

SPORTS AND INTELLECTUAL PROPERTY RIGHTS

M. Pranov Vishnu Arjun * & Mrs. Chameli**

Abstract

The domain of sports can be said to be one of the largest industries among the other industries that prevail. The sports diaspora has brought along with it not only the gaming activities but served other purposes such as recreational, political, and cultural and business purposes as well. The sporting industry has always received encouragement from all the directions. However, with a proliferation in globalization and other developments, the sports industry is emerging to be one of the most commercialized industries.

With the aim of protecting the ownership, Intellectual Property Rights have been adopted by many industries worldwide. Whenever an idea is created by labour and hard work, need for its protection automatically arises. Intellectual Property Rights provide an incentive to the individual for new creations.

The scope of Intellectual Property Rights is immense in the sporting arena. IP Rights are vested in almost every component of the sports industry. They start from Patents which encourage technological advances that result in better sporting equipment. Trademarks and designs contribute to the distinct identity of events, teams and their gear. Copyright-related rights generate the revenues needed for broadcasters to invest in the costly undertaking of broadcasting of sports events to fans all over the world.

This paper speaks how Intellectual Property Rights are used as marketing tools toward the branding of games and connected events, sports clubs, teams, celebrity status which all in turn requires protection to prevent any complications that may arise in future.

Keywords: Sports, Commercialization, Intellectual Property Rights, Trademarks.

* Asst. Professor @ Department of Law, Government Law College, Salem; Contact: +91-9688695241, Email: pranovdragon@gmail.com;

** Advocate @ Coimbatore; Email: chameli.chandran@yahoo.in

INTRODUCTION

Intellectual Property Rights being a global phenomenon is not only recognized in India but in other countries as well. The main aim of IPR is to encourage creativity and innovation and to protect reputation or goodwill that is attached to a brand, by ensuring that the owner of the IP rights gets a fair recognition and reward for his original work or invention through earning his livelihood from it. IP owners can even prevent other people from using or copying their work or invention without their permission until their works come under the scope of public domain. The duration for protection of IP rights is for a limited period of time; for example- in India, Copyright, in certain cases, is protected for a period of 60 years plus lifetime of the author and Patents are protected for the period of 20 years from the date of application of the patent. IP owners can even license, assign or sell their IP rights.

World Intellectual Property Organization (WIPO), a Geneva based specialized agency of the United Nations promotes innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective Intellectual Property system. Intellectual Property Rights are usually associated with manufacturing industry and the main aim of Intellectual Property is to protect the mercantile community. Apart from easing the way for protection of Intellectual property such as patents, copyrights, trademarks, designs around the world, WIPO works to ensure that the benefit of the sports industry are spread wide and deep. Intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, designs.¹ Intellectual Property Rights such as copyrights, trademarks, and designs became a source of significant value to the sporting arena.

SCOPE OF INTELLECTUAL PROPERTY LAW

The scope of Intellectual Property law covers wide aspects of sporting events, Sport brands, etc. IPR bestows IP rights in every sector of the sports field. Starting from Copyrights, in which the Broadcasters require to put into lots of money for broadcasting the sporting events so that, the fans all over the world can enjoy the match. The Patents which promotes innovation and technological advancement will ultimately result in inventing sporting devices. The Trademark protects the goodwill or reputation of a sporting brand. And lastly, Designs protects the aesthetic value of sports articles.

Sporting gears, may be the subject of patent, design, copyright and trade mark rights. The

¹ Available at: <https://sportandrecreation.nsw.gov.au/clubs/ryc/legal/intellectualproperty>

technology used in a swim wear is inventive in nature and therefore can be registered as a patent, the logo printed on the swim wear can be a registered trade mark, the designer can get copyright and the physical design can be registered as an industrial design. These registrations help to protect the value of the unique design and marketing capabilities associated with the sporting gear.²

Another example is a simple sports shoe which could be protected by several IP rights: patents protect the technology used to develop the shoe and designs protect the look of the shoe and trademarks distinguish the shoe from similar products and protect the reputation of the shoe and the copyright protects any artwork and audio-visual creations used to publicize the shoe³. Intellectual Property Rights are also associated with many other aspects of sporting business, such as event promotions, athletes, sponsorship deals and merchandising.

COPYRIGHTS IN SPORTS

Copyright in sports is protected in India under the provisions of the Copyright Act, 1957, vests in various components of sporting events which includes the artwork connected to the trademarks, logos, promotions, slogans, images of a player, event etc. Advancement in communication technologies such as satellites, cable, broadband, and mobile internet have revolutionized broadcast and sports coverage and in turn enabled people around the world to take part in the excitement of major sports events.

India has signed Berne Convention of 1906 for the Protection of Literary and Artistic Works and the International Copyright Order, 1999. Though the fact that the registration of copyright is not mandatory in India and is comparatively easy to protect under the Indian laws, it is advisable to register the copyright in India as the copyright registration certificate is accepted as a proof of ownership of copyrights in courts and by enforcement authorities.

There are various provisions laid down in the Copyrights Act, 1957 which allow for the protection of several components of the sporting events such as the artwork which is associated with the logo, slogan, trademark, etc. Since the Copyright Act does not mandate for the registration of the work of the author, it becomes quite easy for the artwork to be protected as a copyrighted work under the law.

In case of infringement of the artwork of the author, the Copyright Act provides for civil remedies under Section 55 of the Act which states as Permanent, Temporary,

² Available at: http://www.jamaicaobserver.com/business/Sports-and-intellectual-property_8715018

³ Available at: <http://www.wipo.int/ip-sport/en/>

Interlocutory and Mareva Injunctions, Anton pillar order, Accounts of profits or damages and Litigation costs. It also provides for criminal remedies under Section 63 of the Act which states as imprisonment for a cognizable offence punishable with fine.

ROLE OF TRADEMARK IN SPORTS INDUSTRY

A trademark or service mark is a distinctive sign or symbol that uniquely identifies the source of products or services.

Trademarks in sports is protected in India under the provisions of Trademarks Act, 1999 with the presence of features like a logo, captions, taglines, slogans and team names etc. that which are collectively referred as trademarks and that holds commercial value as it creates a level of association with public and fan following and that which is essential for brand value creation in sports teams, clubs, sponsors, athletes.

World Intellectual Property Organization (WIPO's) international trademark registration system called Madrid System enables trademark holders to file a single application for registration in up to 85 countries and to maintain and renew those marks through a single procedure. By an entry on a national trademark register, trademarks are protected and once it is registered, they are valid potentially for unlimited time as long as they are used.⁴

Trademarks have a crucial role to play in the sports industry. When the Sports industry began its branding, it included the characteristics such as logo, mark, taglines, captions slogans, etc. which resulted in the creation of brand value in merchandise, sports club, sportsperson, teams, etc. The brand value of a team name, sports clubs, player and merchandise create a degree of association with the public at large (especially fans), which eventually helps in gaining popularity of any team, player, etc.

Section 135 of the Trademarks Act, 1999 provides for both civil and criminal remedies against infringement or for passing off. Just like the Copyrights Act, the Trademark Act also does not mandate for Registration of the brand so even if any individual who has not registered his brand then also, he can enforce his rights under the law. Violation of a trademark/brand is a cognizable offense and criminal proceedings can be instituted against the infringer.

ROLE OF PERSONALITY IN SPORTS INDUSTRY

Personality Rights in sports has proven to be a significant part in the brand formation of

⁴ Available at: http://iipi.org/wp-content/uploads/2010/07/Sporting_Events_and_Intellectual_Property.pdf

both individual sports person and teams. Even the individual players like Roger Federer, Cristiano Ronaldo and Sachin Tendulkar have become an international brand because of their celebrity status. This celebrity status of the players helps them to gain popularity worldwide and this popularity ultimately turns as a monetary profit for them by doing advertisements or becoming brand ambassadors for a particular brand. Celebrity status prompts different types of image creation, brand advertisement and also helps in generating the revenue. It is required that the federations, coordinators, team owners and athletic equipment producers must choose for registration of their team names, logos, settings, subtitles, slogans and mottos registered as trade names under the Indian Trademarks Act 1999, which will make their life simple for ensuring their trade names in Indian courts.

An activity with respect to the players to register their names, photos and caricatures as trade names/brands ought to likewise be the standard of the day. Simple association of the name of a team, their logo or a team, could offer extraordinary mileage to the individual or entity utilizing such name or logo. It is a misfortune to the team, team owner, player and an unjustifiable profit for the entity partner such name or logo for their own business benefits, without taking any authorization, or paying any license fee or royalty. An unsanctioned utilization of the brand names by a 3rd party without the assent or license of the team owner of such trade names may likewise bring about injury to the goodwill of the parties involved, additionally resulting in unfair competition, damage to reputation and unfair trade practice.

ROLE OF DOMAIN NAME IN SPORTS INDUSTRY

Domain names in sports which are also treated as trademarks by Indian courts plays a substantial role in protection of intellectual property rights associated with sports. Domain names builds brand image, portability and search engine optimization. WIPO, among others, operates a quick dispute resolution procedure for website domain names based on internationally-accepted rules.⁵

Indian courts generally place domain name under the purview of Trademark only. It plays a vital role in protection of IP rights associated with sports. Several information is being communicated and sporting events are being broadcasted through internet, which has not only obtained enormous market shares in creation of brand value, but also has given many occasions to the cyber squatters for committing a crime, just by taking the advantage of the uncertainty which may be accountable solely to domain names. Through website, advertising as well as creating brands have become quite easy.

⁵ Available at: <http://www.wipo.int/ip-sport/en/branding.html>

In order to create brand recognition, many sponsor companies are engaged in selling of tickets of a sport event online, online shopping websites for selling branded merchandise, etc., so as make the experience of a customer comfortable and better. As we all are aware of the fact that internet is an efficient way to spread awareness about the teams, players and the sporting event. Registration of multiple domain names has become very crucial in order to protect the online gamers, fans, merchandise purchaser, etc. from committing any mistakes which would ultimately lead to the trap of cyber-squatters. It is always advisable to be protected against the brand misuse and trademark dilution by registering the domain names with popular gTLDs, i.e. .com, .gov, .org, etc.

LICENSING AND FRANCHISING IN SPORTS

Licensing and Franchising plays a crucial role in generating revenue through the sporting events, wherein the licensee or the franchisee acquires right to sell an exclusive merchandize of the IP owner, which is related to the exclusive teams, clubs, etc. with the intention of creating goodwill or reputation of the brand name. The sole objective behind the exclusivity is generating brand name and increasing the sale of the merchandise.

There are various other ways in which profit can be generated through licensing or franchising the IP rights, which are vested in online games, Restaurant and bar services, broadcasting rights including Media rights, TV/DTH services, etc. Ignorance is bliss for those people who want to enjoy the privileges of IP rights owned by others and gain profit out of it, merely by denying the fact of existence of their IP rights. But ignorance is curse for the IP owners who are unsuccessful in educating people and even failed to give notice to the party, who is exploiting or planning to exploit their IP rights without paying any royalty.

The Brand and Content Protection Guidelines which provides for the do's and don'ts shall be made an important mechanism for all IP owners who are associated with the sporting industry. The companies that provide sponsorship for the sport events generally invest lots of money in the organization and promotion of the sporting arena. So, therefore, they should incorporate such an elaborative brand and content protection guidelines, which must be uploaded on their official websites and must be advertised in order to prevent the misbranding/misuse of IP rights.

AMBUSH MARKETING

Ambush Marketing means “an attack from hidden position”. Protection against ambush marketing is one of the most important aspects of Intellectual Property Rights in sports.

Ambush marketing has acquired a huge space in sporting events and it refers to companies promoting their brands or products by associating them with a team, league or event without paying for the privilege.

The controversy between Pepsi and Coca Cola in *Pepsi Co., Inc. & Others v. Hindustan Coca Cola Ltd. & Another*⁶, is a classic example of ambush marketing in India where in the court issued a permanent injunction to the defendant by restraining its advertisements being broadcasted.⁷

The creativity of these ambushers makes it necessary to adopt specific national legislation in order to prevent ambush marketing and also to implement strategies to counter the threat of ambush campaigns by securing trademarks, copyright registrations for all images, logos in sports events by entering into contractual obligations with explicit terms and conditions for the use of these Intellectual property rights. Many countries have already considered specific ambush marketing legislations as sporting events are becoming more and more lucrative business.

TRADESECRETS IN FIELD OF SPORTS

Trade Secrets, in India there is no separate statute for protection of trade secrets and in sports industry there is always possibility of some information which requires confidentiality to be maintained. Trade secrets encompass manufacturing or industrial secrets and commercial secrets, formula, practice, process, design, instrument, pattern, commercial method, or compilation of information which is not generally known or reasonably ascertainable by other.⁸

CONCLUSIONS AND RECOMMENDATIONS

The commercial sports triggers core IPR related issues such as Trademark, licensing and franchising, Copyright, etc. These IP rights demands that its protection in any sporting events like the one mentioned above are inevitable in nature. So that in order to protect such IP rights, a proper legal contractual agreement must be drafted which would protect all forms of intellectual property associated with the sporting events, players etc. Sports industry can generate revenue through various ways. And it is very crucial for the Indian government to encourage and promote its sport and culture so that it could be raised up to international standards.

⁶ 2003 (27) PTC 305 Del

⁷ Available at: <http://blog.ip.com/2012/02/intellectual-property-rights-in-sports/>

⁸ Available at:

<http://www.mondaq.com/india/x/456442/Trademark/Intellectual+Property+Rights+IPR+For+Startups>

India needs sports law experts so as to promote ethical practices in sports industry. It is indeed need of the hour that the owners invest resources in registration, proper licenses and contracts in order to protect the value the sports and sporting assets as well as, actively protecting intellectual property from infringement and abuse. It is recommended that the legal contractual agreements must be in place protecting all forms of intellectual property created in sporting events, teams, individual players etc., so as to protect all the stake holders and their financial interests.

India should frame legislation for personality rights and also try to build a successful sponsorship program so as to protect the image and status of celebrities of our country like other countries of the world. It is recommended that India should come up with sports business model which could build an effective IP rights strategy that could address the use of patents, trademarks, designs in sports as well as use of domain names; which could address media and broadcasting rights.

In order to maintain balance Intellectual Property rights with the public interest, free access to televised sports events is an attractive approach. It is also recommended to adopt alternative dispute resolution techniques for enforcement of rights involving sports disputes. As a developing country and having a serious intent to attract and sustain investments, India needs to enact a law to protect confidential information particularly in sports industry so to act as an adequate deterrent for prospective offenders. Protecting and enforcing Intellectual property in sports industry is an essential component so as to ensure that sporting events remain a possible financial actuality in India.

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