

The judicial trends have made several assessments which were subjected to constant judicial scrutiny starting from *Phoolan Devi case*,⁵⁹ claiming to halt the publication of “Bandit Queen,” a 1995 film that portrayed her life as the fictitious rape scene and her portrayal in the movie violated her right to privacy under Article 21 of the Constitution and Copyright Act, 1957. The court concurred relying on *R. Rajagopal v. State of Tamil Nadu*,⁶⁰ which had upheld the right to restrict commercial use of one's identify. Court prohibited the film's publication acknowledging the connection between the right to private and the right to publicity. It was only 8 years later, in the 2003 case of *ICC Development (International) Ltd. v. Arvee Enterprises*,⁶¹ that the Delhi High Court specifically discussed publicity rights in relation to privacy rights. The Court decided that people, not organisations, own publicity rights which are derived from privacy rights and right to publicity was explicitly recognised for the first time in India.⁶²

Contrary to the more widely accepted legal view that personality rights are applicable to anybody whose persona has economic worth, the Punjab High Court ruled in the Super Cassettes case⁶³ that only celebrities may assert such rights. This ruling goes against the ideas expressed in instances such as *Puttaswamy*⁶⁴ and *Krishna Kishore*,⁶⁵ which highlight the idea that everyone has the right to their own character and that superstars are not the only ones who possess this right. The court ignores circumstances in which celebrities, may be identified and have their identity utilised commercially despite not being traditional superstars by insisting that celebrity status be a need for such rights. Even if personality rights are first recognised, the court held that they expire once they are made public through the media or court records. This ruling introduces discrepancies into Indian and law stipulates the need for more precise laws in this developing field.⁶⁶

⁵⁹ *Phoolan Devi v. Shekhar Kapoor*, 1994 SCC OnLine Del 722.

⁶⁰ *R. Rajagopal and Ors. v. State of Tamil Nadu*, 1994 SCC (6) 632.

⁶¹ *ICC Development (International) v. Arvee Enterprises and Anr* (2003) Delhi 405.

⁶² Samarth Krishnan Luthra and Vasundhara Bakhru, "Publicity Rights and the Right to Privacy in India" (2019) 31 (1) 6 NLSIR <<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1259&context=nlsir>> accessed 10 September 2024.

⁶³ *T-Series (also known as Super Cassettes Industries Private Limited), New Delhi & Anr v. M/s/ Dreamline Reality Movies & Others*, 2024: PHHC: 025132.

⁶⁴ *Justice K. S. Puttaswamy (Retd.) And Anr. v. Union of India and Ors.*, AIR 2017 SC 4161.

⁶⁵ *Krishna Kishore Singh v. Sarla A Saraogi & Ors.*, CS(COMM) 187/2021.

⁶⁶ Akshat Agarwal and Aditya Bhargava, “Whose Personality is it Anyway?” (*IJLT*, 2024) <<https://www.ijlt.in/post/whose-personality-is-it-anyway>> accessed 10 September 2024.

Personality rights protect individuals, especially celebrities, by granting them control over the commercial use of their name, image, and likeness. While not explicitly provided under Indian law, courts perceive this right as an extension of privacy that protects against unauthorised endorsements and exploitation. *Titan Industries v. M/s. Ramkumar Jewellers*⁶⁷ has clarified that well-known people have to have the power to determine when and how their identities are utilised for commercial purposes. The right to identity addresses the expanding legal ramifications of digital identities and online personas by shielding people against misuse, fraudulent endorsements, and identity theft. The *Anil Kapoor case*⁶⁸ has expanded the scope of personality rights to include distinctive cues, catchphrases, and other features inextricably linked to an individual's identity. The landmark ruling emphasises that free expression does not permit the unauthorised commercial exploitation of celebrities' names and pictures.

Conclusion

Technology poses significant challenges to individual rights by the rampant spread of fake content, raising urgent legal concerns about accountability. The growth of high-priced endorsement deals emphasises the financial stakes involved, necessitating immediate legal action to preserve one's reputation. Courts have to strike a balance between respecting democratic ideals and defending the rights of individuals. In *Snow v. Eaton Centre Ltd*⁶⁹, a prominent Canadian artist successfully obtained an injunction to remove ribbons added to his sculpture, claiming that they misrepresented his work and injured his reputation. Though the court emphasised on a balance between an artist's subjective ideas and objective rationality, but the case also demonstrates the difficulties of determining personality rights and related distortions. In consideration of the crucial role that consumers play in the marketplace, protecting them as well against deceptive advertising is as vital.⁷⁰ Celebrity names and related marks are increasingly being registered as trademarks, bolstering legal protections against any infringements. While no explicit regulation exists, Sections 66D and 66E of the IT Act, address issues such as impersonation and privacy in the context of technology, provides a more effective approach. To successfully address personality rights challenges, the present intellectual property framework must overcome substantial gaps between copyright,

⁶⁷ *Titan Industries v. M/s. Ramkumar Jewelers*, CS(OS) No.2662/2011.

⁶⁸ *Anil Kapoor v. Simply Life India & Ors.*, CS (COMM) 652 of 2023.

⁶⁹ *Snow v. The Eaton Centre Ltd.* (1982) 70 C.P.R. (2d) 105.

⁷⁰ Vishaka. S, "Personality Rights and its protection in India- A Statutory and Judicial analysis" (Lexology, 2020) < <https://www.lexology.com/library/detail.aspx?g=0759e39a-7803-4d67-95fa-f54624e99951>> accessed 10 September 2024.

trademark, and constitutional mandates. Recent judgements have addressed personality rights as and, along the terms as copyrights,⁷¹ trademarks⁷² and infringements under Article 21. These cases have addressed a wide range of legal spectrum in various jurisdictions, including tort law, privacy legislation, constitutional law, and intellectual property law. Evidently, specific legislation in this area is required to address these issues and protect personality rights as a form of intellectual property.

⁷¹ In Arijit Singh v. Codible Ventures LLP, 2024 SCC OnLine Bom 2445.

⁷² In Jaikishan Kakubhai Saraf Alias Jackie Shroff v. The Peppy Store & Ors. CS(COMM) 389/2024.



APPLE SAVES THE RIGHT TO USE RACIALLY DIVERSE EMOJI

Sukanya Nema⁷³ & Ashay Maske⁷⁴

Abstract

The subject of Intellectual Property Law has always ensured that the economic rights of an individual are always secured. More importantly, it also secures the rights of the general public by not allowing protection over generic ideas/marks/inventions to limit the market monopoly of a single player. In this article, we see one such law of IP in play by covering the case summary of a recent dispute before the US District Court of California⁷⁵, the Cub Club Investment, LLC.

Facts

The Texas-based company Cub Club Investment, LLC claimed that Apple stole its idea for racially diverse emoji. An app called “iDiversicons” was created in 2013 that allows people to send emojis of different races. Because of the uniqueness of the app, the company tried to sell the technology to Apple in 2013, but the deal failed. However, Apple liked the idea and copied the product and the concept of five skins. Cub Club Investments sued Apple, alleging trade dress infringement, unfair competition, misappropriation, and unjust enrichment, and hence sought injunctive relief as well as compensation.

Question of Law

Would the Copyright of The Cub Club Investment stand over their expression of the racially diverse emoji against Apple’s racially diverse emoji feature?

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⁷⁵ Cub-Club-v.-Apple.Chhabria-order-dismissing.pdf (law.com)

Findings

While deciding the claim of the copyright infringement of the emojis, the court relied on the precedent settled in the case of *Rentmeester v. Nike Inc.*, it was held that copying is not forbidden at all⁷⁶ and to prove a violation it is essential to prove that the “defendant copied enough of the protected expression to establish unlawful appropriation.”⁷⁷ Therefore, even if the allegations of Cub Club Investment are taken on the face of it, they do not constitute copying of any protectable element of its emoji, it was only the ‘idea’ that was copied by Apple and not the expression.

Further, the court, relying on *Mattel, Inc. v. MGA Entertainment, Inc.*,⁷⁸ held that the term idea is ‘broad’ and a work would be said to be infringed if it is ‘substantially similar’ to the copyrighted work but “if there’s only a narrow range of expression . . . then copyright protection is ‘thin’ and a work must be ‘virtually identical’ to be counted as infringement.”

The judge candidly remarks that there existed not many ways to draw the thumbs-up emoji hence giving a limited scope to the parties to implement the idea.

Trade Dress Infringement

In this case, on comparison it was found that the emojis of Cub Club and Apple have numerous differences, in terms of color, shape, and shadow aspect of the emoji. Thus, making the emojis of Apple and The Cub Club non-identical.

The Cub Club had alleged that the emojis created by Apple were identically similar to the emojis designed by them. Hence violated the mandate of Section 1125 of the Lanham Act,⁷⁹ the court held that the claim of Cub Club’s alleging that the asserted trade dress goes beyond these functional elements to the “look and feel” of the product is not enough to save its claim. The court held that the plaintiff must prove to the court that,⁸⁰

“(1) the trade dress is non-functional,

(2) the trade dress has acquired secondary meaning, and

⁷⁶ *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1117 (9th Cir. 2018)

⁷⁷ *Id.*

⁷⁸ *Mattel Inc v MGA Entertainment Inc* 616 F.3d 904, 913–14 (9th Cir 2010)

⁷⁹ US Congress, *United States Code: Trademarks, 15 USC §§ -1127 1958* (Library of Congress 1958) <https://www.loc.gov/item/uscode1958-003015022/> accessed 16 February 2022.

⁸⁰ *Art Attacks Ink LLC v MGA Entertainment Inc* 581 F.3d 1138, 1145 (9th Cir 2009). *rt Attacks Ink, LLC v. MGA Entertainment Inc.*, 581 F.3d 1138, 1145 (9th Cir. 2009).

(3) there is a substantial likelihood of confusion between the plaintiff's and the defendant's products.”

According to Blumenthal Distributing, Inc.⁸¹, “As a matter of law, a product’s “overall appearance” is functional, and thus unprotectable, where the product is nothing other than the assemblage of functional parts.”

The court held that, without specific claims identifying non-functional features of Cub Club’s product, a simple conclusory statement is not enough to substantiate that the claimed trade dress is non-functional. Additionally, concerning the claim that the product has gained secondary meaning, the complaint does not convincingly indicate that consumers would likely confuse Cub Club’s product with Apple’s, particularly since Apple’s product is embedded in the keyboard while Cub Club’s functions as a standalone application.

Conclusion

The court concluded that Cub Club did not claim any copying of protectable elements within its emojis. Instead, the works in question were expressions of the idea of racially diverse emojis. Furthermore, the court determined that the trade dress cited in the complaint was functional, making it ineligible for protection.⁸²

Comments

Emojis are easy, and expressive facial images used by a user to express their feelings through social media and other platforms. They are expressive in nature and hence are hands-on for a user. Emojis evolved from emoticons, which are icons created using keyboard characters, such as the ‘smiley face,’ represented by the characters :-).⁸³ The copyright of the emojis is subject to merger doctrine which states that if there are a limited number of ways the emotion idea can be expressed by a user then the copyright stands removed.

⁸¹ Blumenthal Distributing Inc 963 F.3d at 866 (citing *Leatherman Tool Group Inc v Cooper Industries Inc* 199 F.3d 1009, 1013 (9th Cir 1999)).

⁸² Daily Journal Verdicts - Apple Cub Club case.pdf (lw.com).

⁸³ Emojis and intellectual property law (wipo.int).

42The Merger and Scènes à Faire Doctrine

A much thought about practice was that the claim was granted to Apple because of the alleged brand value, but such a contention does not hold water as even if the parties were varied the principle of law, that stands applicable is of the Doctrine of Merger And scènes à faire.

A widely practiced doctrine in the copyright law, the doctrine of Merger states that an idea is not copyrightable, but the expression of that idea is copyrightable. The reason for the doctrine is to prevent the decline of growth if the idea becomes copyrightable.

The doctrine of Merger states that “if an idea and the expression of the idea are so tied together that the idea and its expression are one—there is only one conceivable way to express and embody the idea in a work—then the expression of the idea is uncopyrightable because ideas may not be copyrighted.”⁸⁴ The scènes à faire doctrine works alongside the merger doctrine, stating that certain subjects—such as stock images, familiar storylines, folklore, natural scenes, and common cultural references, collectively known as ‘scenes that must be done’—cannot be copyrighted. These elements belong to the public domain, and no one can claim exclusive rights over them simply by fixing them in a tangible medium.⁸⁵ Thus what is seen while checking on the copyrightability of the object in contention is that are their substantial similar elements of the first object.

The major reason why the claim of Cub Club failed was the inability to prove substantial similarity of elements of the emojis of Apple and Cub Club hence the court to conclude that the emojis are invariably different entities.

⁸⁴ L. Ray Patterson & Craig Joyce, *Monopolizing the Law: The Scope of Copyright Protection for Law Reports and Statutory Compilations*, 36 *UCLA L. REV.* 719 (1989).

⁸⁵ *Hoehling v. Universal City Studios*, 618 F.2d 972, 979 (2d Cir. 1980);

COPYRIGHTED MUSIC AT WEDDING FESTIVITIES: THE QUESTION OF INFRINGEMENT

-Aparna Tripathy⁸⁶

Abstract

This paper delves into the intricate dynamics of copyright law as it intersects with the cultural phenomenon of using copyrighted music during wedding festivities in India. Examining Section 52(1) (za) of the Copyrights Act, 1957, the study explores the evolving landscape of weddings, encompassing diverse pre- and post-ceremony events. Judicial deliberations, exemplified by cases like Devendra Kumar Ramchandra Dwivedi v. State of Gujarat and M/S Phonographic Performance v. State of Punjab, underscore the nuances of the law in protecting non-commercial uses during weddings while addressing the challenges posed by commercial exploitation. The Hon'ble Courts have consistently emphasized the distinction between commercial and non-commercial aspects, safeguarding the latter under fair use. The paper analyzes the three-condition rule established by the Hon'ble Delhi High Court in Ten Events and Entertainment v. Novex Communications Private Limited & Ors., highlighting the necessity for events to be bona fide and devoid of commercial intent to enjoy protection. A recent clarification by the Ministry of Commerce and Industries affirms wedding festivities' inclusion under Section 52(1) (za). In conclusion, while non-commercial use finds protection, any financial gain triggers copyright infringement, necessitating a nuanced approach to licensing in the context of wedding celebrations.

Keywords: Copyright law, fair use, Section 52(1) (za), infringement of copyright, Commercial exploitation

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Introduction

Marriages and wedding festivities have been an integral part of the Indian society since time immemorial. Music has also been an inseparable element of such festivities with various events being held surrounding them. This cultural phenomenon has also found recognition in legislation such as the Copyright Act. Section 52(1) (za), of the Copyrights Act, 1957, protects the use of “musical work”⁸⁷ at “any bonafide religious ceremony”⁸⁸ which is inclusive of, “marriage procession and other social festivities associated with a marriage”⁸⁹ from being constituted as an infringement of copyright. In the wake of evolving societal norms and cultural dynamics, wedding ceremonies have undergone a profound transformation. In contemporary times, weddings have transcended their traditional boundaries, expanding beyond mere ceremonial affairs to encompass a multifaceted spectrum of events. This paradigm shift is evident in the incorporation of numerous pre- and post-ceremony events, adding layers of complexity and diversity to the overall wedding culture. The expanded scope of modern weddings now encompasses a variety of activities, celebrations, and rituals that extend beyond the core matrimonial proceedings. From elaborate pre-wedding rituals and festivities to post-ceremony events, the landscape of wedding celebrations has become increasingly intricate and diverse. These additional dimensions introduce new challenges and complexities, particularly in the realm of copyright law, prompting a critical examination of the extent to which Section 52(1) (za) of the Copyrights Act pledges to shield individuals from potential liabilities related to copyright infringement.

The Indian Judiciary, over various instances, has found itself grappling with the intricate nuances surrounding the interpretation and limitation of Section 52(1) (za) of the Copyrights Act. This legal provision, situated within the broader framework of copyright law, has become a focal point for judicial deliberation as it pertains to exceptions and limitations to the exclusive rights granted to copyright holders. The interpretation and limitation of this section, therefore, necessitate a judicious examination of its scope, boundaries, and implications on both creators and consumers of copyrighted content. In the course of its adjudicative responsibilities, the Indian Judiciary has been confronted with multifaceted issues related to Section 52(1) (za). One significant aspect involves defining the parameters of the exceptions laid out in the provision.

⁸⁷ Section 52(1) (za), of the Copyrights Act, 1957.

⁸⁸ Section 52(1) (za), of the Copyrights Act, 1957.

⁸⁹ Section 52(1) (za), of the Copyrights Act, 1957.

One of the earliest cases that discussed this provision in depth was the case of *Devendra kumar Ramchandra Dwivedi v. State of Gujarat*⁹⁰ In this case, while referring to section 52(1) (za) of the Copyrights Act the Hon'ble Gujarat High Court discussed in length the jurisprudential reasoning behind the section and hence the limitation to its protection. While talking about the exemptions provided by the section the Hon'ble high court drew attention to the fact that “Section 52(1) exempts a variety of limits on the rights of the copyright owner in the form of compulsory licenses, complete exemptions from liability and other privileges such as fair or honest use.”⁹¹ The Hon'ble court explained that such exemptions apply to “non-profit performances of music and other non-dramatic works”⁹² and the objective behind allowing the same is “to exempt live performances of such works when there is no commercial purpose and when there is no admission charge”⁹³ from any threat of infringement and liability. It was on the basis of the same that the Hon'ble High Court held that “marriage procession or other social festivities associated with a marriage, would not amount to infringement of copyright” as in such a case “the performance is given to a non-paying audience.”⁹⁴

This seemingly simple explanation was further discussed in a nuanced manner by the Hon'ble Punjab and Haryana High Court in 2011 in the case of *M/S Phonographic Performance v. State Of Punjab*, here the Hon'ble High Court while analysing the elaborate industry that weddings have become, noted that there are various festivities associated with marriages where performances are showcased by artists such as DJs and therefore such performances are associated with marriages, however, “It is not as if a DJ's performance amounts to conducting the marriage”⁹⁵ and hence “Marriage is definitely different from the functions connected to the marriage.”⁹⁶ Therefore, the Hon'ble High Court held that in such cases these performances would not enjoy protection under section 52(1) (za) of the Copyrights Act and hence the copyright owner in such a case “shall be entitled to enforce the rights secured under the Act, both through civil law as well as by setting criminal law in motion.”⁹⁷

The Hon'ble Delhi High Court while understanding the possible confusion that could arise with the distinction being drawn between wedding rituals and wedding festivities in the case of

⁹⁰ Devendra Kumar Ramchandra Dwivedi v. State of Gujarat [2009 SCC OnLine Guj 8924].

⁹¹ Devendra Kumar Ramchandra Dwivedi v. State of Gujarat [2009 SCC OnLine Guj 8924].

⁹² Devendra Kumar Ramchandra Dwivedi v. State of Gujarat [2009 SCC OnLine Guj 8924].

⁹³ Devendra Kumar Ramchandra Dwivedi v. State of Gujarat [2009 SCC OnLine Guj 8924].

⁹⁴ Devendra Kumar Ramchandra Dwivedi v. State of Gujarat [2009 SCC OnLine Guj 8924].

⁹⁵ M/S Phonographic Performance v. State of Punjab [Civil Writ Petition No.7772 of 2011].

⁹⁶ M/S Phonographic Performance v. State of Punjab [Civil Writ Petition No.7772 of 2011].

⁹⁷ M/S Phonographic Performance v. State of Punjab [Civil Writ Petition No.7772 of 2011].

Phonographic Performance v. Look part Exhibitions And Events stated that “when music is to be played for the purposes of marriage ceremonies or other social events connected with marriages, including a marriage procession, the use of music is deemed to be fair use, and hence, no license would be required.”⁹⁸ In order to justify their holding the Hon’ble court explained that “in the Indian context, music is an integral part of any wedding or marriage ceremony”⁹⁹ and the fact that such a distinction is not possible to be drawn as the kind of music being used in such events may range from “devotional or spiritual music for the purposes of the marriage ceremony to popular music in various languages.”¹⁰⁰

Later, owing to the lack of clarity and acting as an adhesive to all the judgements above the Hon’ble Delhi High Court in the case of *Ten Events and Entertainment v. Novex Communications Private Limited & Ors.* stated, “Section 52(1) (za) specifies that it is only the communication to the public of a sound recording in the course of any bona fide religious ceremony which would not amount to copyright infringement.”¹⁰¹ While drawing a clear separation between the commercial and non-commercial aspects of a wedding, the Hon’ble court laid down a three-condition rule to determine the same stating that a function would get protection under section 52(1)(za) of the act, “it would be necessary for the claimant so asserting that (i) the festivity in question is a —social festivity, (ii) the festivity is associated with the marriage and (iii) the festivity is bona fide.”¹⁰² however, it is necessary to note that such an event should “not intended to serve any commercial purpose and not for private financial gain.”¹⁰³ While giving an example as to determine the commercial aspect the Hon’ble High Court stated that, “There is, clearly, qualitatively a distinction between such a case, and a situation in which copyrighted recordings of, for example, hit Bollywood songs, are played by DJs, often for huge remunerations. The motivation of the DJ who plays the recordings, on such occasions, is clearly commercial”¹⁰⁴ and hence it would not be eligible for protection under Section 52(1)(za) of the act.

⁹⁸ *Phonographic Performance v. Look part Exhibitions and Events* [CS(COMM) 188/2022 & I.A. 4772/2022]

⁹⁹ *Phonographic Performance v. Look part Exhibitions and Events* [CS(COMM) 188/2022 & I.A. 4772/2022]

¹⁰⁰ *Phonographic Performance v. Look part Exhibitions and Events* [CS(COMM) 188/2022 & I.A.4772/2022]

¹⁰¹ *Ten Events and Entertainment v. Novex Communications Private Limited & Ors.* [CS(COMM) 74/2021 & 1, I.A. 2289/2021].

¹⁰² *Ten Events and Entertainment v. Novex Communications Private Limited & Ors.* [CS(COMM) 74/2021 & 1, I.A. 2289/2021].

¹⁰³ *Ten Events and Entertainment v. Novex Communications Private Limited & Ors.* [CS(COMM) 74/2021 & 1, I.A. 2289/2021].

¹⁰⁴ *Ten Events and Entertainment v. Novex Communications Private Limited & Ors.* [CS(COMM) 74/2021 & 1, I.A. 2289/2021].

In a recent July 2023 public notification¹⁰⁵ by the Ministry of Commerce and Industries, the Ministry further clarified that wedding festivities fall under the scope of Section 52(1) (za) of the act and therefore are entitled to protection from claims of infringement.

In conclusion, it can be said that The Hon'ble Courts have on various occasions stated the use of copyrighted music in marriages and various other ceremonies related to it as fair use of the same and acknowledged the same as an exception for infringement under the Copyrights Act, 1957. However, any Commercial use of the copyrighted when done without a license is something that falls beyond the principle of fair use and has therefore been said to amount to copyright infringement. The Hon'ble courts through their judgments have drawn a clear distinction between the commercial and non-commercial aspects of events such as marriages and hence laid down that, the events associated with marriages are exempted from infringement to the extent that there is no financial gain from the same. Therefore as a collective understanding of the section, one can say that the person obtaining financial or commercial gain from the use of copyrighted music at wedding festivities falls outside the scope of fair and bona fide use of such material owing to the commercial gain from the same and hence doesn't fall under the protection of section 52(1)(za) of the act and therefore, should obtain a license for such use failing which they shall be liable for infringement while the non-commercial aspects are protected from the same.

¹⁰⁵ No. P-24029/56/2023-IPR-VII Government of India Ministry of Commerce & Industry Department of Promotion of Industry and Internal Trade (Copyright & Design Section)