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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. Whether you're a startup founder, a content creator, or a researcher, understanding and protecting your intellectual property is crucial.

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, we'll explore the latest trends and updates in IP law with reference to Mergers & Acquisition, BAR codes-QR codes, Taglines & Slogans; share insights from industry experts, and provide practical advice regarding copyright infringement and how to navigate the complexities of 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
(Jan-June, 2024)

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 BLOG POST (Jan-June, 2024)

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**REVISITING THE LANDMARK R.G. ANAND V. DELUXE FILMS CASE (1978 SC):
 SIGNIFICANCE AND CONTEMPORARY RELEVANCE**

-Himanshu Rajpurohit¹

ABSTRACT

This article explores the legal framework around intellectual property rights and copyright infringement in India and considers the lasting impact of the landmark case "R.G. Anand v. Deluxe Films (1978 SC)." It begins by highlighting the necessity of protecting intellectual works and the safeguards provided to individual authors by the Indian Copyright Act, 1957. This narrative then explores the landmark R.G. Anand case, in which the plaintiff claimed that his intellectual property rights on his play "Hum Hindustani" was violated by the movie "New Delhi." A crucial principle was established by the Hon'ble Supreme Court's judgement, which said that a mere likeness of ideas does not constitute copyright infringement; rather, there must be a palpable similarity in execution. The article then looks at the case of R.G. Anand's current relevance, particularly in the age of digital material consumption on websites like YouTube, Netflix, and Amazon. It tackles the difficulties in telling the difference between "similarity" and "copying" in a country as densely populated with a wide variety of creative products as India. Highlighting examples from the past, such as MRF Ltd. v. Metro Tyres Ltd. and Vinay Vats v. Fox Star Ltd., the narrative demonstrates how the guidelines established in R.G. Anand still serve as a basis for decisions about copyright infringements. It emphasises how important the R.G. Anand case is still today for resolving conflicts in the dynamic field of intellectual property rights and creative expression.

Keyword: Copyright Infringement, IPR, R.G. Anand Case, Contemporary Relevance.

¹ 4th year student of National Law University and Judicial Academy, Assam

Introduction

Intellectual, a word which generally means something which came from our intellect or something which is related to our mind. Human race is the most intellectually advanced species among all other species, this advancement makes us different from other living beings. Having the characteristic of intellectually advanced and being creative give us different opportunity to develop ourselves in better way and to create something which is unique and something which is the result of our intellect. Creation of something is a big task because not all the individuals have the capabilities to work on their intellect and create something unique, but here the more difficult task is not only the creation but also the protection, the protection of individual's intellectual property rights, so that nobody else can infringe someone's intellectual property rights by way of copying, imitating the work of any creator without his/her permission.

To ensure the protection of intellectual property rights of each and every creator in India, Indian Copyright Act, 1957 provides remedies and rights to the creator of any novel work like a song, movie, or a book etc., As per Indian Copyright Act an author's, creator or composer's etc., copyright infringes when someone else intentionally attempted to copy the work of the original creator without taking his/her prior permission or consent. Let's take an example, if a person named as Ravi writes a comic of superhero and afterwards another person named Suresh attempted to imitate the same and convert the whole story of comic into a film without taking the permission of Ravi, here it will be considered as infringement of Ravi's copyright. As per Indian Copyright Act, 1957 there is a list of incidents among which if anyone or number of incidents committed then it will be considered as the infringement of copyright.

We got the basic idea what is copyright and how it is violated but the question here is that what actually the act of 'copying' means? India carries huge population which means more people and more people means more intellectual creations and among all of the creations there is a huge chance that someone's work might be similar to someone's else work, here it is very hard to distinguish what is 'copying' and what is 'similarity' or to infer that any individual is creating something similar to someone's else work by having the intention to infringe someone's copyright.

To solve this problem of interpretation the judgement of “R.G Anand v. Deluxe Films (1978)”² plays a very crucial role where the Hon’ble Supreme Court laid down certain principles to determine exactly what institutes the infringement of any individual’s copyright.

Facts:

In the pertinent case, R. G. Anand (plaintiff) authored a very popular play named as “Hum Hindustani”. The play become very popular, considering the play's popularity the defendant-2, Mr. Mohan Sehgal approached plaintiff to make a film on the play but didn’t receive any response from the plaintiff, defendant further started working on a movie named “New Delhi”. Plaintiff watched the film produced by defendant and alleged that the film named “New Delhi” is a copy of his play named “Hum Hindustani” and filed the suit in the Trial Court of Delhi for the infringement of his copyright, and demanded the injunction order but the court rejected his contention and refused to grant the injunction order stating that there is not any similarity between the play and the film.

The appellant then approached the High Court, arguing that the movie was based on the theme of "provincialism," which was also used in the play, but the High Court confirmed that, even though that the play and the movie have the same theme, there are no similarities in work and upheld the Trial Court's decision. Finally, the appellant approached the Hon’ble Supreme Court under special leave petition under Article 136 of Constitution of India.

Issue:

The case was primarily revolved around the issue of whether the film named “New Delhi” is an imitation of the play named “Hum Hindustani” and whether it infringes the plaintiff’s copyright?

Judgement:

The Hon’ble Supreme Court in its judgement held that notwithstanding the fact that the movie and the play are centered on the same theme that is the "provincialism" it cannot be concluded that there is an infringement of plaintiff’s copyright because the mere similarity of idea does not amount to the infringement of someone’s copyright, there must be the similarity in the execution of that particular idea. If the execution of the idea is not similar then it will not be declared as infringement of copyright.

² (1978) 4 SCC 118

Further the Hon'ble Supreme Court also laid down certain principles or guidelines as follows:

- The execution of a specific idea, theme, fact or subject matter can be copyrighted, the idea alone cannot be copyrighted.
- To establish that an infringement of copyright has occurred, the nature of the copied work must be substantial and literal
- It was also laid down that if after watching the two disputed contents any reasonable person can able to understand or can see the similarity or copied nature of the content then it will be inferred as the violation of copyright.
- After watching the content if there are more dissimilarity than similarity then it will conclude as there is no violation of copyright.
- The plaintiff will have the burden of proof to prove that his/her copyright infringed.
- The plot of movie is much wider than the plot of a play but if after watching both of the contents it is evident that there is a copied content then it will be counted as violation of copyright.

Conclusion and Present Relevance

In India there are huge number of online content user, where OTT platforms like Amazon, Netflix and also video content platforms like YouTube are in great demand. In these platforms there are number of movies, documentaries, short films etc., which are based on popular novels, books, plays etc., most of the times before making movies or any kind content the producer or director first take permission from the original creator then proceed with their work, this kind of procedure is ethical and legal, but many times for the sake of creating content to inspire people directors or producers design and make the content based on someone's else idea without obtaining the consent from the original creator of that idea. Copying the idea of someone without taking his/her consent result into the infringement of creator's copyright. To solve such type of chaos the principles laid down by Hon'ble Supreme Court in the landmark case of "R.G Anand v. Deluxe Films" plays a very crucial role to determine what incidents leads to the infringement of copyright.

In the noted cased of MRF Ltd v. Metro Tyres Ltd³, the case of R.G Anand played a crucial role to help Delhi High Court to determine there are similarities between the advertisements of both companies or not.

³ 2019 SCC OnLine Del 8973

In the latest case Vinay vats v. Fox Star Ltd.⁴ The Delhi High Court came across with the decision that it is very normal to have similarities between two works when the theme of both of the works is same. If any reasonable person after looking at both of the contents can infer that there is a copied work then it will be determined as copyright's infringement. The judgement of Hon'ble Supreme in the case of R.G Anand is still a very relevant determining factor to conclude about the copyright infringements, which can be seen in many judgements where the principles laid down in the judgment worked as a guiding tool.

⁴I.A. 6351/2020 IN CS(COMM.) 291/2020



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BLOG POST (Jan-June, 2024)
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BEYOND THE HORIZON: NAVIGATING INTELLECTUAL PROPERTY CHALLENGES IN SPACE TOURISM MERGERS AND ACQUISITIONS

-Anvi Vijay & Poonam Beniwal

Introduction

“The Earth is the cradle of humanity, but mankind cannot stay in the cradle forever.”

The father of astronautics, Konstantin Tsiolkovsky spoke these words, which perfectly captures the essence of rapid advancement in the space industry in the contemporary era. As the industry is undergoing transformative changes marked by unparalleled growth and innovations, space tourism ventures are rapidly growing their footprints in the domain. It is an ever-expanding universe where companies are sprinting to discover new horizons which is fueled by a growing public interest in venturing beyond our territorial home. With this pace of expansion, mergers and acquisitions pose complex ambiguities, particularly in the realm of Intellectual Property, and this blog will shed light on the complexities and legal intricacies involved in the same.

Patents: Securing the Galactic Innovations

In the dynamic realm of space tourism, private companies are ardent to turn this into a commercially viable and technologically advanced sector where they are constantly working to develop innovative technologies related to spacecraft design, propulsion systems, life support systems, etc., which calls for patents as crucial safeguards for galactic innovations. Patents provide exclusive rights for an invention⁵ and exclude others from exploiting groundbreaking technologies. Moreover, patents function as catalysts for progress and not just as legal instruments.

There are various treaties governing outer space activities⁶, but they are not advanced enough to manage the issues arising in the context of patents of innovative technologies. Not only it, but the issue of patents and their enforcement has become more daunting with the prevalence

⁵ *Patents*, <https://www.wipo.int/patents/en/>.

⁶ *Space Law Treaties and Principles*, <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties.html>

of merging and acquisition of companies to consolidate resources, expand market reach, and accelerate technological advancements and this introduces serious legal complexities, the companies in this industry often leads to the complexities of overlapping or discord patents, another set of issues arises in respect to the geographical patent protection, as the companies have different jurisdiction and they are governed by different and unique set of patent laws. This doesn't stop here licensing agreements further complicate the merger and acquisitions landscape, as in this industry companies often make agreements with third parties regarding the use of patent technologies, if these agreements are not scrutinized properly, they might create numerous problems resulting in disruption of technologies and obligation to pay very high royalty fees.

Thus, before embarking on M&A, companies should conduct thorough due diligence on their patent portfolios, this would involve examining the existing patents, understanding their scope, and evaluating potential infringement risks, this would mitigate the risk of legal disputes and would ensure seamless integration of technologies.

Trademarks: Guiding the Cosmic Identity

In the competitive field of space tourism, trademarks go beyond just being legal symbols. They transform into cosmic guides, steering brands through the vast challenges of competition. When companies merge, combining their trademarks is a significant undertaking. It's not just about putting logos together; it's like a well-thought-out dance that aims to strengthen and preserve the brand, upstarts like SpaceX, Blue Origin, and XCOR⁷ would strive to protect their innovation and identity in the realm of space.

Currently, there isn't a specific treaty ensuring trademark protection for innovations launched in space⁸. However, according to WIPO, trademark protection can be expanded by incorporating a new protocol into the existing Madrid Protocol,⁹ along with potential adjustments to the Paris Convention, which offers a pragmatic and globally recognized framework for extending trademark protection to space. This approach balances standardization, efficiency, flexibility, and adaptability to future developments in the evolving

⁷ *To study the issues and challenges faced by intellectual property rights in Outer Space* (2021) *The Amicus Qureia*. Available at: <https://theamikusrise.com/to-study-the-issues-and-challenges-faced-by-intellectual-property-rights-in-outer-space> (Accessed: 17 November 2023).

⁸ <https://arc.aiaa.org/doi/abs/10.2514/6.2023-4602>.

⁹ *Trademarks in outer space: supporting the off-world economy*, (Apr. 17, 2021), https://www.wipo.int/wipo_magazine/en/2021/04/article_0005.html.

landscape of space activities¹⁰ and is essential for creating a cohesive and legally defensible brand identity.

Software Systems: Decoding the Legal Algorithms

Spacecrafts are powered not only by engines but by sophisticated software systems, which play an indispensable role in the burgeoning space tourism industry. From guiding spacecraft through the boundless expanse of space to facilitating seamless communication, software acts as the backbone of the industry.

As space tourism companies increasingly pursue mergers and acquisitions, a deep understanding of intellectual property rights becomes imperative for the seamless integration of intricate software systems. The recent amalgamation of Virgin Galactic and Spaceship Company serves as a case in point, highlighting the complex legal hurdles tied to software integration. With each entity possessing distinct software systems for their spacecraft, questions arose regarding ownership, licensing, and utilization rights. A meticulous intellectual property due diligence process proved essential, ensuring a harmonious merger while safeguarding the intellectual property interests of both companies. This underscores the critical role of comprehensive legal assessments in navigating the challenges inherent in merging software systems within the evolving landscape of space tourism.

Companies can navigate these complexities by incorporating a proactive approach to IP management, proper identification of the existing intellectual property rights, and understanding potential conflicts would help the companies to easily escape the legal conundrums. Other than this clearly defined ownership and licensing terms would impart a strong foundation. Adopting these legal components would maximize value creation and would safeguard their innovative assets.

International Space Laws: Navigating the Galactic Legal Framework

Space tourism expands beyond national boundaries, entering the realm of international space laws, to govern the activities happening beyond our territorial home. Understanding the complexities of these laws becomes more crucial, particularly in the domain of Intellectual property (IP) and mergers and acquisitions (M&A). However, the galactic legal framework for

¹⁰ *Intellectual Property Protection in Outer Space – An Overview*, (Feb. 28, 2020), <https://ili.ac.in/pdf/rm.pdf>.

space activities doesn't effectively address the challenges happening beyond our territorial abode.¹¹

Intricacies when companies merge become multifaceted and complex, and issues like jurisdiction arise when dealing with the entities working in the vastness of space, companies operating in multiple jurisdiction creates legal uncertainty because it becomes difficult to figure out which country's laws are applicable, for example, it is generally seen that laws of the state that are launching the spacecraft applies to the activities happening in space which might pose a problem regarding its enforceability in some other country where the launching state might not have jurisdiction over activities happening in some other countries airspace.

The lack of a comprehensive international legal framework poses another set of challenges, as the existing treaties fail to adequately cover numerous new legal issues in the dynamic field. In aspect to space tourism, there's a need for extensive regulations governing passenger safety, emergency response procedures, and training requirements.

For all these issues to be handled suitably it's important to develop international treaties and agreements to harmonize the laws, create international courts having jurisdiction over space-related issues, establish clear and wide-ranging rules and guidelines, foster international collaboration and cooperation among different space agencies, industry stakeholders and government, etc. all this would create a more consistent, predictable, and stable environment for companies operating in space.

Conclusion

As space tourism as an industry continues to soar and amplify its reach, mergers and acquisitions will become an indispensable part of the industry's evolution. However, the legal complexities of intellectual property, including patents, trademarks, software systems, and data security, continue to remain a grey area of demands careful consideration and strategic planning.

To navigate these complexities successfully and with ease, companies must prioritize thorough due diligence, engage in transparent communication, and collaborate with legal experts who are well-versed in both space law and intellectual property law, as they would unparalleled advice, helping the companies to navigate their ways through all the legal intricacies. The

¹¹ Anna Konerta, *11th International Conference on Air Transport – INAIR 2022, Returning to the Skies Legal Framework for Space Exploration. Benefits and Threats for the Earth 7* (11th ed. 2022).

harmonization and standardization of legal frameworks, both at the national and international levels, is essential to provide a solid foundation for the growth and sustainability of the space tourism industry as this industry is not confined to a single area or country. This involves not only developing resilient national rules and regulations but also facilitating international cooperation to establish a cohesive legal framework.

As we venture into the cosmos, the legal frameworks we establish today will shape the trajectory of innovation and cooperation in the space industry for generations to come.



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**UNLEASHING THE POTENTIAL OF INTELLECTUAL PROPERTY: FOSTERING
INCLUSIVITY AND EMPOWERMENT**

Mayank Panchpute¹²

Abstract

The essay “Intellectual Property as an Instrument for Inclusiveness and Empowerment: Promise and Possibility” examines the transformational potential of Intellectual Property (IP) to promote inclusivity, access to knowledge, and economic empowerment of marginalized communities. IP laws have traditionally been created to reward creators and inventors while ignoring the interests of marginalized communities. However, the grooming idea of IP recognizes its broader role in fostering social justice and cultural preservation. The opportunities of an inclusive IP are highlighted, emphasizing the necessity for multi-stakeholder participation to develop policies that reflect all stakeholders’ diverse demands and aspirations. Initiatives like Traditional Knowledge Digital Library (TKDL) demonstrate the potential of an inclusive IP framework to safeguard traditional knowledge and promote affordable healthcare.

The essay emphasized that inclusivity in IP can result in a more equitable society, empowering marginalized communities economically and fostering collaborative innovation. The essay emphasizes how intellectual Property can transcend its traditional limitations and become a potent tool for inclusivity, societal progress, and knowledge sharing.

Keywords: Intellectual Property, Inclusiveness, Empowerment, Traditional Knowledge, Access to Knowledge

¹² Second-year, B.Com. LL.B. (Hons.), Institute of Law, Nirma University

Introduction

Intellectual Property refers to “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names, and images used in commerce.”¹³ Patents, trademarks, copyrights, and others legally preserve Intellectual Property (IP). These types of Intellectual Property Rights (IPR) facilitate people to earn recognition and earn profits from their inventions or creations. Considering the traditional view, IP laws focused on enabling creators and inventors with exclusive rights as an incentive for economic growth and innovation. The central goal was to reward and incentivize creators and inventors. IP is a concept closely connected with innovation and creativity and has the potential to surpass its traditional boundaries and become a powerful tool for inclusiveness and empowerment.

This essay aims to delve into the inclusive nature of intellectual property rights and how they can pave the way for marginalized individuals and communities, and these individuals can contribute actively to knowledge creation and fostering a more inclusive and empowered society.

IP and Inclusiveness

When used effectively, intellectual property has the tendency and potential to promote inclusion and empowerment through collaborative efforts. Sharing and expanding existing knowledge, collaborative efforts like open-source software, creative commons license, and patent pools can encourage inclusivity and creativity. IPR can help protect various artistic expressions, innovative ideas, and cultural practices. By safeguarding these creative pieces, IPR contributes to fostering inclusivity by acknowledging the contribution of marginalized communities and individuals. This recognition will preserve cultural heritage and provide them a platform to assert their rights and participate in and endorse their cultural and economic exchanges.¹⁴

IPR helps protect traditional knowledge and indigenous cultural expressions. Traditional knowledge is the knowledge base, skills, and practices developed and sustained by local, indigenous, and native communities.¹⁵ There can be two ways to protect traditional knowledge

¹³ World Intellectual Property Organization, ‘What Is Intellectual Property?’ (*Wipo.int*2016) <<https://www.wipo.int/about-ip/en/>>.

¹⁴ Vakeel Khoj-[Virtual Legal World, ‘Intellectual Property as an Instrument for Inclusiveness and Em.’ (*Vakeel Khoj - [Virtual Legal World]*1 July 2023) <<https://vakeelkhoj.com/blog-1/f/intellectual-property-as-an-instrument-for-inclusiveness-and-em>> accessed 20 July 2023.

¹⁵ Vakeel Khoj-[Virtual Legal World, ‘Intellectual Property as an Instrument for Inclusiveness and Em.’ (*Vakeel Khoj - [Virtual Legal World]*1 July 2023) <<https://vakeelkhoj.com/blog-1/f/intellectual-property-as-an-instrument-for-inclusiveness-and-em>> accessed 20 July 2023.

through IPR- Positive Protection and Defensive Mechanism. Positive protection is providing the holders of traditional knowledge with the right to take appropriate actions and pursue remedies for the misuse of the knowledge base. This includes ratifying specific rules and laws, access to royalty payments, and benefit-sharing provisions. Defensive mechanisms are the steps taken by the owner of traditional knowledge to protect it from getting acquired by others. A defensive mechanism prevents illegitimate conventional knowledge acquisition by third parties.

IPR can also help economically empower marginalized communities by enabling them to derive economic profits from their intellectual endeavors. Securing exclusive rights over their creations can help individuals and communities to engage in commercial activities, participate in fair trade practices, and negotiate licensing agreements. This economic empowerment can lead to reducing socioeconomic disparities and fostering self-reliance. This can also help marginalized communities with the means to control and capitalize on their intellectual assets. Additionally, it opens doors for community-led enterprises, cultural tourism, and the sustainable usage of natural resources resulting in a more inclusive and equitable distribution of economic profits.

Access To Knowledge

Intellectual Property Rights can help balance the rights of creators and promote the spread of knowledge, information, and ideas. There are many ways in which IPR can result in creating access to knowledge and creating inclusiveness:

- Open Access Initiatives- Open Access (OA) means free online access to digital content, scholarly journal article, and research results that writers publish without expecting payment.¹⁶ It is based on the moral argument that the research that has been publicly funded should be freely available to the public. After being initiated in developed countries, OA has since spread to many developing nations, including India. In India, many R&D organizations and major scientific research institutions (like the Indian Institute of Science, IITs, ISI, Institutes under the CSIR, and Indian Council of Medical Research) are participating in the open access movement by creating institutional and digital repositories to make their research literature available to worldwide access.

¹⁶ Sangeeta Keisham and Soubam Sophiarani, 'Open Access Journal and Open Access Initiatives in India' [2008] [ir.inflibnet.ac.in <https://ir.inflibnet.ac.in/handle/1944/1134>](https://ir.inflibnet.ac.in/handle/1944/1134) accessed 28 March 2021.

- Patent Pool- A patent pool is an agreement between patent owners to grant patents to one another and any third party.¹⁷ Patent pools had great significance in the industry since the sewing machine pool of 1956, and later, it lost its importance during World War II. Patent pools have made their comeback and are considered important in new economies. Section 102 of the Indian Patent Act of 1970 provides for developing a patent pool in the public interest, which is managed and governed by the government. The Medicines Patent Pool (MPP) is an UN-backed public health organization, and many Indian drug manufacturing companies like Aurobindo Pharma Limited and MedChem joined the MPP.¹⁸
- Public Domain- Public domain refers to works that have never been copyrighted or are no longer protected under applicable intellectual property laws.¹⁹ It is part of humanity's common cultural and intellectual legacy and is the primary source of inspiration, creativity, and discovery for creators.
- Technology Transfer- It is a cooperative process that enables the transfer of intellectual property, scientific discoveries, and information from creators like universities and research institutions to users in the private and public spheres.²⁰ Technology Transfer aims to create new goods and services that facilitate society out of discoveries, inventions, and scientific outcomes. Many technology giants like Microsoft, Apple, and Samsung have transferred their technology to Indian companies to set up manufacturing facilities in India.²¹

IPR can be a helpful instrument in fostering learning, research, innovation, and societal progress by striking a balance between the rights of creators and the need for greater access to information.

¹⁷ Josh Lerner and Jean Tirole, 'Efficient Patent Pools' (2004) 94 American Economic Review 691.

¹⁸ Rachit Garg, 'Patent Pooling: Analysing in the Light of COVID-19 Pandemic' (*iPleaders* 22 May 2021) <<https://blog.ipleaders.in/patent-pooling-analysing-light-covid-19-pandemic/>> accessed 20 July 2023.

¹⁹ 'The Public Domain – Why WIPO Should Care (2007) – IFLA' (*IFLA* 19 February 2007) <<https://www.ifla.org/publications/the-public-domain-why-wipo-should-care-2007/>>.

²⁰ 'Intellectual Property and Technology Transfer' (*www.wipo.int*) <<https://www.wipo.int/technology-transfer/en/>>.

²¹ Rajiv Tuli, 'Technology Transfer-A Necessity for the Growth of the World Economy - New Technology - India' (*www.mondaq.com* 30 March 2023) <<https://www.mondaq.com/india/new-technology/1299444/technology-transfer-a-necessity-for-the-growth-of-the-world-economy>> accessed 20 July 2023.

Initiatives For Inclusiveness

Traditional Knowledge Digital Library (TKDL) - TKDL is a ground-breaking project of the Government of India to protect Indian traditional medicinal knowledge and prevent its misappropriation at International Patent Offices. Traditional knowledge is a valuable but vulnerable and fragile asset to the indigenous and local populations that rely on it. Over 70% of the population and millions of people in India depend on traditional medicine for their healthcare needs. TKDL is an initiative to document traditional knowledge. It intends to provide prior art evidence and defend the rights of indigenous communities by digitizing and classifying traditional knowledge. Traditional Knowledge Resource Classification (TKRC) is an innovative classification system which useful in categorizing and structuring the Indian Traditional Medicine System into several thousands of subgroups for Ayurveda, Unani, Siddha, and Yoga.²²

Access to Medicines- Many initiatives and legal mechanisms, like patent pooling and compulsory licensing, have promoted access to cheap and affordable medicines, especially in developing countries. These initiatives try to balance IP protection and public health, ensuring that life-saving treatments are accessible to all.

Towards An Inclusive Ip Framework

The need for an inclusive intellectual property (IP) framework has never been more evident as the globe has grown more interconnected and diverse. IP laws were traditionally intended to reward inventors and creators and encourage innovation but frequently fell short of fully addressing the interest and rights of marginalized communities, indigenous groups, and people with low socioeconomic status. An inclusive intellectual property system aims to incentivize innovation and knowledge creation. It also aspires to provide fair access, economic empowerment, and cultural expression for all.

An inclusive IP framework must protect and consider a wide range of creative expressions beyond the traditional beliefs of patents, trademarks, and copyrights. These creative expressions include traditional knowledge, cultural expressions, and other forms of intangible heritage. An inclusive framework allows marginalized communities and individuals to preserve, share, and control their creative and cultural assets by providing legal protection for diverse forms of creativity. Numerous indigenous communities hold a plethora of innovations

²² 'About TKDL' (www.tkdل.res.in) <<https://www.tkdل.res.in/tkdل/langdefault/common/Abouttkdل.asp?GL=Eng>>.

and traditional knowledge that have been passed down through years from generation to generation. An inclusive IP framework recognizes the importance of protecting this priceless knowledge from misuse and misappropriation. It should ensure mechanisms to safeguard traditional knowledge, genetic resources, and folklore and secure that indigenous communities have a say in how their knowledge is utilized and commercialized.

A vital component of an inclusive IP framework is access to knowledge. The framework must include provisions for fair use, open access, and limitations and exceptions that permit information sharing for research, education, and cultural purposes. Wider access to knowledge can be promoted with initiatives like open-access journals, open educational resources, and creative Commons licensing. A comprehensive IP framework should balance the rights of innovators and creators and the needs of the public. While IP protection is crucial for encouraging innovation, it must not hinder access to necessities like healthcare, education, and technology. When it comes to public health emergencies, flexible measures like the patent exemption for public health can help give priority to the public interest.

An IP framework should promote technology transfer and collaboration to foster inclusive innovation. The flow of knowledge, particularly between developing and developed countries, can be encouraged through collaborative research projects, open-source initiatives, and technology-sharing agreements. This kind of IP framework requires the active involvement of several stakeholders, like governments, indigenous groups, civil society organizations, academia, and the private sector. The engagement of all stakeholders from diverse backgrounds ensures that the framework reflects the requirements and objectives of all parties.

Conclusion

In conclusion, this essay highlights the transformative power of intellectual Property in fostering inclusivity, economic empowerment of marginalized communities, and access to knowledge. Although IP has historically been viewed as a tool to promote innovation and safeguard creator's rights, the evolving landscape of IP recognizes its border role in advancing social justice and cultural preservation. Diverse forms of creativity can be recognized and protected by embracing an inclusive IP framework, allowing marginalized communities to stand up for their rights and share their cultural expressions with the globe—the protection of traditional knowledge through IP guarantees indigenous innovations.

Additionally, an inclusive IP framework promotes knowledge access, fostering open access initiatives, fair use provisions, and technology transfer to fill the informational gap for individuals with limited resources. The framework paves the path for affordable access to educational, medical, and technological advancements, contributing to global well-being by balancing IP enforcement and public interest.

Importantly, an inclusive IP framework empowers economically deprived people to derive economic benefits from their creations and participate in community-led businesses. By offering programs that create capacity and education on IP rights, individuals and communities may successfully traverse the system, ensuring that IP protections are accessible to all.



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CAN BAR CODES AND QR CODES BE PROTECTED UNDER THE TRADEMARKS ACT 1999? A DEBATABLE QUESTION

*Shriya Salini Routray*²³

Abstract

Machine-readable symbols called barcodes are utilised to store data bits. Barcodes are used in retail point of sale (POS) systems as well as for identification, tracking, inventory, and other purposes. In the contemporary world, barcodes are utilised almost everywhere and may be found when we hunt for them. We come across bar codes all the time on labels, cards, and fresh foods at supermarkets. Now probably the product price has been replaced with bar codes. Even menu cards in the restaurants have been replaced by these codes. Barcodes and QR codes are frequently used to identify the goods and/or services offered by an organisation in the market. They provide a simple way for customers to get information about product legitimacy and accessibility. Therefore, it would be prudent to point out that barcodes and QR codes reduce the likelihood that end users may buy fake goods. Concerning public policy, conventional usage, and distinctiveness, the Indian Trademarks Act of 1999 presents difficulties for registering trademarks for QR codes and barcodes. Barcodes and QR codes can still be given trademark protection in India, even if doing so may be difficult but not impossible. Hence this paper drives through the possibilities of a barcode being protected under the current statutes.

Keywords: Barcodes, QR Codes, Trademark Protection

Introduction

A barcode is readable by machines which are a representation of numbers and characters that consists of bars and spaces. A graphic that represents information, typically not always numbers but lines of varying thickness are used. It is made to be read by a specific scanner so that it may be effortlessly and rapidly uploaded to a computer. The five components of a

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barcode symbol are: a quiet zone, a start character, data characters (including an optional check character), a stop character, and another quiet zone.²⁴ Barcodes give businesses the power to save information about their goods, keep track of inventory, facilitate online sales through platforms like Amazon, process their orders, and identify goods they have sold in the event of quality problems. Basically, it enables merchants to track products as they move through the supply chain and standardize their supply chain operations. UPCs are one-of-a-kind, 12-digit 1D barcodes. Misuse or unauthorized use of barcodes and QR codes creates a risk of confusion to the public and industry participants about the origin and source of goods and/or services, damages the manufacturer's reputation and damages its brand. Such misuse of barcodes or QR codes can also harm public interest as consumers may end up buying fake or illegal products because of such confusion.

What Is the Difference Between Barcodes and Qr Codes?

While QR codes have square dimensions and are made up of black and white squares, barcodes have rectangular or square shapes and are composed of parallel black lines. Compared to barcodes, QR codes offer more product information. Barcodes may simply contain details about a product's type, size, and color; however, QR codes may also provide details about the product's price, condition, and manufacturing date. Additionally, multimedia data can be stored in QR codes efficiently.

How Is It Obtained?²⁵

In India bar codes are managed and standardized by the non-profit organisation GS1. Retailers, suppliers, and manufacturers all use the barcode standard that is managed by GS1. The GS1 System of standards is used by almost two million businesses globally in 20 different industries, including retail and consumer packaged goods, food, healthcare, transport & logistics (including customs), and government. As a result, GS1 is the entity in charge of overseeing the creation of globally scan able barcodes. The pricing also differs and depends on the annual turnover of the company and number of years of barcode subscription.

²⁴ Pharma State Academy, <https://pharmastate.academy/bar-code/> (last visited 30.06.23).

²⁵ Addleshaw Goddard, <https://www.addleshawgoddard.com/en/insights/insights-briefings/2017/retail-and-consumer/retail-and-consumer-newsletter-february-2017/barcodes-who-owns-them-and-how-can-you-use-them/> (Last Visited 1.07.23).

Are The QR Codes Protectable Under Trademarks Act?

A brief discussion can put forth on QR Code and Barcodes be protected under Trademarks Act 1999 or not? According to the following grounds (under S.9 of Trademarks Act 1999)²⁶ a mark would be subject to trademark registration -

- Trademarks that lack any distinctive characteristics, something that is distinctive has a special quality or feature which makes it easily recognizable and different from other things of the same type.
- Trademarks that only comprise symbols or identifiers used in commerce to specify the nature, caliber, scope, costs, or place of origin of products or services.
- Trademarks can mislead or confuse the public because of their nature.
- Trademarks that include or include content that could offend a group or part of Indian residents' religious sensibilities.
- Trademarks that include or contain offensive or scandalous content.

Hence the Barcodes and QR code creates confusion and cannot be distinguished at the first instance. Since QR codes are square by nature with many combinations of “squiggles” inside the square, they aren't particularly distinctive. It only protects characteristics that let the public recognize products and services immediately, such as names, logos, slogans, sounds, or colors. The same is true when it can be challenging to determine the source by just scanning a QR code. However, a Trademark Application can be submitted to register a logo that uses a QR code.

To avoid filtering complications at the checkout counters, a substantial section of India’s massive retail outlets, both offline and online, only permit items with globally unique GTINs (Global Trade Identification Numbers)²⁷ or barcode numbers to be detected in their systems. In these situations, barcodes obtained from unreliable sources become useless, forcing the corporation to dispose of away and replace all its product containerization with fresh barcodes.

But, in India, courts have granted bar codes and QR Codes protection under trademark law. A brief discussion on the case of *GSI India vs Barcodes SI & Ors*²⁸ is mentioned below:

²⁶ The Trademarks Act, 1999, § .9, Acts of Parliament, 1949 (India).

²⁷ GS1, <https://www.gs1.org/standards/id-keys/gtin>, (Last visited 2.07.23).

²⁸ CS(OS) 1933/2006.

The sole authorised entity in India by the global organisation GS1, which has developed international standards for goods all over the world, is GS1 India here is the plaintiff. The defendant Global Barcodes SL (*owner of the websites www.indiabarcodeship.com and <https://india-barcodesstore.com>*) was sued by the regulatory body. The defendant assigned bar codes beginning with “890” that had been assigned to the plaintiff by GS1 to third parties. The plaintiff, a GS1 licence holder and certification business owner, requested an order of injunction from the High Court of Delhi. In class 35 for certification services, the plaintiff additionally held a certificate of registration for the trademark with a pictorial design and the number “890” therein. Manufacturers and suppliers in India can use barcodes with the ‘890’ code provided by the standards organisation GS1 India to manage the application of international supply chain standards. The ‘890’ code is joined by ten additional digits to produce the 13-digit barcode that verifies a product’s quality, determines its country of origin and quantity, and offers further production details.

It seemed that the defendant infringed plaintiff’s trademark and violated the proprietary rights which lead to consumer misinformation. The court further stressed how innocent consumers are led to assume that the bar codes allocated by the defendant come from the plaintiff and follow GS1 standards due to the defendant’s misrepresentation. As a result, the court issued an order prohibiting the defendant, among other things, from utilizing bar codes that begin with the number “890” directing the Internet Service Providers (ISPs) to takedown the passed a decree to pay Rs.20 lakhs as compensation to the aggrieved and restrained other defendants from providing services to Global barcodes.

Hence this case enshrines the pivotal role that is being played by the bar codes and the QR codes to combat the counterfeiting products and protecting the consumers, brand owners, stake holders. Additionally, it gives them a certified mark to be trusted for effective business and commercial purpose.

Conclusion

Registration of bar codes and QR Codes as trademarks under Indian law poses a number of uniqueness, conventional use, and public policy issues that may be challenging to resolve. Bar codes and QR Codes can still be registered as trademarks in India, notwithstanding this. Besides, it would be against public policy to grant one business the sole right to use a QR code for the category of goods or services even while each QR code has a different set of data, they

all nonetheless have certain characteristics. Not that a trademark cannot use a QR code in conjunction with other design components to create a design mark, but it must clearly advertise or sell the goods or services you are selling. It will be fascinating to observe how and where QR codes are employed in trademarks in the future.



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**CRIMINAL REMEDIES AVAILABLE TO COPYRIGHT HOLDERS IN CASE OF
 COPYRIGHT INFRINGEMENT**

*Somdatta Ghosh*²⁹

Abstract

Copyright infringement is an offence having civil, administrative and criminal remedies. This article talks about various criminal remedies that an owner can seek in case his/copyright is infringed. As *mens rea* is an essential element to constitute a crime and attract penal sanctions, this article even explores how far *mens rea* is important to be established to attract penal sanctions regarding copyright infringement. Lastly, the article explores the perception of Indian Courts regarding matters relating to copyright infringement and how far Courts have been inclined towards imposing penal sanctions on the copyright infringers. Lastly, the article concludes with my take on the nature of remedies a copyright owner should seek in case his copyright is infringed.

Keywords: Copyright, Criminal Remedies for Infringement, Copyright owner, Copyright Infringement, Copyright Holder

Introduction

When any person, without the license from the copyright owner, or the registrar of copyrights, exercises certain rights which are exclusive only to the copyright owner as per the Copyright Act, 1957 (Hereinafter referred to as “Act”), he or she is said to have committed copyright infringement.³⁰ When, any person, sells, displays for sale, distributes the copies for trade, imports to India the infringing copies or does any act which is prejudicial to the owner of the copyright, he or she is said to have committed copyright infringement under the Act.³¹

²⁹ 4th Year Law student at St. Xavier's University, Kolkata.

³⁰ Copyright Act, 1957, S. 51(a), Acts of Parliament, 1949 (India).

³¹ Copyright Act, 1957, S. 51(b), Acts of Parliament, 1949 (India).

Criminal Remedies for Copyright Infringement

It is advantageous to seek criminal remedies as doing so directly taints reputation of the infringer and he comes for a settlement outside court to save his prestige.³² Registration of Copyright is not mandatory for seeking criminal remedies under section 63-70 of the Act, which provide criminal remedies for copyright infringement.³³ A criminal complaint under these sections cannot be dismissed on the grounds that the dispute is civil in character nor does the pendency of a matter in any civil suit justify the stay of criminal proceedings.³⁴

Section 63 of the Act states that when any person knowingly infringes the copyright of any work or any other right vested by the Act, he or she can be sentenced with a term of imprisonment of six months which can be extended up to three years and a fine which can range from fifty thousand rupees to two lakh rupees. If no gain during business or trade has been made from the infringement, then the Court may reduce the sentence to less than six months and impose a fine for less than fifty thousand rupees. The provision of Section 438 of the Code of Criminal Procedure is applicable for every offense punishable under this section.³⁵ For subsequent convictions, the punishment may range from one year imprisonment to three years of imprisonment and the fine may range from one lakh rupees to two lakh rupees.³⁶ Offences under this section are cognizable and non bailable.³⁷

The Police could not seize any infringing copy till the Magistrate had taken cognizance of the offense³⁸ but now, any police officer not below the rank of the sub inspector can seize the infringing copies without warrant if he is satisfied that an offense under section 63 has been committed. A person having interest in such copies can seek for the restoration of the copies by filing an application to the Magistrate within fifteen days of such seizure who shall pass an order after hearing the applicant, complainant and conducting any further inquiry if required³⁹. When the constitutional validity of Section 64 of the Act was challenged on the ground that the police can arbitrarily seize the copies as no such procedure was laid in the section, the Court

³² Sumedh Kumar Sethi, *Remedies for Infringement of Copyright in India: The Adequacy or Inadequacy thereof*, 3 Journal for Legal Studies and Research, 115,134-135 (2002).

³³ *Radha Krishna v. State of Bihar*, 1979 Cr.L.J. 757 (Pat.).

³⁴ *V.S. Sharma v Dharma Rao*, A.I.R. 1942 Mad. 124

³⁵ *Jitendra Prasad Singh v. State of Assam*, (2004) 2 GLR 271, 2003 (26) PTC 486 Gau.

³⁶ Copyright Act, 1957, S. 63A, Acts of Parliament, 1949 (India).

³⁷ *M/S Knit Pro International v. The State of NCT of Delhi*, 2022 SCC OnLine SC 668.

³⁸ *Ghera Lal v. State*, A.I.R. 1965 All 206.

³⁹ Copyright Act, 1957, S. 64, Acts of Parliament, 1949 (India).

held that as the police will act only upon any credible information found during investigation and as his satisfaction is objective, the section is not unconstitutional.⁴⁰

Role Of Intent to Constitute an Offence Under Section 63 Of the Act

Mens rea is an important element in any criminal act and this principle applies even for criminal prosecution under this Act. The appellants had published a copyrighted book to which the Court held that the section read “knowingly infringes the copyright” and not “knowingly prints or publishes any work that has a copyright.”⁴¹ The major fallacy in the judgement was that the court failed to comprehend that the publication of any copyrighted work is also an infringement of copyright as per the provisions of the Act. When an English book was translated into Malayalam without prior permission from the author, the Kerela High Court had upheld the acquittal of the accused in the trial Court since conclusive proof of knowledge could not be established.⁴² From the above cases, it can be concluded that the Courts have stressed a lot of establishments of a *mala fide* intent to constitute a criminal offence.

In the popular *De Acosta v. Brown* case,⁴³ the defendant was heavily penalised even after acting out of a bona fide interest. It was suggested that once it is mandatory to register the copyright of every work and once the list of all the registered works is made available to the general public, it will act as a constructive notice of the fact that a certain work has a copyright and the copyright owners can also have their work protected.⁴⁴ As the list of all copyrighted works is available at the registrar is available to the public, it acts as a constructive notice and the infringer cannot say in his defence that he did not have any knowledge about the work being copyrighted. Copyright infringement, on having either an actual or constructive notice of any work, is an offence and there is no need to establish *mens rea* for such offence separately.

Perception Of the Indian Courts

Earlier, the Courts believed that as copyright infringement affects the financial interests of the copyright holder and hence, he/she should be entitled to criminal protection.⁴⁵ However, in the subsequent cases, Courts have been reluctant to initiate criminal proceedings time and again. In the *Vankataram* case,⁴⁶ the Court reduced the sentence of the accused from 6 months

⁴⁰ *Girish Gandhi v. Union of India*, AIR 1997 Raj 78.

⁴¹ *Sheo Ratan Upadhyay v. Gopal Chandra Nepali*, A.I.R. 1965 AU. 274.

⁴² *Cherian P. Joseph v. N. Prabhakaran Nair*, A.I.R. 1967 Ker. 234.

⁴³ *De Acosta v. Brown*, 1944, 325 U.S. 862, 65 S.Ct. 11.

⁴⁴ Anonymous, *Necessity of Intent for Infringement of Common-Law Copyright*, 54 Yale Law Journal, 697,706 (1945).

⁴⁵ *Nagin Chand Jain v. State of UP*, 1981 All. L.J. 1272.

⁴⁶ *State of A.P. v. Negoti Vankataram*, (1996) 6 SCC 409: 97 97.

imprisonment to an enhanced fine although the judgement of holding the accused guilty under Section 52A read with Section 63 of the Act was upheld. In the *Gulfam Exports* case,⁴⁷ the matter had already gone to the civil court and was pending in the appellate stage of the Court. The person against whom the complaint was lodged filed a petition under Section 482 of the Code of Criminal Procedure to quash the said FIR under Section 63 of the Act. The Court held that since the civil suit was in favour of the complainant as well as the interim order for injunction was against the petitioner, quashing the FIR served the best interests of justice. In the *Sitaram Silk Mills Case*,⁴⁸ a prosecution for an offence under section 63 was initiated but a petition was filed to quash the FIR. The Court opined that the continuance of the proceedings would not serve any useful purpose and must be quashed. The Courts are more suggestive of seeking civil remedies for issues pertaining to Copyright Infringement rather initiating criminal proceedings. The primary reason behind this perception is that there's a violation of individual property right and hence the Courts are reluctant to spread the net of criminal law in a private domain.⁴⁹

Conclusion

Although criminal remedies are available in the statute, the decisions elucidated in the article not only fails to appreciate the spirit of the provisions, but they also give a wrong impression to the infringers that they can get away without any dire consequence.⁵⁰ The apex court has treated copyright infringement as a serious offence by regarding it cognizable and non-bailable.⁵¹ In my opinion, if the financial loss or the deprivation of growth prospects, isn't very huge from the perspective of the copyright owner, the remedy sought should be civil in nature but if the financial loss and the deprivation of growth prospects is so huge that it cannot be compensated in monetary terms, a criminal remedy should be opted for.

⁴⁷ *Gulfam Exports and Others v. Sayed Hamid*, 2000 (2) BomCR 619, 2000 (3) MhLj 183.

⁴⁸ *Sitaram Silk Mills v. State*, (2001) PTC (21) 600 (Del).

⁴⁹ N. S. Gopalakrishnan, *Criminal Law and Intellectual Property: Current Practice*, 36 Journal of the Indian Law Institute, 64,67 (1994).

⁵⁰ Bushan Tilak Kaul, *Copyright Protection, Some Hassles and Hurdles*, 46 Journal of the Indian Law Institute, 236,267 (2004).

⁵¹ *M/S Knit Pro International v. The State of NCT of Delhi*, 2022 SCC OnLine SC 668.



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TAGLINES/SLOGANS AND THE BAR ON DESCRIPTIVE TRADEMARKS

*T.E. Krishna*⁵²

Abstract

What comes to your mind when you come across the phrase “It’s finger lickin’ good”? Majority of us don’t get redirected to the literal meaning of the phrase but associate the phrase with KFC. The above-mentioned phrase is the Tagline/Slogan of the infamous chain of restaurants called KFC. Interestingly, the phrase holds a trademark protection in India⁵³. But isn’t the phrase descriptive in nature? Isn’t it generic and not specifically referring to KFC? How did it obtain its trademark protection then? Aren’t descriptive marks barred from being registered as trademark under Section 9(1) (b) of the Indian Trademarks Act, 1999? Are Taglines/Slogans an exception to descriptive trademarks? These are primarily the questions this research aims to answer. The aim of this research is to provide a guide for registration of Taglines/Slogans by way of answering the above questions.

Taglines/Slogans: The “Peculiar” Marketing Strategy

Taglines/Slogans are short phrases which are used to deliver the company’s overall purpose through its attractive construction. The need for businesses to reserve a place in the memory of people is inevitable; they seek for a distinct place in the market as well as in the minds of the people. Taglines/Slogans serve the above purpose of the companies to some extent. Taglines/Slogans help in the unique identification of brands among the public. They help the company in building their brand value and popularity. Popularization of Taglines/Slogans depends on its uniqueness, attractiveness, simplicity and the dedication of the company in marketing and advertising the same. Taglines/Slogans also help in drawing consumers’ attention to the product through its attractiveness. Over a period, when Taglines/Slogans significantly serve the above purpose to a company, they become an asset to the company. The

⁵² Final Year, B.B.A, L.L.B, VIT School Of Law, VIT University Chennai.

⁵³ <https://www.startupwala.com/trademarks-registration/search-DELHI-IT'S-FINGER-LICKIN'-GOOD-3510764> (last visited on 9/10/2023).

Taglines/Slogans get associated with the company and becomes an inseparable part of it. This exclusive and distinct association of Taglines/Slogans with a company is the point where the Taglines/Slogans fetch income per se. It accommodates into itself a monetary value and comes to a point where the usage of the same Taglines/Slogans by other people will fetch them income. This point in the life of Taglines/Slogans is when there arises a need for the company to protect the Taglines/Slogans from undue uses. These Taglines/Slogans generally being a combination of common words cannot be protected by copyrights.⁵⁴ Given this, the only protection mechanism available to the companies are Trademarks.

Taglines/Slogans Protection Under the Trademark Act

The Trademark Act defines mark, where it includes combination of words through the term “any combination” thereof. This implies that there is no fundamental bar against registration of Taglines/Slogans as trademarks. As the primary requirement of Trademark Act suggests, the Taglines/Slogans need to be reduced into two dimensional structures for its registration. This aside, the Trademark Act also in its Section 9 enumerates absolute grounds for the refusal of registration of trademarks where it in 9(1) (b) says that descriptive trademarks designating the characteristics of the product are to be refused registration.

It is well settled that these slogans cannot be protected by copyrights but can be protected by the law of passing off, it involves a high level of ability and judgment and it plays a key role in generating additional goodwill for the product or service and in view of the same, the protection under the law of passing off is not restricted to names but also to such descriptive materials such as slogans.⁵⁵ Trademark protection extending to such Taglines/Slogans remains undisputed till date.

The Trademarks cannot be plainly descriptive in nature, and it cannot be specifically lauding the product to obtain a registration.⁵⁶ For Example, “We make good cakes” Tagline of a bakery cannot be protected under the Trademark Act; it is barred by Section 9 (1) (b). However, to obtain a trademark for a descriptive slogan, its exclusive association to the product should be positively established coupled with the fact that the slogan is distinct in nature.

It is also important to note that the Trademark Protection granted to the Tagline/Slogan pertains to it as a whole and the Trademark owner cannot claim monopoly over words of the Taglines/

⁵⁴ Godfrey Phillips India Ltd. vs Dharampal Satyapal Ltd. & Anr., 201.

⁵⁵ Pepsi Co. Inc. And Anr. vs Hindustan Coca Cola and Ors, 2001.

⁵⁶<https://www.sconline.com/blog/post/2022/04/13/red-bull-sting-pespi-trademark-infringement-delhi-high-court/> (last visited on 9/10/2023).

Slogans.⁵⁷ Since these Taglines/Slogans are a combination of common words, if protection is granted to every word in the Tagline/Slogan would be arbitrary and contrary to the provisions of Trademark Act and hence, it is the combination of words which are protected and not every single word.

With these positions established, a successful protection of a Tagline/Slogan through Trademark law can be stated for a happy ending. Raymond is known for its Tagline “The complete man”, upon an undue use of its tagline by a company names Radhika Exports, Raymond filed a suit for injunction and was successful in obtaining the same in 2019 in the Bombay HC.⁵⁸ The Tagline of Raymond has reached the stage of being an asset and obtained significant monetary value and it is progressive to see such a Tagline being protected through Trademark establishing a prima facie case.

Conclusion

While the importance of Taglines/Slogans can be understood by every prudent man, importance of its protection cannot be denied. Intellectual property laws through its Trademark Law have given ample provisions for the protection of such Taglines/Slogans. These provisions help the companies to safeguard one of its most valuable assets associated with them. The above article sums up to say that Taglines/Slogans are granted protection under Trademark Law and not Copyright law, to get registered under the Trademark Law, Taglines/Slogans should be distinct and non-descriptive in general and in case of a descriptive Tagline/Slogan, its exclusive association and distinctiveness should be established, and Taglines/Slogans are protected only as a whole and not in parts.

⁵⁷ Bright Lifecare Pvt. Ltd. vs Vini Cosmetics Pvt. Ltd. & Anr, 2022.

⁵⁸ Raymond Limited vs Radhika Export and Anr, 2019



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**EXPLORING THE INTERSECTION OF TRADEMARK AND DESIGN:
 SAFEGUARDING VISUAL ELEMENTS IN INTELLECTUAL PROPERTY**

*Aditi Singh*⁵⁹

Abstract

This article explores the complex interplay between trademark and design law in the context of intellectual property law. It offers a detailed examination of how courts have approached the coexistence of passing-off actions alongside design infringement cases, including their reasoning, identified flaws, and the evolution of their stance over time, highlighting specific cases to elucidate the current legal position on this matter.

Furthermore, it explores how the current legal position enables plaintiffs to seek justice in such cases.

Keywords: Passing-off actions, Design infringement, Identical, Novelty, Combined lawsuit, Remedy.

Introduction

In the recent 2023 case of *Casio Keisanki Kabushiki Kaisha vs. Riddhi Siddhi Retail Venture*⁶⁰, the matter of the intersection between trademark and design arises again. In this case, the Delhi High Court upheld an interim order restraining the defendant from selling musical keyboards with a design deceptively similar to Casio's. The court found that the defendant's keyboards closely resembled Casio's design.

Casio had registered its keyboard design as "Blueberry" in 2009, which had become strongly associated with the brand. The plaintiff argued that the defendant's keyboard design, sold under the brand "Nexus32," was nearly identical to theirs and had caused confusion among consumers.

⁵⁹ 4th year- The National University of Advanced Legal Studies (NUALS).

⁶⁰ *Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Co. Ltd. v. Riddhi Siddhi Retail Venture*, (2023) 94 PTC 225.

The court determined that the defendant's keyboard design was an obvious imitation of the plaintiffs, as per the Designs Act. The burden of proving lack of novelty or originality was on the defendant, and since they couldn't provide evidence of prior publication, the court held that the plaintiff's design was not liable for cancellation.

The Delhi High Court upheld the injunction against the defendant, finding their keyboard design deceptively similar to Casio's and rejecting claims of lack of novelty or originality.

Under the Trademark Act of 1999,⁶¹ a trademark is defined as a mark that can be represented graphically and is capable of distinguishing the goods or services of one person from others. This definition explicitly includes the shape of goods as a registrable trademark.

In contrast, the Design Act of 2000⁶² defines "design" as limited to the features of shape, configuration, pattern, ornament, or composition of lines or colors applied to any article. Design registration requires novelty and prohibits prior publication. There is no provision for common law rights or passing-off actions for design marks, and infringement remedies are limited to the statutory framework outlined in Section 22⁶³ of the Design Act.

This creates an overlap between design and trademark, where shapes can serve as both. Trademark registration does not have the same novelty requirements as design registration.

Courts have provided varying responses regarding the coexistence of a passing-off action alongside design infringement.

Examining Evolving Court Responses and Key Cases

In the 1983 case of *Tobu Enterprises v Meghna Enterprises*,⁶⁴ the court made it clear that when both parties have registered designs, they cannot seek injunctions or damages under two statutes simultaneously. The plaintiff claimed both design infringement and passing off by the defendant, but the court ruled that the Designs Act, 1911, does not allow for a passing-off claim. Such a claim is only permitted under the Trademark Act, 1958. The court emphasized that the right to "passing off" is a common law right but is subject to specific statutory provisions. Since the Designs Act did not provide remedies for passing off, no injunction could be granted on those grounds.

⁶¹ The Trademark Act, 1999 (Act 47 of 1999), S. 2(1)(zb).

⁶² The Design Act, 2000, S.2(d).

⁶³ The Design Act, 2000, S.22.

⁶⁴ *Tobu Enterprises v Meghna Enterprises*, (1983) PTC 359.

Furthermore, in *M/S Micolube India Limited v Rakesh Kumar Trading As Saurabh Industries & Ors*,⁶⁵ the court made the following observations:-

Regarding Infringement of Registered Designs:

- A lawsuit for design infringement is not allowed under the Designs Act when both parties are registered proprietors, and the design registrations cover the same shape and configuration of an article.

Regarding Passing Off for Shape Protection:

- Passing off cannot be used to enforce rights for shape protection under the Designs Act. The Act's purpose is to provide limited protection without extending it to shape protection.

Regarding Joining Passing Off with Design Infringement:

- Passing off can be used alongside design infringement claims, but only in cases related to elements like trademarks, trade dress, or trade-related features other than the shape of the goods covered by the design registration.

Exceptions to Passing Off for Shape Protection:

- Passing off for shape protection remains available during and after the design monopoly period if the shape isn't covered by the design's novelty claim. However, after design expiration, if the shape is part of the novelty claim, it becomes part of the public domain and cannot be protected through passing off.

However, in the case of *Mohan Lal v. Sona Paint & Hardwares*,⁶⁶ a three-judge bench held the following:

1. Suit for Registered Design: A person with a registered design can file a lawsuit against another person who also has a registered design.
2. Passing Off with Registered Design: If someone with a registered design uses it as a trademark and meets the necessary requirements, they can take legal action for passing off. This means they can sue if someone else is using their design as a trademark.

⁶⁵ *Micolube India Limited v. Rakesh Kumar Trading as Saurabh Industries & Others*, 2013 (55) PTC 1[DEL][FB].

⁶⁶ *Mohan Lal v. Sona Paint & Hardwares*, 2013 (55) PTC 61[DEL][FB].

3. Composite Suit: However, you cannot combine a lawsuit for registered design infringement with a passing-off action. They need to be separate legal actions.

In simpler terms, if a person has a registered design, then that person can take legal action against someone else with a registered design or if they are using their design as a trademark. But if the person wants to do both, then they have to file two separate lawsuits: one for design infringement and another for passing off.

The key difference between the two cases lies in the approach to combining a registered design infringement claim with a passing off claim. In the *Micolube India case*, it was clarified that there is no provision for passing off under the Designs Act, whereas in the Mohan Lal case, the court allowed for separate actions but not a single composite suit.

But in 2018, a five-judge bench of the Delhi High Court, in the *Carlsberg Breweries v. Som Distilleries and Breweries case*,⁶⁷ overturned the previous Mohan Lal precedent. The new ruling allowed a plaintiff to combine two legal claims in a single lawsuit: one for the infringement of their registered design and the other for the defendant's passing off their goods.

The central issue was whether a composite suit could include both the claim of design infringement and the claim of passing off in one legal action. The court determined that the court in Mohan Lal had misunderstood the previous precedents that it had relied on, and that those cases were not addressing the joining of causes of action in a single composite suit. According to the court's ruling, when claims of design infringement and passing off arise from the same sale transaction, they involve similar legal and factual questions. Therefore, to prevent unnecessary duplication of legal proceedings, it's appropriate to combine these two causes of action into one lawsuit. This decision streamlines legal proceedings by allowing the combination of design rights and passing off claims in such cases.

In the case of *Symphony Ltd. v. Thermo King India Pvt Ltd.*,⁶⁸ Symphony Ltd. filed a lawsuit against Thermo King India Pvt Ltd., primarily addressing the alleged infringement of Symphony's design rights and trademarks in their air cooler products. On the other hand, in *Crocs Inc. USA v. Aqualite India & Others*,⁶⁹ the court clarified that a registered design cannot serve as a trademark. However, if additional features beyond the registered design are used as

⁶⁷ Carlsberg Breweries v. Som Distilleries And Breweries, C.S.(COMM) 690/2018 & I.A. No.11166/2018.

⁶⁸ Symphony Ltd. v. Thermo King India Pvt Ltd., CS (COMM) 321/2018.

⁶⁹ Crocs Inc. USA v. Aqualite India & Others, 2019 (78) PTC 100[DEL].

trademarks and have built up goodwill, these additional features can be protected as trademarks. These cases collectively illustrate the evolving landscape of intellectual property law in India.

A slightly different case, *Havells India Ltd v. Panasonic Life Solutions India Pvt Ltd.*,⁷⁰ challenged whether a single lawsuit can encompass both passing off of trade dress and design infringement, with the dispute arising from similar fan designs. The plaintiff, having design registration for its Enticer ceiling fans, sought an injunction against the defendant's Venice Prime fans, alleging similarity. The court ruled that combining passing off and design infringement claims for the same product in a single lawsuit is permissible, following the Carlsberg precedent. It favoured the plaintiff, granting an interim injunction against the defendant's Venice Prime fans.

In *Diageo Brands v. Alcobrew Distilleries*,⁷¹ Diageo Brands, known for “Johnnie Walker” whiskey, held design rights for their unique bottle shape. They sued Alcobrew Distilleries, alleging trademark and design infringement due to Alcobrew's use of the “OFFICER'S CHOICE” mark and a similar bottle design.

The court assessed trademark distinctiveness, bottle design similarity, and potential consumer confusion. Recognizing the reputation of the “JOHNNIE WALKER” mark and bottle design, the court ruled in favor of Diageo Brands. They issued an injunction against Alcobrew and awarded damages.

This case underscores the need to protect both trademarks and designs and the legal recourse available to brand owners when their intellectual property faces infringement in the alcoholic beverage industry.

Together, these cases offer valuable insights into the complexities and evolving nature of intellectual property law in India. They cover a range of issues, including the permissibility of combining claims in a single lawsuit, the distinction between design rights and trademarks, and the protection of unique product features in a competitive market.

⁷⁰ *Havells India Ltd v. Panasonic Life Solutions India Pvt. Ltd.*, [CS (COMM) 261/2022]

⁷¹ *Diageo Brands v. Alcobrew Distilleries*, [CS (COMM) 30/2022]



DPIIT-IPR CHAIR, CNLU PATNA
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BREAKING THE MOLD: AI'S CREATIVE BOOM UPENDS STANDARDS
CONCERNING INTELLECTUAL PROPERTY

Pankhudi Sinha⁷²

Abstract

The blog delves into the complex ethical issues related to AI-generated intellectual property. Concerns concerning the legal protection of AI-generated creativity surface as AI becomes more and more integrated into daily life. AI is not covered by traditional intellectual property laws, which creates a loophole that makes it possible for AI-generated ideas to be stolen. The blog suggests integrating AI detection tools into intellectual property frameworks and highlights the necessity of mechanisms to distinguish between human and AI creativity. But putting such mechanisms in place brings with it concerns about AI dominance as well as practical issues. To ensure a balance between preventing fraud and promoting ethical AI use, the blog concludes by advocating for a careful evaluation of property rights procedures to align with modern practices and societal norms.

The scientific field of artificial intelligence, or AI, develops numerous devices and computer programs that can carry out a variety of tasks that the human mind can.⁷³ With the exemplified use of the same in our everyday life many questions regarding its ethical use has come into light. Man-made machine which runs on algorithm and data has certainly outwitted human in many fields such as medicines⁷⁴ and even various chatbots have come up, example: Chatgpt, Bard etc with novel ideas which people find it hard to come up with. Then the question stands: the unprecedented ideas by the AI driven tool are intellectual property or not? Will it be protected under Intellectual Property Laws or not? If the AI algorithm makes a new idea, be it

⁷² 1st Year BA LLB (Honour), Symbiosis Law School, Pune

⁷³ M Sivasubramanian, Learning outcomes of classroom research pg. no. 1, (L Ordine Nuovo Publication, Madurai, 2021).

⁷⁴ Pavel Hamet, Johanne Tremblay, "Artificial Intelligence in Medicines", 11th January 2017.

a story, an invention idea etc. will it be ethical for the person to use it who lays their hands on it first?

Creativity was earlier considered to be a human trait and the laws protecting this creativity under all the Intellectual Property Laws like Copyright Act 1957,⁷⁵ Indian Patent Act 1972,⁷⁶ Trademark Act 1999⁷⁷ and even International Conventions such as Trade Related Aspects of Intellectual Property Rights (TRIPS),⁷⁸ World Intellectual Property Organisation (WIPO).⁷⁹ All these laws miss to take AI under its ambit. Conclusively, ideas of AI are not protected under any laws.

An individual may steal the idea of an AI and call it their own and no laws are present to hold such intellectual property theft accountable. Moral rights under Section 57 of The Copyright Act of 1957⁸⁰ which would in such case belong to the AI would be arbitrarily given to the Individual who committed the theft in the first place. In case of a Copyright Infringement anyone may ask AI to generate a novel and frame in their words and ask for a copyright. Both the copyright doctrines (Doctrine of Sweat and Brows⁸¹ as well as Doctrine of Modicum of Creativity⁸²) are violated. In cases of Patents three objectives needs to be satisfied- Novelty, Utility and Inventiveness.⁸³ AI may generate novelty and inventiveness in this case and no laws will be there to question it or even identify this. Thus, property theft is now easier than ever, and the property thief will now be protected by the Intellectual Property Laws.

Making no mechanism to regulate this unprecedented theft would lead to a havoc of intellectual property claims based on AI's algorithm being falsely labelled as an individual's creativity. This would lead to no moral ownership⁸⁴ or attachment of the intellectual property. There ought to be a mechanism which separates human ideas with that of AI generated Idea. AI detection tools should be used beyond the realms of classroom and applied in the intellectual world to distinguish between the two facets of creativity. However potential question arises by introducing which mechanism: who will claim the share of AI's creativity? The idea falls within the preview of an automated algorithm, which is created by the computer and not the

⁷⁵ The Copyright Act, 1957 (Act 14 of 1957).

⁷⁶ Indian Patent Act 1972 (Act 39 of 1972).

⁷⁷ Trademark Act 1999 (Act 47 of 1999).

⁷⁸ Trade Related Aspects of Intellectual Property Rights 1995.

⁷⁹ World Intellectual Property Organisation 1967.

⁸⁰ The Copyright Act, 1957 (Act 14 of 1957), s. 57.

⁸¹ *Walter v Lane* ALL ER Rep Ext (1666).

⁸² *Fiest Publication Inc v Rural Telephone service*, 199 US 340 (1991).

⁸³ *Novartis AG v. Union of India*, (2013) 6 SCC 1.

⁸⁴ *Supra* 8.

owner. Thus, a gap between the claimed ownership is left unattended with no proper solution to it. Furthermore, introducing such mechanism may also lead to the question of so called “robot uprising” and “AI supremacy”.

There are various negative outcomes of not introducing a mechanism which checks the AI’s contribution. On the other hand, there are various practical difficulties of introducing a mechanism for the same in the first place. With time AI will be used in our daily lives which will make the public prone to various fraud; protecting them is the foremost question which may be solved by following the steps: first being understanding the ownership of AI’s creativity- who will claim the ideas which AI makes. Second being discouraging and punishing people who try and falsely claim AI’s ideas as their own. Thirdly using AI detection tools while granting Copyrights and Patents and last but not the least active government and law enforcement’s intervention.

The application and growth of AI requires changes to the laws governing intellectual property, putting property rights in line with societal norms. To prevent serious issues later, the process for granting property rights needs to be updated to reflect current practices. The pros and cons of the procedure for granting property rights should be evaluated to provide the ultimate solution to its ethical and practical obstacles.



**DPIIT-IPR CHAIR, CNLU PATNA
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HUMANS OF BOMBAY VS PEOPLE OF INDIA: NAVIGATING THE LABYRINTH

*S Abhipsha Dash*⁸⁵

Abstract

Digital storytelling communities evolve as dynamic clusters of creativity and connection in an era where stories dance across screens and resound via algorithms. The dynamic ecosystem of these online places is explored in this article, where code, pixels, and music become the threads via which artists, educators, activists, and regular storytellers come together to tell stories. We investigate the approaches and goals that unite these societies by drawing on a variety of viewpoints. A legal conflict involving copyright infringement between Humans of Bombay (HoB) and People of India (PoI) is consuming the digital storytelling community. This lawsuit involves the plaintiff, HoB, running the popular website www.humansofbombay.in, and the defendant, PoI, running www.peopleofindia.io. The primary allegations in this complaint are that PoI has improperly used HoB's copyrighted content, which encompasses essays, videos, photographs, and artistic expressions. This page addresses the contentious issues, the claims by plaintiff and intricate legal issues involved. It further goes on to discuss the judgement and concludes by emphasizing the importance of the precedence established by this case.

Keywords: Copyright, Digital Storytelling, Copyright Infringement, Substantial Imitation, IPR

Introduction

Amidst the ongoing stand-off between India and Canada over visas, Karnataka and Tamil Nadu over disputed waters of the Cauvery River what caught attention was the fight between two social media pages. The Humans of India, founded by Karishma Mehta recently filed a copyright infringement suit against People of India. Further the dispute has drawn the attention of founder of popular blog Human of New York the inspiration behind Humans of Bombay Page. To understand the row a little background knowledge is important. The inception of

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Humans of Bombay happened in 2014 as a Facebook Page. Drawing inspiration from the famous blog of Human of New York, it was started to share the tales of Mumbaikars. It was the brainchild of 21-year-old Karishma Mehta. The page gives an essence of life in Mumbai through the lenses of Mumbaikars that she shares in form of stories, anecdotes, struggles and triumphs. Eventually her page registered meteoric rise not only in number of subscribers but also in the number of people sharing their journey and struggles. It embraced an ever-widening circle of merchants, traders, celebrities, etc showcasing diversity of Mumbai's "*sapnon ka sehar*" spirit. The row erupted after a similar story telling platform People of India allegedly copied the content of Humans of Bombay hence attracting a copyright infringement suit. The Delhi High Court took cognizance of the matter and issued a notice to People of India. It was observed that some posts have "substantial imitations" whereas some other cases photos were identical. The Delhi High Court putting an end to the copyright infringement suit as both the parties agreed to not use each other's photos, videos and literary works said that there cannot be monopoly in the field of storytelling, but when images and content owned by one platform is used by another platform is used without permission, it will amount to infringement of copyright.

Reaction of Humans of New York

Karishma Mehta started the page after taking inspiration from the page of Humans of New York. The Lawsuit has attracted the attention of Brandon Stanton but not in praise of Humans of Bombay. Taking to social media platform X (previously twitter) he wrote.

"I've stayed quiet on the appropriation of my work because I think @HumansOfBombay shares important stories, even if they've monetised far past anything I'd feel comfortable doing on HONY. But you can't be suing people for what I've forgiven you for."

He started his page in 2010, photographed and chronicled the life of people in an unique manner paving the way for himself to become an internet sensation. Netizens chimed on Stanton and started calling out Karishma Mehta who then reiterated that they embrace all platforms and share the love for story telling with every creator, the suit is for infringement on their content.

Concept of Copyright Infringement

The concept of copyright infringement refers to unauthorized use of one's original and novel work. The work can include literary work, photographs, images and other creative content. In this instance the court examined prima facie evidence and said that there has been "*substantial imitation*" in some of the posts. Substantial Imitation means that after examining all the

evidence court found significant similarities in the content of posts chronicling same story and between the business model of HOB and POI. However, there was no specific mention of injunction clause for interim relief hence the court hasn't placed any prohibition on POI.

The fact that substantially identical images or videos might behave as screengrabs in the first instance. This presents a complicated picture suggesting that the source of the content might be not as straightforward as it was assumed initially. The possibility that the footage was provided to both platforms by same persons resulting in some overlapping segments adds to the complexity of the case. This case hence unfolded the importance of investigating a case holistically including evaluating the business model of both the platforms, content and overall approach to storytelling. To ascertain if HoB's original content and business model have been unfairly used or imitated by PoI, this review may involve looking at the particular components that set the platforms' content and business strategy apart. If one of the platforms uses certain images, videos to share a story and another uses the same set of images and videos but focuses on a different story altogether it unfolds a critical case of examination and interpretation of the concept of "copyright infringement."

The meaning of substantial imitation

Keeping in view the above-mentioned points, what can be understood is that issue of ownership of the work and its expression becomes crucial in determining the issue of actual infringement of rights. To determine if a work is original, whether there is a significant resemblance between the two pieces of art, and how creatively the shared subject matter was presented, the court must examine the nuances of copyright law.

Examiners should determine whether a significant portion of HoB's content has been independently replicated by PoI or whether the resemblances are purely accidental or coincidental because the videos have the same source or context. Furthermore, attention must be paid to spotting any distinctive components in the presentation and narrative that set each platform's content apart and add to its distinct personality and aesthetic. Since copyright mainly protects material manifestations of creative works, HoB's claim that copyright infringement occurs when their business strategy is replicated is deemed non-conventional. This argument appears to lack a legal foundation because the court's order makes no mention of this particular feature. The conversation focuses on how crucial it is to discern among an idea and its manifestation, as this is the cornerstone of copyright defense.

Analysis of claims by Humans of Bombay

1. Ownership on Photograph and Videos

At the prima facie stage, it is unclear whether the copyright of these pictures and videos. As mentioned above, the same set of videos, pictures or snippets can represent different stories. This raises the question of that these videos are made by same person and submitted to different sites for the purpose of promotion. The official page of Humans of Bombay talks only about a few people interviewing, clicking photos managing finances and making hires and hence casts a doubt that if they themselves have the right of ownership on the claimed pictures or not. Even if in arguendo we assume that ownership rests with Humans of Bombay the immediate question that pops up is there any infringement of such rights by PoI by uploading on similar stories. Keeping in view the test prescribed by Supreme Court in the case of R.G.Anand vs. Deluxe Films⁸⁶ that infringement should be studied holistically. Applying this to the above case the expression of PoI is different than the “idea” of HoB.

2. Replication of Business Model

The replication of business model in a copyright infringement case is a strange argument. First of all, copyright only covers tangible manifestations of creative “works”; business models are not covered by this! Thus, the query is never posed. Secondly, even "if" there was a mechanism to protect the business model HoB is undoubtedly aware that they are not the first to adopt the business model of publishing photo-accompanied narratives of people's experiences. Nevertheless, it doesn't seem that this question was addressed in the court judgment regarding the matter's prima facie hearing. The claim of Humans of Bombay on the specific arrangement of works/photograph followed by a story doesn't satisfy the criteria of being an intellectual property. It would also be difficult to demonstrate that the format used in HoB's stories photographs with corresponding captions or anecdotes is unique and not just a mash-up of components found in a plethora of other works that portray real-life experiences, like Humans of New York (HoNY), of course.

⁸⁶ AIR 1978 SC 1613.

Conclusion

Justice Pratibha Singh also made the observation relying upon the case of *Eastern Book Company v. D.B.Modak*⁸⁷ and The Copyright Act 1957⁸⁸ that in a storytelling platform the images, literary content and the manner in which stories are depicted they form the creative aspect of the work. Should these platforms commission any photos and videos, the platforms themselves would become the owners of the copyright to those images and movies since they would be protected by the Copyright Act of 1957. It's also possible that subjects are uploading images from their own collection to other websites. It is not within the purview of such platforms to assert any rights over photos that are reproduced by them. But, if the platform commissioned the photo, the platform would be the owner of the copyright to the mentioned material. The ruling in *the Humans of Bombay v. People of India* case sets a benchmark for the creative fraternity to ideally and dramatically enhance the protection of the labor-intensive original work. The Delhi High Court decided that neither of the two storytelling platforms, People of India and Humans of Bombay, may use the copyrighted works of the other. The parties had agreed to specific terms, the court emphasized. For similar instances involving digital content in the future, this one will serve as a precedence. It places a strong emphasis on fair rivalry in the digital sphere that can coexist with copyright and creativity.

⁸⁷ MANU/SC/4476/2007.

⁸⁸ The Copyright Act, 1957 (14 of 1957).



**DPIIT-IPR CHAIR, CNLU PATNA
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Pg. No. 49-52



BATTLE OF PANCHAGAVYA AND PATENT: COMBATING FOR TRADITIONAL KNOWLEDGE IN IP REGIME

*Prakhar Dubey*⁸⁹

Introduction

Traditional knowledge (TK) is a type of intellectual property but also possesses distinct attributes. Unlike conventional intellectual property, TK encompasses the skills, practices, and knowledge that indigenous societies transmit between generations.⁹⁰ Generations have passed down this knowledge, firmly ingrained in cultural traditions, reflecting the shared experiences of these groups.

Oral transmission is the primary method of transmitting traditional knowledge, making it vulnerable in the absence of appropriate documentation. Indigenous people often lack recognition, while companies seek to exploit their biological resources and knowledge, a situation known as biopiracy.⁹¹

The Council for Scientific and Industrial Research has established the Traditional Information Digital Library (TKDL) as a means to maintain and authenticate traditional information. The existing intellectual property framework, which prioritizes individual rights, faces challenges in effectively addressing the collective nature of traditional knowledge (TK).⁹² Proposals suggest using patent laws defensively to protect TK and prevent industry from monopolizing biological resources and related knowledge. Patents can be challenged based on Traditional Knowledge (TK) using Sections 25,⁹³ and 64.⁹⁴

⁸⁹ LL.M student at NALSAR, Hyderabad.

⁹⁰ Traditional Knowledge and Intellectual Property https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_1.pdf.

⁹¹ S.K. Tripathi, '*Traditional Knowledge: Its significance and Implications*', Indian Journal of Traditional Knowledge Vol 2(2) April 2003, pp.99-106.

⁹² Protection of Traditional Knowledge under Intellectual Property Rights Regime, E-JAIRIPA, Vol 1 (01), Dec 2020, pp. 149-164.

⁹³ Indian Patent Act, 1970, S.25.

⁹⁴ Indian Patent Act, 1970, S.64.

A patent refers to the government's grant of an invention to a third party in exchange for full disclosure of the invention. However, there are certain exceptions, as mentioned in Section 3, which include indigenous varieties and biological resources. The government takes this action to safeguard the rights of indigenous people. The government takes this action to safeguard the rights of indigenous people.

This blog delves into the recent verdict of the Madras High Court, which denied a patent for Panchagavya-related traditional knowledge. This blog also delves into the interpretation of Section 3(p),⁹⁵ with the aim of breaking the silence and safeguarding traditional knowledge. the traditional knowledge.

In the case of *M/s. The Zero Brand Zone Pvt. Ltd. v. The Controller of Patents & Designs*, a patent application was filed for an environmentally friendly lamp created using a composition derived from Panchagavya, which is a combination of cow milk, cow ghee, cow butter, cow curd, cow dung, and cow urine, combined with leaves from traditional herbal medicine. In this case, the company used the natural material Panchagavya, a mixture of cow-derived substances common in Indian culture. Traditional medicine also combines the lamp with leaves, providing an herbal remedy. This patent application was rejected by the Controller of Patent and Design, and the company filed an appeal. The company has filed an appeal in court.

Issues before the courts

1. This is an analysis of Section 3(p) of the Patent Act.
2. Is the preparation of a lamp from composite materials an invention, or is it considered traditional knowledge? knowledge.

The court examined Section 3(p), which defines an invention as traditional knowledge or the duplication of known properties of a traditionally known component and prohibits it from being the subject. In the current case, the material under dispute is Panchagavya, which has medicinal value. However, since it already exists in nature, patenting it is not possible. In this case, the community responsible for its discovery shares traditional knowledge. The goal is to prevent the monopolization of natural resources. found it. The goal is to prevent the monopolization of natural resources.

⁹⁵ Indian Patent Act, 1970, S.3(p).

Further discussion revealed that the patent act does not define traditional knowledge. However, the court has relied on international bodies like the World Intellectual Property Organization to define traditional knowledge as knowledge passed down from generation to generation and based on experiences.⁹⁶ The intention is to uphold community ownership and prevent any individual from claiming sole proprietorship. The intention is to prevent any individual from claiming sole proprietorship.

Similarly, India has traditionally used the Panchagavya and leaves in this lamp for centuries because of their herbal qualities. Therefore, granting a patent to a company for such a product would not align with the legislative purpose. The product in question does not align with the legislative purpose. The court also deliberated on whether the claimed invention merely combines established characteristics, such as the use of cow dung, a natural fuel source. Given the functioning of the lamp in this instance, it resembles the use of cow dung for fuel, demonstrating the claimed invention's lack of novelty.

Court's Reasoning

Therefore, the court determined that the claimed invention does not possess novelty, making it ineligible for a patent. Through this case, the court has addressed the need for more explicit criteria when making classifications of traditional knowledge under Section 3(p). At present, the Indian Patent Act, 1970, does not clearly lay down what is traditional knowledge, so more clear rules and definitions are required. This enables large corporate entities to exploit traditional knowledge for obtaining patents. This allows big corporate giants to abuse it to get patents.

To simplify the process, the patent manual provides basic instructions. Upon analysis, we have determined that traditional knowledge is not patentable due to the pre-existence of established knowledge. The guidelines underscore the necessity for the Traditional Knowledge Digital Library (TKDL) to verify the existence of the knowledge in the application, yet they still lack a detailed procedure. The Guidelines for Processing Patent Applications specifically address traditional knowledge pertaining to plants and medicine. This case involves traditional knowledge related to plants and medicine.

⁹⁶ Traditional Knowledge, WIPO, <https://www.wipo.int/tk/en/>

This recommendation will provide the examiner with the criteria for examining the patent application related to medicinal plants or remedies, which will be denied under Section 3(p), and will also address medical traditional knowledge. Traditional medical knowledge.

Eliminating the Silence through legislative objectives

The Parliament intends to prevent foreign players from misusing India's traditional knowledge, particularly in relation to indigenous and Ayurvedic therapies, by outlawing its unauthorized use for patent purposes. Failure to do so would lead to a phenomenon known as biopiracy.

The TRIPS, specifically Article 27.3b, lays down this necessary safeguard to protect traditional knowledge and biodiversity. We do this to safeguard traditional knowledge, avoid benefit sharing, and promote greater involvement in decision-making processes. The goal is to stop any part of the world from patenting traditional knowledge.

Only substantial research on traditional knowledge could make this leap, potentially leading to the protection of Indian traditional knowledge. Incorporating traditional knowledge into the national healthcare system will relieve the pressure associated with conventional medicine.

Conclusion

In the context of safeguarding traditional knowledge, it's essential to conduct research on the scope of traditional knowledge and devise more effective methods for its protection. Traditional knowledge symbolizes the rights and endeavours of indigenous communities to safeguard their resources. We could design the legislation to establish sui generis laws, thereby strengthening the safeguarding of traditional knowledge and biodiversity. This will be a beneficial step for the future generation, as they realize the importance of preserving their cherished knowledge.
