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Intellectual Property Rights (IPRs) allow innovative entrepreneurs and enterprises to protect their inventions, new business ideas, designs, trademarks and brands, copyright and related rights, geographical indications, helping them to leverage these for the benefit of their business ventures, increasing competitiveness and enhancing market reach. Globally, the small and medium enterprises have been the driving force behind a large number of innovations. Successful SMEs across the world have been able to reinforce an idea to create a product that consumers wanted, utilized IP rights to protect it and created value for their business. This is particularly true in the high-tech and export-oriented enterprises, service sector, digital economy and other priority areas of the economy. However, there are many MSMEs world over which are unaware of the intellectual assets that they possess and consequently fail to protect and develop them thus missing out on the prospects to expand and grow. By and large, this scenario applies to a majority of India's small and medium businesses, which is due to the low level of IPR awareness and skill-set amongst them.

The MSME sector in India contributes significantly to the country's GDP, employment and exports. Rightly called the 'engine of India's economic growth', the sector is also recognised for its inventiveness and entrepreneurial acumen. Even during the COVID-19 crisis, it was heartening to see the many outstanding innovations in the health sector that emerged from this segment: ranging from masks, sanitizers and sanitizer pumps, infrared thermometers, face shields and testing equipment. These quick innovations are an evidence of the creative and innovative abilities of India's small and medium businesses in the face of social-economic crisis precipitated by the pandemic and resource constraints.

The Government of India has recognised this key potential of the country's MSME sector and has initiated several support measures to strengthen and incentivise them. The Government must be complemented for the several programs and special schemes specifically directed at promoting the IP culture among Indian MSMEs and the versatile start-up sector, including the nation-wide IPR awareness programs, the special financial packages, the reduction in fee for filing of applications, expeditious processing and examination, the setting up of IP Facilitation Centres that guide small businesses to adopt IP tools and technologies, and other support measures aimed at building IPR related capacities. These steps have had a positive impact, which is reflected in the growing level of awareness about the significance of intellectual property in the sector, a growing trend in IP filings by MSMEs and start-ups, enabling IPR oriented enterprises to transform their inventive creations into market value and competitiveness. While such support measures should continue and indeed be enhanced, it is more important that MSMEs increasingly view IP protection as an investment to create IP assets rather than an expense.

FICCI, as the voice of Indian Industry, has been working closely with the Government on diverse IPR related issues of national interest through wide-ranging engagements on policy, legal and regulatory framework, implementation, enforcement and capacity creation. It has also taken decisive steps in raising the level of IPR awareness in the MSME sector through seminars, workshops and joint programs with the IP Office and other Government departments.

It is notable that World Intellectual Property Organization (WIPO) has kept its Annual World IP Day theme this year as 'IP and SMEs: Taking your Ideas to Market', providing a timely occasion for India's MSMEs to broaden their understanding of IP generation, protection and commercialization. FICCI will continue to engage closely with India's MSME sector and step-up efforts to enhance IP awareness and utilization among these extremely important economic players.

Innovation, Intellectual Property & SMEs: Taking Ideas to Market

Most businesses begin with an idea. The crores of small and medium-sized enterprises (SMEs) that operate across the globe would have started with an idea that took shape and made its way to the market. Creative minds the world over, be it entrepreneurs, designers, artisans, engineers, researchers; come up with new ideas day after day. When nurtured and enriched with ingenuity, know-how and flair, these ideas become intellectual properties that can drive business development, economic recovery, and human progress.

SMEs worldwide form the backbone of national economies. They deliver the goods and services we need everyday, come up with break through innovations and inspiring creations, generate employment, and some go on to become world business leaders. SMEs make up around 90% of the global businesses, employ 50% of the workforce and generate up to 40% of national income in many emerging economies, and even more if informal businesses are considered.

Therefore, at a time when the need for economic recovery following the COVID-19 crisis is a global imperative, the World Intellectual Property Organisation (WIPO) keeping its annual World IP Day theme 'IP and SMEs: Taking your Ideas to Market' is indeed timely. It highlights not only on the critical role of SMEs in every economy, but also how they can use IP rights to build stronger, more competitive and resilient businesses.

Most successful SMEs have taken an idea, reinforced it with ingenuity to create a product that consumers want, and utilized IP rights to safeguard and create value from their business assets. However, there would also be many such enterprises that are unaware that they hold IP or that it has enormous value. This means, many are missing out on opportunities to expand their businesses and grow. Empirical evidence shows that when organizations are IP savvy, and acquire and manage IP rights, they perform much better.

For developing economies like India, MSMEs have been recognised as the 'engine of economic growth' because when they flourish, the country's economy also grows. This sector in India, comprising 6.3 crore units (NSS 2015-16 data), is a key component of the economy, contributing 29.7% to GDP. Indian MSMEs have developed into a dynamic sector, contributing significantly to socio-economic development; and encouraging entrepreneurship and large employment opportunities at comparatively lower capital cost. Serving as ancillary units to large industries, MSMEs are contributing substantially to India's inclusive industrial development, widening their domain across sectors, and producing a range of products and services to meet domestic and global market demands. The driving force behind them is the large number of innovations, which has led to productive investments and value-added exports. During the COVID-19 crisis, it was particularly encouraging to see the remarkable innovations that emerged from Indian MSMEs and start-ups: from sanitization drones, digital stethoscopes to incredibly cheap portable ventilators and affordable Covid-19 test kits. These swift innovations at the heart of India's response to the pandemic was a testimony to the country's age-old tradition of being creative and resourceful in the face of social crisis and limited resources.

Despite the importance of MSMEs to the Indian economy, it is important to note that the awareness levels on IPR continues to be low in this sector. This must change to enable the smaller businesses to exploit their intrinsic innovative abilities. Increased adoption of IP applications will also be a key element in achieving the 'Atmanirbhar Bharat Abhiyan' goal of becoming vocal for our local products and making them global.

The Government of India, recognising the potential of the MSME sector, has been initiating several policies and support measures to strengthen it. The 'Atmanirbhar' campaign, which provides a comprehensive economic package of Rs. 20 lakh crores, equalling 10% of India's GDP,

also focusses on the MSMEs among other sectors. Further, steps have been taken to facilitate IPR protection in Indian industry through amendments in the laws, modernising IPR offices and digitisation of IP application filing processes. Programs specifically directed at the MSMEs have also been initiated including schemes to promote the IP culture and awareness in the sector through seminars and workshops focussed on international filing procedures, counterfeiting and piracy concerns; as well as special schemes for filing of applications, adopting IP tools and technologies.

The MSME Ministry has brought out guidelines to implement schemes to promote IPR awareness in the sector. In 2019, a reduced fee for filing of IP applications was announced amounting to 60% for patents and 50% for designs; the fees for trademark applications were already reduced by 50% earlier. The intent was to encourage more and more MSMEs to protect their IPRs. Another scheme provides financial assistance for filing applications of up to Rs 1 lakh for domestic patents, Rs 5 lakh for international patents, Rs 10,000 for trademark and up to Rs 2 lakh for GI registration. Besides, IP Facilitation Centres (IPFC) have been setup nationwide that guide MSMEs and start-ups to utilize IP tools and technologies, help them to evaluate possibilities of IP registration and application filing; and facilitate collaboration with clients to upscale.

As per the MSME Ministry Annual Report 2021, Rs. 39.35 crore was allocated to promote IPR awareness for 2020-21. In the interim, 193 virtual webinars were organised for MSME Development Institutes across the country, and financial support was provided to set up 28 new IPFCs and for reimbursement of 105 patents and trademarks. The actual expenditure incurred (up to 11 January 2021) was, however, low at Rs. 6.71 crore, which may have been due the COVID-19 disruptions. Formalisation of the Bilateral Patent Prosecution Highway (PPH) Programme was another significant step aimed at reducing disposal time and pendency of patent applications, providing consistency in quality of granted patents and expeditious examination of patent applications of Indian inventors and MSMEs. A collaboration with the Japanese Patent Office, the program helps Indian MSMEs to get their patents registered in Japan expeditiously.

The "L2Pro India" programme, which stands for 'Learn to Protect, Secure and Maximize your Innovation' was another important initiative, developed jointly with Qualcomm and NLU, Delhi. The platform enables innovative enterprises to understand their IP ownership and protection rights; and to integrate IP into business models to maximise commercial benefits. L2Pro, successfully implemented in Germany, U.K, Italy and France earlier, is customized for India to promote innovation by MSMEs and start-ups.

The initiatives are beginning to show a positive impact. Patent applications by SMEs, for instance, saw a steady rise from 412 in 2016-17 to 607 in 2018-19. Although these account for only 1.3% of the total applications filed, it reflects a growing level of awareness on IPR in the sector, helping enterprises to transform their creative innovations into market value and competitiveness. While this support system must continue and indeed be enhanced, the ongoing initiatives must be also taken to entrepreneurs in the smaller towns across the country. At the same time, it will be more important that MSMEs increasingly look at intellectual property protection as an investment to create an asset, rather than as an expense.

India's small and medium-sized companies must realise that it is only through Intellectual property that they can protect, and exclusivity exploit their creative products, besides recouping innovation investments. They must have an IP strategy in place to establish business identity through brands, extend businesses overseas through franchising and licensing; and enhance the value of their businesses in the eyes of potential investors and financial institutions.

Regulating OTT - Between Freedom and Responsibility



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The Ministry of Information and Broadcasting (MIB) along with the Ministry of Electronics and Information Technology (MEITY) issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on February 25, 2021 (Rules). This intervention seemed imminent given recent events relating to electronic news media, social media as well as over-the-top streaming (OTT) platforms. This article focuses on the available opportunity for OTT rather than any fragility in the Rules or their manner of issuance. The aim is to highlight the need for filling the gap between freedom for content creation and the responsibility that may be embedded therein. The endeavor is to ensure that the growth trajectory for the world's fastest growing OTT market is maintained and content creation continues at the same clip and in the same vein.

The Opportunity

India is the world's fastest growing OTT (over-the-top streaming) market and is all set to emerge as the world's sixth largest by 2024.¹ Digital media in fact overtook print in 2020 and contributed approximately \$3.2 billion to the overall media and entertainment market. The segment is expected to grow at 22% and contribute close to a quarter of the entire M&E industry by the end of fiscal 2023².

This growth has no doubt been accelerated by the rollout of 4G, the relative increase in broadband penetration and the technological ease of access for OTT platforms generally. However, the primary reason for this growth remains the content that has found its voice through this medium. It is reflective of an unaddressed demand that subsists. There has been a hitherto unseen spurt in content creation across the country and anyone with bare minimal facilities stands empowered to create content and find the means to disseminate it. The rise of this industry has been an impressive story of democratization and it may not be incorrect to say that it has received less than its due in public discourse.

Characteristics

There are a few distinctive characteristics unique to OTT which ought to be borne in mind when dealing with OTT platforms. Unlike theater which is public exhibition i.e. exhibition in a public place along with other members of the public, OTT is distinctly private viewing. Further, unlike television, which is also private viewing, it may be fair to distinguish television as being passive viewing while OTT may be considered active in that sense. Simply put, there is an active informed choice made by a viewer in the context of OTT. Not to say that a television remote is not suitably empowering of informed choice as such.

Much jurisprudence exists in the context of the traditional mediums, but we will not delve into those aspects in this article. Suffice to say that exhibition of content in public places and viewing in your own residence/private property is different and ought to carry a distinct legal application especially when active informed choice is involved.

Creative Ecosystem

Speech and expression (its creation and dissemination) are at the core of the entire creative industry including OTT and stand to benefit immensely from a light touch approach. The products and processes involving creativity need to be treated and regulated distinctly. Indian Courts have consistently preserved the preferred treatment required for the creative industry. Content by its very nature can be polarizing. To say that content must receive universal sanction would be an exercise in futility and a gross travesty on speech and expression.

As has been held by the Supreme Court³, *"The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes."*

The Supreme Court has further held as recently as in 2015 that Indian Courts have moved towards the contemporary community standards test when dealing with subjective matters used to define "public order", "decency" or "morality" i.e. "Thus, in Directorate General of Doordarshan v. Anand Patwardhan this Court noticed the law in the United States and said that a material may be regarded as obscene if the average person applying contemporary community standards would find that the subject-matter taken as a whole appeals to the prurient interest and that taken as a whole it otherwise lacks serious literary, artistic, political, educational or scientific value."

Embedded into these observations is the tacit acknowledgment that ideas and opinions expressed through any form of creative speech must be free flowing and without hindrance save for any valid exercise under the specific limitations to Article 19(1)(A) of the Constitution. These limitations have been permitted to curtail free speech by Courts only by way of a valid law passed by parliament prescribing the least intrusive measure into the freedom.

The Rules

The Rules issued by the Central Government include the requirement to:

- comply with the prescribed content code & content classification requirements;
- access controls for content classified above a particular age.

- follow a three-tiered grievance redressal for addressing complaints regarding non-compliance - tier 1 being redressal by the OTT platform itself, tier 2 being redressal at the level of self-regulation body; and tier 3 being redressal at the government level; and,

The Rules also set out a Code of Ethics which proposes certain principles on the basis of which publication of content itself must be evaluated by a publisher as well as its classification. The Rules have since been the subject matter of some preliminary judicial scrutiny but there has been nothing to dislodge their presumption of validity as on date.

Striking the Right Balance

Given the pre-eminent rights involved, it is not only important for the relevant laws to be framed in consonance with the constitutional mandate, but equally important for its application to be guided by well-established principles laid down by Indian Courts. It is the collective duty of civil society as well as the Central Government to nourish and support the constitutionally preferred right of speech and expression and find the right balance as we chart the road ahead. Towards this endeavor, the following could be some starting points:

- Light touch implementation;
- Industry level regulation (i.e. grievance redressal at tier 1 and tier 2) should be the norm;
- Invocation of the more stringent provisions only in the rarest of rare cases with intelligible criteria to minimize misuse; and,
- Contemporary community standards as the test for determining all subjective decisions relating to publication or the classification of any content.

With the right manner of implementation, the industry may be in a position to find a way to continue on its trajectory of growth and creation of world quality content while providing a mechanism to suitably deal with those exceptions which fall foul of constitutional parameters.

Disclaimer: This article contains the views of the author alone.

¹ <https://www.livemint.com/news/india/india-is-the-world-s-fastest-growing-ott-market-pwc-report-11603355739242.html>

² "Playing by new rules" 2021 edition, FICCI – EY report on the media and entertainment sector

³ S. Khushboo v. Kanniamal & Anr. (2010) 5 SCC 600

⁴ Shreya Singhal v. Union of India (2015) 5 SCC 1

Geographical Indication: A Key Factor in Fostering Rural Development



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Introduction

One of the most dynamic field of law in this era is Intellectual Property Laws. On one hand, the major concern in this ever-developing set of intangible rights is the integration of Artificial Intelligence. On the other hand, there is one branch of intellectual property that seeks the protection of tradition and traditional values. Where other branches of this field seek the protection of individual rights, Geographical Indication (GI) is that unique branch, which is based on the recognition of Community Rights.

A Geographical Indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to their origin. In order to function as a GI, a sign must identify a product as originating in a given place.

Article 22 of the TRIPS Agreements defines Geographical Indications as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

Consequently, upon India joining as a member state of the TRIPS Agreement sui-generis legislation for the protection of geographical indication in India was enacted in 1999.

The basic feature of Geographical Indications is:

- It is an indication,
- It originates from a definite geographical territory,
- It is used to identify agricultural, natural or manufactured goods,
- The manufactured goods should be produced or processed or prepared in that territory,
- It should have a special quality or reputation or other characteristics.

In India, the Geographical Indications tag is given by the Geographical Indication Registry under the Department of Industry Promotion and Internal Trade, Ministry of Commerce and Industry. The object of the Geographical Indications of Goods (Registration and Protection) Act, 1999, is three-fold:

- By specific law governing the geographical indication of goods in the country which could adequately protect the interest of producers of such goods,
- To exclude unauthorized persons from misusing geographical indications and to protect consumers from deception and,
- To promote goods bearing Indian Geographical Indication in the export market.

Benefits of Registering A Geographical Indication

While there are various benefits of registering a Geographical Indication, the underlying rationale behind each and every one of them is economic development of a geographical territory. India is an Agricultural State with around two third of its population living in rural area. The primary source of income of this population is directly or indirectly related to agriculture. A GI tag is beneficial for such rural population as it aims to protect local culture by preserving traditional production methods, habits of consumption and cultural identity. The question is how this preservation is favourable for rural development? To know about this, it would be imperative to understand the following:

- **Increased Value of A Product**

The economic rationale for protecting geographical indications fundamentally derives from the fact that place of origin may be used as a quality signal and that the resources of the region may be captured in the origin-labelled product as quality attributes. Where place of origin is used as an attribute, resources of the region are used to increase the value of the product.

These resources could include aspects such as production techniques, varieties and species, but also resources that are general to the region such as landscape, environment and culture. The added value derived from these resources leads to a value differentiation based on product “qualities” and consequently to the creation of niche markets.

The collective monopolies which result from the institutionalization process provide producers within origin-labelled niche markets the opportunity to protect and enhance their market and to transform the value added into an economic rent.

- **Powerful Marketing Tool**

A geographical indication, by differentiating products by its area of origin, restricting supply and creating barriers to entry of fake products, may act as a powerful marketing tool which could improve market access. Several factors influence the success of small, rural enterprises that target niche markets. While numerous factors have an influence, two main factors become apparent: market access and differentiation. GIs affect both these factors.

- **Increased Income for Rural and Local Producers and Farmers**

Whenever an industry is established, it is a known fact that, it gives rise to many tertiary industries. No establishment can function without contribution from other industries. Similarly, when recognition is provided to one product the entire geographical locality associated with the product starts flourishing.

There is a direct link between the cultural diversity that exists in India with its varied people, traditions and flavours on the one hand, and the legal protection as GIs that the products of cultural activity can have, on the other.

There is also a link to local communities, in towns and villages, which possess traditional knowledge of making these products, which in themselves, many a time, are part of their traditional cultural expressions. Thus, legal protection to GIs also extends to protection of traditional knowledge and traditional cultural expression contained in the products. In doing so, not only are livelihoods protected but also possibilities of employment generation are encouraged. In fact, owing to the premium prices that many GIs command today, there is a possibility of preserving many traditional skills. As such, geographical indications draw from both natural and human resources located within the territory, thereby stimulating all the components of the rural economy.

- **Promotion of Trade**

Kanjeevaram silk sarees, Pochampally Ikat are examples of origin-specific products in India that can very well contribute to exports and popularity. With the development of local market, the next step that is taken by the community is its contribution towards foreign exchange at the same time protecting its exclusiveness, heritage and traditional skills of making such products.

The recognition of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) on GIs as a form of IPR, has enhanced the marketability of these products, and demonstrated that GIs have great potential to play a major role in trade between countries.

The benefits of GI registration are not just hypothetical, and the same may be ascertained by two leading products as examples of India, namely 1) Kashmiri Saffron and 2) Darjeeling Tea. Both the products have their own fan following and are relished world over by the connoisseurs of food.

Kashmiri Saffron

Kashmiri saffron, which is cultivated and harvested in the Karewa (highlands) of Jammu and Kashmir, has been granted the GI tag by the Geographical Indications Registry in May 2020. The spice is grown in some regions of Kashmir, including Pulwama, Budgam, Kishtwar and Srinagar.

Prior to the registration, saffron production had seen a steep decline of around 65 percent in recent years. Chinna raja G. Naidu, Former Deputy Registrar of Geographical Indications, had said, “Kashmir saffron is a very precious and costly product. Iran is the largest producer of saffron and India is a close competitor. With the GI tag, Kashmir saffron would gain more prominence in the export market”. While that is true, registering the saffron would also remove quality concerns, and there would be more development and employment generation in this sector.

The same has proved to be true. GI tagged Kashmiri saffron is now available in the United Arab Emirates. It was launched in the UAE markets during the two-day UAE-India Food Security Summit 2020, which was attended by over 200 importers, exporters, investors and businessmen from the food and allied sectors.

A 20-member strong business delegation from J&K led by Union territory's Principal Secretary (Agriculture) participated at the Summit along with a display of food products from J&K. The launch gives it outreach to global markets. Export of agricultural and food products from India to the UAE currently stands at USD 2.2 billion.

Darjeeling Tea

Darjeeling' tea is a premium quality tea produced in the hilly regions of the Darjeeling district, West Bengal—a state in the eastern province of India. Among the several tea varieties grown in India, Darjeeling tea offers distinctive characteristics of quality and flavor, and enjoys a global reputation for more than a century. Broadly speaking, there are two factors which have contributed to such an exceptional and distinctive taste, namely geographical origin and processing.

In October 2004, Darjeeling was granted the GI status in India to become the first application to be registered in India as a GI. An adequate legal protection is necessary for the

protection of legitimate right holders of Darjeeling tea from the dishonest business practices of various commercial entities. For instance, tea produced in various countries have often been passed off around the world as 'Darjeeling tea'. Appropriate legal protection of this GI can go a long way in preventing such misuse.

Ever since the registration of GI, the Darjeeling Tea industry has seen an exponential growth in employment and decrease in rural exodus, besides inducing a favorable effect on tourism and infrastructural growth.

Thus, the registration of GI in itself can give rise to development of many industries. Further, the growth is not limited to the expansion of the product in itself; the evolution of the geographical region is directly related to the product's growth.

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Non Fungible Token - A Boon or A Bane



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Introduction

The concept of a Non-Fungible tokens is one of the most talked of topics with the astronomical amount of headlines across jurisdictions. The underlying principle is one of block chain technology and it holds the potential to create a new generation of digital artists, musicians and creators and empower them by eliminating middlemen, monetise their work and find unique ways of disseminating information, expression and engagement with fans.

What are Non-Fungible Tokens?

Tokenization is the encapsulation process converting intellectual property into digital tokens with an underlying value. Fungible means something which is replaceable by another identical item or is mutually interchangeable. Hence, fungible tokens are of such nature that in some part or quantity they may be replaced by another part or quantity. While a 100 rupee note is an example of a fungible token, a non-fungible token is a one that has an individual characteristic setting it apart and is typically linked to an object like a collectable, music or art. Blockchain technology is used by Non-Fungible Tokens to record ownership and validate their authenticity. Further, they are usually brought and sold on numerous

marketplaces such as Rarible, OpenSea etc using cryptocurrency. These unique items cannot be exchanged for the equal amount of the same kind, because they are inimitable, possibly rare and each holds several different functionalities and characteristics. Thus, one of the main differences between fungible and non-fungible tokens is the fact that fungible tokens are divisible and non-fungible are not. Fungible tokens can be borrowed, returned and otherwise transferred in parts, whereas non-fungible tokens cannot be divided into parts.

To take an example, if someone sends across bitcoin, a ledger entry is made on the blockchain. In the case of a non-fungible token, a ledger entry is also made, but in that entry, there is also an address to the file, which establishes the ownership of that non-fungible token. Each NFT, on its creation on the blockchain is time stamped. This makes digital ownership very simple, easy to identify and makes sure that verify the ownership of the NFT on the blockchain.

What is Essentially Purchased?

Chris Torres, creator of Nyan Cat, a famous internet meme, sold a one-of-a-kind version of his viral GIF for around USD 600,000 while artist Mike Winkelmann, also known as Beeple, sold one of his works for USD 6.6 million. It is not just art that is tokenised and sold. Twitter's founder Jack Dorsey has promoted an NFT of the first-ever tweet, with bids hitting almost USD 2.5m. Canadian musician Grimes recently sold her crypto-art through NFTs for USD 6 million and the Kings of Leon is another band in the field of music which has jumped on the NFT bandwagon. An NFT is nothing more than metadata written into a blockchain. For example, if someone wants to mint an icon of a horse, a contract can be installed in the computer and one can use the

file to compile a contract which produces metadata that can be written to the Ethereum blockchain. Since this metadata was encoded with a file and a set of private keys and private accounts, the resulting token is unique and intrinsically encoded with the original file. Although the image of the horse was used to encode the NFT and make it uniquely attached to the image, the NFT is not the actual image itself, it is the metadata that ties it to the original file. What people are purchasing in the form of NFT is a unique receipt written into the blockchain.

Copyright Concerns with Respect to NFTs

With the advent of blockchain technology to the forefront, the concept of NFTs has taken centerstage with numerous pieces of art and music being tokenized and released as an NFT. There have been recent reports of artists reporting their work turning up on NFT websites without their permission. When a NFT action site called “the Crypto Doctrine” started selling art which was commissioned years ago in the form of NFTs, the same was met with vociferous opposition from artists and ultimately taken down. NFT is a technological breakthrough which although offers great promise and potential, has also given rise to a number of complex problems in regard to the law of Copyrights.

Copyright is an intangible incorporeal right granted to an originator of a literary or artistic production whereby he is invested for a specific period of time with the exclusive right and privilege to publish, multiply, make derivative works and sell the copies of the same. It is not a single right and essentially consists of a bundle of rights in same work. It can only be transferred based upon a written agreement by the owner of the copyright. This means that copyright is separate from the actual “work” itself.

The same principles will apply with respect to an NFT. Unless an NFT includes a transfer of copyright in the underlying asset, the author or the artist has the copyright. Therefore, an express

agreement will be required for a copyright owner to transfer their entire copyright in a work to an NFT holder. Copyright's “signed writing” requirement is fulfilled in the context of the blockchain through digital wallets and anonymity.

However, what happens when someone tokenizes something, for example, a piece of art not belonging to them? WeirdUnded, a digital artist complained that someone had minted their works and placed them on OpenSea, a crypto-marketplace while another digital artist CorbinRainbolt had some of his works on dinosaurs also tokenized without his permission. In both the situations, the works were finally removed from the marketplaces. If a pirate token has been created, where in the metadata false ownership claims have been encoded, the same would be an infringement of the moral right of attribution. Although, copyright law provides a remedy for rip-offs, it's likely to prove difficult for artists to find and sue an infringer, since blockchains, by their nature, are designed to be borderless and decentralized.

Conclusion

NFT ownership interest does not give any rights to any intellectual property. Instead, it gives interest in the digital file which is purchased and derives value from the file's scarcity, not the image. NFTs attempt to capture uniqueness in a work, and it is the presence of just that one unique piece that drives the cost considerably high. However, without proper checks and balances in place to guarantee that NFTs are created by the artist or the right holder, NFTs are going to serve a bigger copyright threat. It is of paramount importance that law of Copyrights is able to tackle the impeding intellectual property issues that will arise and the manner of enforcement of such works is to be seen.

Disclaimer: This article contains the views of the author alone.

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Consultation on IPAB Abolition Bill

February 26, 2021

The Government, through the Tribunals Reforms (Rationalisation & Conditions of Service) Bill, 2021 (introduced on 13 February 2021) seeks to abolish various tribunals, including the Intellectual Property Appellate Board (IPAB), and transfer their functions to the High Courts of India.

FICCI organized a stakeholder consultation with its members on 26 February 2021 to discuss the proposed bill, according to which all disputes and appeals concerning intellectual property protection may soon be decided by the courts and not through the designated appellate tribunal. By and large, the participants were against the implementation of this Bill as the general opinion was that it will seriously damage India's credibility as an IP jurisdiction and lower the country's IP standards. Some of the reasons cited by the participants why IPAB should not be abolished were as under:



- A vibrant and robust IP eco-system is an imperative for a country like India, seeking to achieve developed economy status by relying on innovation and creativity. Creation and protection of IP is the driver for achieving such aspirational goal.
- The abolition of IPAB, among various adverse effects, will erode the level of certainty and predictability of India's IP eco-system and its institutions; impact affordable, user-friendly and easy access to speedy justice; lead to increased costs and delays in adjudication, besides ushering in inconsistency in IP law and practice in different parts of the country.
- IPAB, being a critical part of India's IP eco-system, has played a pivotal role in rendering decisions to complex issues involving IP rights. Besides, it has had an excellent record of accomplishment - out of the 3793 cases disposed by the IPAB, only 3% have been appealed and less than 1% have been reversed on such appeals.
- IPAB takes away significant burden from the High Court by dealing with a variety of cases on appeal from IPO and Trademark Registry.
- More importantly, IP-related cases often require navigating complex techno-legal issues. Therefore, a specialized central justice dispensation machinery (like IPAB) is crucial in creating uniform judicial standards that results into consistency, predictability and more informed decision making rather than being ambiguous.

Today, when India is aiming to be a top player in innovation and IP creation, it is only befitting that the country has a judicial framework that is both effective and speedy. Therefore, the proposal to Abolish the IPAB needs to be reviewed so that stakeholders can continue to truly innovate, safeguard their creations, produce, and help society prosper, knowing that IP rights in the country will be effectively protected.

Based on the outcome of the meeting, FICCI had forwarded a comprehensive submission to the Government requesting that the Bill on the abolition of IPAB should be reconsidered and recommending that it should not go forward.

Stakeholders Consultations Series on Promotion of Geographical Indications and Strengthening of India's GI Regime

March 3, March 16, March 26, and March 30, 2021

Quality products that are deeply rooted in each geographical area play a key role in the economy. They contribute to social development and to the preservation of the local environment. Natural features as well as tradition and culture, typical of certain geographical environments have the potential to confer products specific characteristics and reputation, which are valued in the market. Preserving such resources, traditions, and qualities through Geographical Indications (GI) can create and preserve values (economic, social, environmental) for millions of producers and consumers.

FICCI, in partnership with Ernst & Young, has been organizing a series of stakeholder consultations on the promotion of GIs. This activity forms a part of a Government of India project to prepare a report on 'Centrally-sponsored schemes required for promotion of Indian GIs', in which FICCI partnered with EY. The objective is to conduct focused discussions among select experts/individuals working in the area to understand the current issues/ground realities in the GI sphere e.g. legal, procedural, monitoring, enforcement, infrastructure aspects; invite suggestions on removing existing gaps, and to work out a national strategy on the branding, marketing, communications aspects to achieve the desired economic and social benefits results of GI promotion and commercialisation.



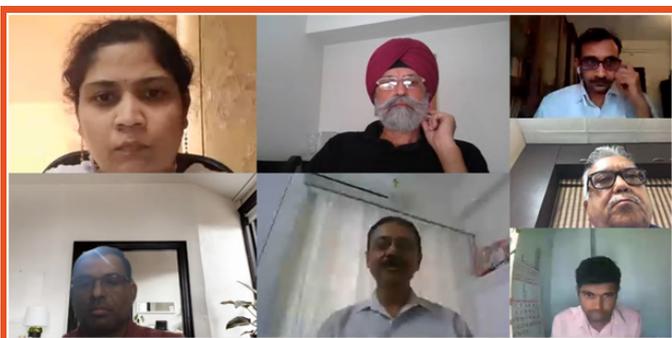
The First GI Consultation - March 3



The Second GI Consultation - March 16

The focus of the discussions has been on the opportunities and challenges prevalent in the country's GI sector, to get an insight from the stakeholders on the ground realities of the pre- and post-registration scenarios, and suggestions on the various approaches possible for improving the GI system in India. The consultations, designed to enhance awareness on the challenges related to protection of GI and the probable solutions thereof, were specifically aimed at:

- The legal procedures, monitoring, and enforcement aspects of GIs.
- The required soft and hard Infrastructures for the sector; and
- Promotional aspects from the viewpoint of consumers, producers, manufacturers, artisans, craftsmen, traders and international markets.



The Third GI Consultation - March 26

Through the consultations, several key issues and challenges in the sphere of geographical indications in India have come to light which were hindering the realization of the potential benefits ingrained in GIs: like, the need for concrete legal, enforcement and monitoring provisions; the problems arising due to lack of awareness among the GI stakeholders themselves, the concerned govt. officials, as well in the general public; the absence of effective enforcement of the rights in domestic and export markets; inadequate marketing and promotion of products due to resource constraints; non-percolation of the due benefits accruing from the GI status of products to actual producers/artisans; the prevalence of rampant infringement of GI products with negligible action by the concerned authorities, among others.



The Fourth GI Consultation - March 30

100 Webinar Series on Intellectual Property Rights January- March 2021



To raise awareness on intellectual property right among stakeholders in the country and to increasingly get them involved in deliberations across diverse topics on IP, thus fulfilling one of the key objectives laid down in the National IPR Policy, FICCI along with DPIIT and CIPAM had joined hands to launch the “100-Webinar Series on Intellectual Property” in March 2020.

This initiative by FICCI, since its inception, has garnered much appreciation as well as active participation from a wide range of stakeholders in spreading awareness and disseminating information about intellectual property rights in the country and the key role that IP would play in strengthening India's economic ecosystem. The speakers partaking the webinar-series are experienced IP professionals, academicians, researchers, company secretaries and other related experts who have been engaged with the growth and development of IP rights in India. Since its launch in March 2020, the webinar-series has productively conducted several webinars, covering a wide range of IP topics.

Allotment of Patent for the treatment of Arthritis.

The Intellectual Property Appellate Board (IPAB) granted Patent for the treatment of Arthritis to Arthritis Relief Plus Ltd.'s ('Appellant') patent application concerning topical formulation including comfrey or comfrey derived compounds and tannic acid which is used for the treatment of arthritis. The Controller had originally rejected the patent application on grounds mentioned under Section 3(e) and Section 3(j) of the Patents Act, 1970 which pertain to admixtures having lack of synergistic effect and involvement of biological process, respectively. Additionally, the Controller also was of the view that the invention of the Appellant lacked inventive step in accordance with Section 2(1) (ja) of the Patents Act, 1970 as the separate compounds were already known to have such medicinal quality.

Design Rules amended

The Government of India while exercising the powers conferred by Section 47 of the Designs Act, 2000, amended the Designs Rules 2001 through Designs (Amendment) Rules, 2021. Amendments introduced are as follows:

Inclusion of the definition of start-up;

- On transfer of rights or interest in the design, partly and fully, to an entity other than a natural person, start-up, or small entity, from a natural person, start-up or small entity, applicable difference in the official fee will required to be paid along with the necessary request for recording of assignment. However, such provision is not applicable in case the applicant ceases to be a start-up or a small entity;
- The current edition of Locarno Classification will be followed;
- As per the revised First Schedule and Fourth Schedule, reduction in the applicable official fee for small entity has been observed;
- The official fee incurred by the applicants claiming small entity and start-up status is akin to Natural Persons.

First India-EU IPR dialogue held to strengthen relation and facilitate enhanced cooperation in the field of Intellectual Property Right.

The 1st India-EU IPR dialogue was held on 14 January 2021 between the EU Commission and Department for Promotion of Industry and Internal Trade (DPIIT) through a virtual platform. India Co-Chair provided an overview of various IPR developments, with an aim to meet the objectives set forth in the National IPR policy 2016. He also reiterated importance of legislative reforms brought in by India to stimulate innovation and creativity among start-ups and MSMEs. Various initiatives taken up by the Indian government in this context were appreciated by EU representatives. Indian counterparts updated the functionalities on reduced pendency on trademarks and department's continuous efforts to further improve the process. Further, there were discussions on plant protection and farmer's right and their importance for Indian economy. Representative from India also briefed on the various enforcement initiatives being taken by the government so as to ensure the right of the owners are respected.

Draft Patent Amendment Rules, 2001 notified

The Government of India has recently published the draft Patent (Amendment) Rules 2021 ('Draft Rules'). The Draft Rules are subject to inclusion of the definition of the 'eligible educational institution'. The Rules mention that educational institutes can claim reduced filing fee which is akin to Natural Person by filing relevant from along with evidence in this regard. Further, the eligible educational institution would be eligible for requesting the expedited examination.

Screenwriters' Association of India applies for registration as copyright society

The Screen writers Rights Association of India (SRAI) recently filed a revised application before the Registrar of Copyrights to be recognised as a copyright society under Section 33 of the Copyright Act, 1957. SRAI aims to negotiate, collect and distribute royalties on behalf of screenwriters in works authored by them. They had previously applied for registration in 2017 as well, but the application disappeared for unknown reasons. On 27 November 2020, the Copyright Office issued a public notice (which includes the application for those who want to see it) inviting comments from industry stakeholders as well as members of the public regarding the registration within 30 days.

WTO takes up India and South Africa's intellectual property waiver plea for COVID-19 vaccine

The World Trade Organisation (WTO) continues to back India and South Africa on the proposal of waiving certain provisions of the TRIPS Agreement for COVID drugs, vaccines, diagnostics and therapeutics until the pandemic subsists. The waiver plea involves temporarily dropping some provisions of the Industrial Designs Act, the Patents Act, the Copyright Act for protection of undisclosed information under the agreement. The WHO and over 80 Countries support this proposal, whereas the bigpharma and high-income countries such as the European Union, the USA and Canada object to the same.

Source:

<https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/wto-to-take-up-india-south-africas-intellectual-property-waiver-plea-for-covid-19-vaccine/articleshow/81423346.cms>

China remains the top patent filer in 2020 under PCT; India ranks 14th on the global list

China retains its position as the top patent filer under the Patent Cooperation Treaty (PCT) by filing around 68,720 patent applications in 2020, that exhibits about 16.1% increase from 2019. China is followed by the USA, Japan and South Korea, whereas India ranks 14th on the list with 1,914 applications filed. Filing of International Patent Applications under the WIPO'S PCT, is one of the widely recognised and used standard for measuring innovative activity of a country.

Source:

https://www.wipo.int/pressroom/en/articles/2021/article_0002.html

Industry group asks the government to reconsider the plan to abolish the IPAB

A group of industry associations on intellectual property has written to Minister of Finance, Nirmala Sitharaman, Minister of Justice, Ravi Shankar Prasad, and Minister of Commerce and Industry, Piyush Goyal to not include the Intellectual Property Appellate Board (IPAB) in the Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021, that seeks to scrap various tribunals and authorities. They have alleged that the IPAB is not a drain of national exchequer and the abolishment would lower India's IP standards and adversely affect its credibility as an IP jurisdiction.

Source:

<https://economictimes.indiatimes.com/news/economy/policy/rethink-plan-to-abolish-intellectual-property-appellate-board-industry-groups/articleshow/81403514.cms>

Ricoh joins WIPO Green to contribute to solving social issues

Multinational Japanese Group, Ricoh Company Ltd. has joined WIPO Green as a contributing partner by providing 83 of its environmental technology patents. Ricoh aims at contributing to social issues by increasing accessibility of environmental technologies to the society and accelerating innovation through co-creation. WIPO Green, operated by the World Intellectual Property Organisation (WIPO), is an international platform that connects green technology providers and seekers through its marketplace and network.

Source:

<https://www.ricoh-europe.com/news-events/news/ricoh-joins-wipo-green-and-provides-83-patented-environmental-technologies-to-contribute-to-solving-social-issues/?prev=&next=tcm:100-48474>

Ludhiana gets Punjab's first IPFC

The Central government has approved Punjab's first Intellectual Property Rights Facilitation Centre (IPRFC) in Ludhiana. Although, the centre was initially sanctioned for the 'Auto Parts' Manufacturers' Association (APMA), it shall provide services to all other sectors such as filing for patents, copyrights, trademarks, geographical indications and industrial designs. The centre aims at creating awareness about intellectual property rights especially focusing on entrepreneurs in the micro, small and medium enterprises (MSME).

Source:

<https://timesofindia.indiatimes.com/city/ludhiana/city-gets-states-first-intellectual-property-rights-facilitation-centre/articleshow/81354085.cms>

China's IPR protection improved to create a sound business environment

During the World Economic Forum (WEF) in Davos Agenda, President Xi Jinping stressing upon the importance of intellectual property rights has shown intention to work with other countries to create an open, fair, equitable and non-discriminatory environment for scientific and technological progress.

Source:

<https://www.lexology.com/library/detail.aspx?g=22d1a0a1-a689-4f7b-908a-c5e3df3528b6>

The US Copyright Office implements a new Group Registration

The US Copyright Office's proposal of creating a new group registration option for musical works, sound recordings, and associated literary, pictorial, or graphic work contained in a music album, is set to take effect from 26th March 2021. This rule expands the registration options currently available to register multiple musical works or sound recordings and will permit the registration of multiple works distributed together using a single electronic application, regardless of whether such distribution occurs via physical or digital media. Video tutorials and other guidance shall be provided to access, complete and submit under the new proposal.

Source:

<https://www.bananaip.com/ip-news-center/french-court-fines-jeff-koons-for-copyright-infringement-english-high-court-orders-isps-to-block-music-piracy-sites-supreme-court-suggests-screening-online-content-and-more/>

After Pakistan, Nepal also opposes India's GI Application for Basmati in the EU

Nepal is opposing India's GI application before the European Union (EU) on account of three major claims. Firstly, Nepal contends that Basmati is grown and consumed traditionally in Nepal. Secondly, Nepal had worked extensively to develop different varieties of rice using local basmati landraces; and thirdly because Basmati has social and cultural ties with Nepalese communities. This is the first IP dispute to involve three south-Asian countries and according to the EU regulatory framework, parties shall engage in consultations running over a period of six months in order to reach an agreement. In case of failure, the EU Committee will hear and decide on the matter.

Source:

<https://spicyip.com/2021/03/the-third-to-tango-nepal-becomes-the-second-country-after-pakistan-to-oppose-indias-application-for-gi-over-basmati.html>

Samsung and Nokia sign a deal for Video Patent Licensing

Nokia has inked a deal with Samsung to license its patents regarding innovations in video standards. As per disclosed details, Samsung will make royalty payments to Nokia under this deal. Samsung and Nokia had signed a 5-year patent licensing deal in 2013, and other patent agreements in 2016 and 2018 as well.

Source:

<https://www.bananaip.com/ip-news-center/cait-announces-launch-of-ecommerce-portal-samsung-and-nokia-ink-video-patent-licensing-deal-spotify-and-kakao-sign-music-licensing-deal-and-more/>

Spotify signs a Music Licensing Deal with South Korean music distributor Kakao Entertainment

Spotify and South Korean music distributor, Kakao Entertainment Music, signed a global music licensing agreement. The companies had failed to renew the existing deal in the month of February 2021 leading to the unavailability of associated music, videos and podcasts on the streaming platform.

Source:

<https://www.bananaip.com/ip-news-center/cait-announces-launch-of-ecommerce-portal-samsung-and-nokia-ink-video-patent-licensing-deal-spotify-and-kakao-sign-music-licensing-deal-and-more/>

Indian Performing Right Society Ltd. And Ors V. Entertainment Network (India) Ltd And Phonographic Performance Ltd & Anr V. Cri Events Private Limited & Ors²

The Delhi High Court, on 4th January 2021, held that underlying works incorporated in sound recordings, when broadcasted, are not utilized independently. A separate license is not required for the same.

In the first suit, the defendant obtained a license to broadcast music in 7 cities. However, it broadcasted in 3 additional cities for which it had not acquired a license. The plaintiff contended that this amounted to infringement of its public performance rights. The second suit was jointly instituted by PPL and IPRS against, 'Cri Events', an event management company that was playing music without acquiring licenses from the Plaintiffs.

The Delhi High Court observed that sound recording is not simply the total of lyrics and musical works only. It also comprises lyrics, a voice, an appealing amalgamation and it therefore incorporates multiple works. The court also stated that Section 19 (10) of the copyright act has to be read as not affecting the right of the author of the work to claim an equal share of royalties and consideration payable for any utilization of such work in any form. This, however, cannot mean that utilization of the work as embodied in the sound recording also entitles the owner of the copyright in such work to demand an equal share of royalties and consideration payable for the sound recording.

The court ruled in favor of the defendant in the first case; and the plaintiff, in the second. It further held that, to broadcast sound recordings to the public, a license from PPL is necessary. If the underlying works are to be communicated or performed in public, independently, through an artist, a license from IPRS is necessary and in the case of an event that includes performances or communication of works of both kinds to the public, a license from both, PPL and IPRS is essential.

Cremo Netureal Milk LLP And Anr V. Cremo S.A.³

The Punjab-Haryana High Court, on 5th January 2021 dismissed an appeal challenging an order of the Commercial Court, Faridabad that granted an ad-interim injunction, restraining the appellants from using any mark identical or deceptively similar to the mark 'CREMO'. The appellants stated that the respondent company was based in Switzerland and had no customers in India and had no evidence or records to confirm sales in India. Further, the appellants have acquired a preferential right to use the trademark by applying before the respondent's application and having spent considerable time and money and thus earning goodwill.

The respondent relied on invoices demonstrating that it had been running its business relating to dairy products since 1927 and has acquired global goodwill. It further showed that it has been supplying goods to Indian customers and importers before the registration of the appellant's LLP venture, showing established goodwill in the Indian market.

The court observed that the appellants stated in their written statement that they had not proceeded with manufacturing activities due to the outbreak of the COVID-19 pandemic.

It noted that while the appellants had moved their application prior in time, subsequent filing of respondent's application did not adversely affect its preferential right as the appellants were yet to even start manufacturing their products. The court held that a prima facie case could be held in the respondent's favor and that there was evidence to show irreparable loss would be caused if an injunction was not granted, upholding the commercial court's decision.

Roland Corporation V. Sandeep Jain⁴

The Delhi High court, on 6th January 2021, granted an injunction in favor of the plaintiff and against the defendant restraining the use of the defendant's marks as per a statement given by the defendants, in a trademark infringement suit filed by the plaintiff for their registered 'BOSS' mark.

The plaintiff is a company incorporated in Japan in 1972 and is the registered proprietor of various trademarks including BOSS, RODGERS, RSS, EDIROL, and ROLAND. The trademark BOSS had been registered in favor of the plaintiff in India, with effect from 2nd July 2004. The defendants, Hi Tone Sandeep Jain, who is a partner of Hi Tone Electronics, stated that it had adopted the trademark BOSS concerning public address amplifiers, echo and reverb amplifiers, microphones, speakers, disco lights and sound invertors, and other similar products, way-back on 15th January 1979 and has been using the trademark BOSS continuously and extensively since then. In the year 2007, the plaintiff instituted a suit against the defendant to restrain them by way of permanent injunction from passing off their goods as that of the plaintiffs by using the trademark BOSS or Hi Tone BOSS and for ancillary reliefs.

Hon'ble Mr. Justice Rajiv Sahai End law relied upon the Toyota Jidosha Kabushiki Kaisha case and stated that the plaintiff had failed to prove use or a registration in India at that time and had the defendant being dishonest, the defendant would have blatantly copied the mark of the plaintiff. The awareness of the defendant of the goods and marks of the plaintiff can thus only be said to have led to the idea behind the mark of the defendant. In an action for passing off, as the present suit is, the factum of the plaintiff being first in the world is irrelevant, without the plaintiff establishing goodwill and reputation in India and which the plaintiff has failed to prove. Though the plaintiff has claimed to have an exclusive distributor in India since 1993 the same also remained to be proved. Permanent injunction from passing off their goods as that of the plaintiffs by using the trademark BOSS or Hi Tone BOSS and for ancillary reliefs.

However, while making a massive development court held that actions for infringement of trademark and passing off also have a public interest element of protecting the customers at large from the possibility of confusion and of being misled into buying goods of one assuming them to be of another and therefore the Court restricted Hi Tone to use the mark as Roland is a globally known brand and consumers associate the products primarily with Roland and hence a decree was passed in favor of the plaintiffs.

Nippon Life India Asset Management Limited V. Private Registrant, Digital Corporation/ Abhishek Rai, Amplinno India Pvt. Ltd.⁵

The World Intellectual Property Organization (WIPO) Arbitration and Mediation Center (the Centre), on 11th January 2021, ordered the transfer of seven disputed domain names to the complainant, Nippon Life India Asset Management Limited.

The complainant underwent a corporate name change and after this, filed approximately 100 Indian trademark applications for several of its trademarks. To ensure presence on the internet, it registered several domain names consisting of its trademarks NIPPON, NIPPON INDIA, and NIPPON INDIA MUTUAL FUND. The complainant had instructed one of its employees to register the disputed domain names to be able to migrate its services from existing domains. However, the disputed domain names were registered by the employee under his personal email ID.

The panel observed that the disputed domain names were confusingly similar to the complainant's trademarks and that the respondent did not have any rights or legitimate interests in the disputed domain names. The fact that the disputed domain names were registered before the complainant acquired statutory rights does not by itself preclude a finding of confusing similarity. It further noted that the respondent registered the disputed domain names primarily to transfer them in exchange for valuable consideration which was evidentiary of opportunistic bad faith.

Gs¹ India V. Global Barcodes SI⁶

The Delhi High Court, on 12th January 2021, issued an order of permanent injunction, restraining the defendant from issuing barcodes illegally.

The suit concerned the defendant using, selling, and issuing 13-digit barcode numbers i.e., ten digits along with the '890' code. This code is characteristic of the plaintiff, GS1 India, a standards organization with established global standards for products around the globe. GS1 is solely licensed to allocate this code. The plaintiff contended that such use would deceive individuals as to the origin and quality of the product and that such confusing allocation would amount to infringement of its trademark.

The court observed that the defendant was allocating barcodes with '890' to products without having any association with the plaintiff and therefore deceiving consumers of its compliance to standards prescribed under the GS1 standards. Therefore, it ruled in favor of the plaintiff, restraining the defendant from using the unique code and issuing barcodes accompanying the same.

Beiersdorf Ag V. Rsh Global Private Limited⁷

The Delhi High Court passed an interim order through its judgment dated January 28, 2021, against using, distributing, selling, importing, offering for sale, and advertising directly or indirectly dealing in cosmetic products that apparently appear to be similar to that of Beiersdorf AG's NIVEA concerning label and trade-dress.

The plaintiff Beiersdorf AG reached the High Court alleging trademark infringement by the defendants RSH Global of the trade dress of their products which included bottles of body lotions. The plaintiff had claimed that the defendant had copied the label, trade-dress, and packaging of their products. It was also claimed that the defendants had commenced manufacture of 'Joy Intense Moisture' moisturizing lotion, in a container, using a trade dress which was deceptively similar to that of the plaintiff and therefore needless to say that defendant trying to encroach the history of the plaintiff, and the reputation, which has been garnered over a period of time, concerning its trademarks and trade dress.

The Court very interestingly observed that a prima facie comparison of the products of the plaintiff and the allegedly infringing products of the defendants reveals this, indeed, to be the case. The defendant packaged their products in a container of similar, even if not identical, shape and size, with white letters on a blue background, the shades of blue also being similar to the naked eye and, perhaps, most significantly, a white semi-circular splash towards the lower half of the container, which at any rate is, prima facie, a feature distinctive to plaintiff's product. It is a settled principle of law that the comparison test is not for identifying the dissimilarities between the product of a plaintiff and the allegedly infringing product of the defendant, but of whether, when seen as a whole, the product of the defendant is deceptively similar to that of the plaintiff. The Court held when the alleged infringed product was holistically seen, there is, prima facie, every likelihood of an unwary purchaser, of average intelligence and imperfect recollection, confusing the product of the defendants with that of the plaintiff. Finally, Court concluded that there was an infringement of the plaintiff's copyright in the artistic work of their 'NIVEA' label.

M/s. Pathanjali Ayurved Limited V. Arudra Engineers Private Limited⁸

The Madras High Court, on 2nd February 2021, set aside an order for an interim injunction issued by a single bench, restraining the appellants from using the mark 'CORONIL' concerning immunity-boosting tablets.

The single bench had previously granted the injunction under Section 29 (4) of the Trade Marks Act 1999, noting that allowing such use would be detrimental to the distinctive character or reputation of the respondent's registered trademark. In the present appeal, the appellants contended that the goods of the respective parties were not similar and came under two different classes of the Nice Classification (Class 1 and 5 respectively). Further, the respondent had registered a composite mark comprising of three elements i.e., droplet symbol with letter 'A' inscribed therein, the name 'CORONIL' and '92-B' across a black background whereas the appellants were making use of one word, 'CORONIL'.

The court observed that the respondent could not claim exclusive rights over a singular part (CORONIL) of the composite mark despite having disclaimed the alpha numerals '92 B' and '213 SPL'. Such exclusive rights could only be acquired through a separate registration as per Section 17 of the Trade Marks Act. It was held that the plaintiff has failed to establish a prima facie case for grant of interim injunction.

CEAT Ltd V. JKM Tyres⁹

The Bombay High Court, on 16th February 2021, while hearing a trademark and copyright combined with passing off infringement suit by Ceat Limited against JKM Tyres granted an ad-interim order restraining the defendants from using on their signage the impugned artwork of CEAT or using the impugned mark or trade dress of CEAT in relation to their products, till the final disposal of the suit alleging copyright and trademark infringement as well as passing off.

The Plaintiff is the registered proprietor of the trademark CEAT used in respect of vehicle tyres and allied goods. Its mark CEAT is a well-known mark. It also has copyright in artistic labels and has obtained the necessary assignments in that regard. The mark CEAT is also depicted uniquely in a stylized font. In February 2020, Plaintiff found Defendant using the mark CEAT under a pirated artwork on the signage of his shop in New Delhi. There is no manner of distinction between the mark Defendant has used and the Plaintiff's mark.

The Court before granting an ad-interim order stated that strangely the Defendant was using the same mark differently. When Plaintiff gave notice, the Defendant began using the slightly different version while still using Plaintiff's registered mark and copyright-protected label. If the Defendant is, in fact, a dealer of tyres, and is an authorized dealer, he may be permitted to use such signage but the Defendant is not and never has been an authorized dealer of the Plaintiff's product and has never had its permission, authority or consent to use this material and the Plaintiff's logo and label as signage. Therefore, this is a case of infringement and copyright theft/piracy. The Defendant could have no conceivable reason to adopt this mark. It is not the Plaintiff's authorized or licensed dealer or distributor. The Defendant has never had any commercial relations with the Plaintiff.

Cinefones V. Cinefones Systems and Anr¹⁰

In an extremely peculiar trademark and copyright infringement and passing off action where the mark in question is only one i.e., "CINEFONES" the Bombay High Court on March 12, 2021, granted an ad-interim injunction pending the hearing and final disposal of the suit restraining the respondents from infringing the plaintiff's trademark and copyright in the impugned mark concerning its overhead projectors, lamp, antenna, receiver, etc. or allied products and all other goods included in class 9.

The Plaintiff claims to be a well-established entity in the field of cinematographic hardware and products. Plaintiff has been using this mark concerning audio-visual equipment including projectors, screens, etc. since January 1947. The design of the mark and the artistic scripting was prepared by one of the Plaintiff's erstwhile partners. The mark has been in continuous use. It is registered in Class 09 under No. 319531 since 1964. It also holds the copyright in the artistic depiction. The Plaintiff thus claims to be the prior user and proprietor of the mark and the holder of copyright. According to the Plaintiff, the Defendant not only has constructive but actual notice of the Plaintiff's prior registration since the defendant had filed a trademark application on 3rd March 2005 for registration of the same mark in Class 09 for electronic goods and after its publication in Trade Mark journal the Plaintiff filed a notice of opposition but the defendant did not appear at the time of hearing of the opposition proceedings and the mark was treated as abandoned for want of prosecution. In January 2020 defendant had surreptitiously obtained registration of the trademark CINEFONES in Class 11 for lighting and other electrical fittings. On 4th January 2021, the Plaintiff's Advocates sent the Defendants a cease-and-desist notice but there is no reply.

The High Court observed that what is peculiar is not only that the Defendants have taken the word mark CINEFONES, which is bad enough, but have also started using the stylized depiction which is the subject matter of copyright protection. This is not a case of similarity at all. Plaintiff's exact mark and the label have been illicitly put in use by the Defendants. The Defendants cannot possibly claim prior use or bona fide adoption. Prima facie there is absolutely no reason to believe that the Defendants' mark can in any way be said to have been honestly adopted. It is nothing but Plaintiff's mark and Plaintiff's artistic work. Court finally held that there is a strong prima facie case and the balance of convenience is with the Plaintiff, to which irreparable prejudice will be caused if reliefs are denied.

¹ *The Indian Performing Right Society Ltd vs Entertainment Network (India); CS(OS) 666/2006.*

² *Phonographic Performance Ltd & Anr vs Cri Events Private Limited & Ors; CS(OS) 1996/2009.*

³ *CremoNetureal Milk LLP & Anr vs Cremo S.A; FAO-COM No.4 of 2020 (O&M).*

⁴ *Roland Corporation v. Sandeep Jain; CS(COMM) 565/2018 & CC (COMM) NO.6/2018.*

⁵ *Nippon Life India Asset Management Limited v. Private Registrant, Digital Privacy Corporation / Abhishek Rai, Amplinno India Pvt. Ltd.; D2020-3125.*

⁶ *GS1 India vs Global Barcodes SL & Ors; CS(COMM) 147/2020.*

⁷ *Beiersdorf AG v. RSH Global Private Limited CS(COMM) 48/2021.*

⁸ *M/s. PathanjaliAyurved Limited vs Arudra Engineers Private Limited; O.S.A. No. 169 of 2020.*

⁹ *COMMERCIAL IP SUIT (L) NO. 3398 OF 2021*

¹⁰ *Cinefones vs Cinefones Systems and Anr COMMERCIAL IP SUIT (L) NO. 4550 OF 2021.*

Copyright Amendment Act

The office of the Registrar of Copyrights in October 2020 had invited industry inputs on the proposed amendments to the Indian Copyright Act, 1957. Due to the changes brought about by COVID-19 pandemic, the creative industries were now performing and evolving with the increased use of the internet, digitalization, and a growingly globalized market for digital contents. In this altering scenario, the Govt. had sought comments and suggestions on whether there was a need for revisiting some of the existing provisions of under the Act, and for due amendments in the act.

FICCI had accordingly reached out to its members seeking inputs on the proposed amendments in the Copyright Act and submitted its recommendations to the Govt. While welcoming the Government's move to bring about necessary amendments in the Act, it was emphasised that the objective should be to make the Copyright legislation forward-looking and bring in clarity in its provisions, which would further strengthen the Indian IP system – a Copyright regime that ensures that creators are rewarded for their efforts and any unauthorised use of their creations is prevented.

The recommended amendments pertained mainly to certain sections of the Act and towards making it future-ready in the backdrop of the growing technological disruptions, including:

- Strengthening Technology Protection Measures (TPM) under the Copyright Act
- Enhancement of damages especially for habitual infringers
- Extended Collective Licensing (ECL) model for copyright societies to address the fragmentation of rights owners
- Need for statutory damages
- Establishment of a central authority for tackling piracy
- De Minimis Usage
- Bringing fair dealing into line with the global trends for a more flexible regime
- Greater Flexibility for Cover Recordings

The complete recommendations from FICCI can be viewed on:

<http://ficc.in/SEDdocument/20528/FICCI-Recommendation-Proposed-Copyright-Act.pdf>

Non-Hearing of Opposition Matters

Based on several grievances regarding the delayed/non-hearing of opposition matters by the trademark office, FICCI had made a representation to the Office of Controller General of Patents, Designs & Trademarks (CGPDTM) bringing attention to the issue.

While it was encouraging that the registration process for a new trademark application without statutory objections and for third-party oppositions has improved; and the pleadings and evidence in opposition proceedings are completed in quick succession, the issue pertains to certain aspects of the opposition and cancellation proceedings before the TMO e.g.:

- Despite completing the pleadings and evidence in most of the opposition files, opposition hearings are not being appointed on merit for several years.

- As regards rectification and cancellation petitions filed before the TMO, there has not been adequate movement in these files for several years even where pleadings are complete

FICCI's representation urged the Office of CGPDTM that a suitable structure be put in place to expeditiously clear the backlog in opposition files by appointing hearings in a chronological order; and to enable virtual hearings for opposition and rectification/cancellation matters that do not require a hearing on merit.

Submission on the Tribunals Reforms (Rationalisation & Conditions of Service) Bill, 2021

On 13th February 2021, the Lok Sabha introduced the Tribunals Reforms (Rationalisation & Conditions of Service) Bill, 2021 (now an ordinance) that proposed to abolish various tribunals, including the Intellectual Property Appellate Board (IPAB), and transfer their functions to the High Courts of India.

FICCI had made a submission to the Government suggesting that the proposal to abolish the IPAB should be re-considered as the move may seriously damage India's credibility as an IP jurisdiction and will lower the country's IP standards. Following are the key reasons cited why IPAB should not be abolished:

- A vibrant and robust IP ecosystem is an imperative for a country like India, seeking to achieve developed economy status by relying on innovation and creativity. Creation and protection of IP is the driver for achieving such aspirational goal.
- The abolition of IPAB, among various adverse effects, will erode the level of certainty and predictability of India's IP ecosystem and its institutions; impact affordable, user-friendly and easy access to speedy justice; lead to increased costs and delays in adjudication, besides ushering in inconsistency in IP law and practice in different parts of the country.
- IPAB has been a critical part of India's IP eco-system and has played a pivotal role in rendering decisions to complex issues involving IP rights. It has had an excellent record of accomplishment - out of the 3793 cases disposed by the IPAB, only 3% have been appealed and less than 1% have been reversed on such appeals.
- IPAB takes away significant burden from the High Court by dealing with a variety of cases on appeal from IPO and Trademark Registry.
- More importantly, IP-related cases often require navigating complex techno-legal issues. Therefore, a specialized central justice dispensation machinery (like IPAB) is crucial in creating uniform judicial standards that results in consistency, predictability and more informed decision making rather than being ambiguous.

Today, when India is aiming to be a top player in innovation and IP creation, it is only befitting that the country has a judicial framework that is both effective and speedy. It needs an ecosystem where stakeholders can continue to truly innovate, safeguard their creations, produce, and help society prosper, knowing that IP rights in the country will be effectively protected.

FICCI's submission on the IPAB Bill is available on: www.ficci.in



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BACKGROUND

- FICCI Launched its unique initiative - FICCI IPFORUM in may 2020 to provide an interface for businesses to resolve their issues pertaining to intellectual property rights and also develop a pool of IP professionals whose knowledge and expertise will benefit the industry at large.

OBJECTIVE

- To create a consortium of legal professionals who are keen to support IP and encourage innovation, brand protection and creativity among various stakeholders.
- To strengthen the IP ecosystem in India and play an important and more comprehensive role in addressing existing and evolving issues in the area of IP in India.

BENEFITS

- Engagement in IP Policy Advocacy
- Networking through various FICCI national & international seminar/conferences
- Speaking/ participating opportunities in various FICCI Webinars:
- Enhanced Visibility for forum members
- FICCI IP Talks
- Several other Benefits

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