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**COMPUTER ENGINEERING**

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**CANDIDATE’S DECLARATION**

I, Mr. Ritik Singh 2K19/CO/319 student of B.Tech (COMPUTER Engineering), hereby declare that the project Dissertation titled “McDonald’s Vs McCurry TRADEMARK INFRINGEMENTS” which is submitted by me to the Department of Computer Science and Engineering, Delhi Technological University, New Delhi in partial fulfillment of the requirement for the award of the degree of Bachelor of Technology. It is original and not copied from any source without proper citation.

This work has not previously formed the basis for the award of any Degree,

Diploma Associateship, Fellowship, or other similar title or recognition.

Date: 01st May 2022

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**CERTIFICATE**

I hereby certify that the Project Dissertation titled “McDonald’s Vs McCurry TRADEMARK INFRINGEMENTS” which is submitted by, Mr. Ritik Singh

2K19/CO/319, Department of Computer Science and Engineering, Delhi Technological University, New Delhi in partial fulfillment of the requirement for the award of the degree of Bachelor of Technology. Is a record of the project work carried out by the students under my supervision, to the best of my knowledge this work has not been submitted in part or full for any Degree or Diploma to this University or elsewhere.

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Thank you

**ABSTRACT**

This Case Study is about the case of **“McDonald’s vs McCurry**” over Trademark Infringement. This case brought my attention to this topic and I decided to uncover the whole plethora of how MNCs work, the way they are securing their Trademarks as well as misuse and manipulation of the law and their “dirty secrets”.

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**Title**

McDonald’s Vs McCurry Trademark Infringement Case

**INTRODUCTION & MOTIVATION**

We have all studied the Trademark and Trademark laws protecting the rights of individuals, creators, and companies on this subject. This has opened my eyes to a lot of action that has been going on in this field for a very long time and it seems very interesting. So I decided to take the initiative and share with all of our classmates regarding one such industry where this law is prevalently used. This is the Fast food Chain.

The motivation behind the project was to explore the functioning and

implementation of these laws in real-life scenarios and to see how it is used and sometimes manipulated, like any other law, for personal gains. Here I will be discussing the implementation of these laws in the US market as the number of high profile cases originates here only.

**OBJECTIVE OF THE REPORT**

The objective of this project is to understand and get informed regarding the following:

● How much importance a prefix can be

● How the MNCs want to dominate in their respective fields

● How MNCs secure their trademarks

● Case Studies

**CASE STUDY:**

* **The "Mc" Family of Marks in the United States**

According to its annual report for 2008, McDonald's franchises and operates 31,967 restaurants worldwide. Clearly, this enormous and well-known company is taking advantage of the global marketplace, and its goal is to expand its presence further in the 118 countries it occupied at the end of the fiscal year 2008. According to McDonald's in APMEA (Asia/Pacific, Middle East, and Africa), "[o]ur goal is to be consumers' first choice when eating out. To achieve this goal, locally-relevant strategies surrounding convenience, breakfast, and branded affordability are essential in this diverse and dynamic part of the world."' This expansion of territory also comes with an obligation of litigation.

A large corporation such as McDonald's must feverishly police the reputation and goodwill of its company. A large part of that policing involves protecting its trademarks from dilution, "genericide" and misappropriation. I will discuss McCurry Restaurant (KL) Sdn Bhd v. McDonald's Corp. (hereinafter McCurry), where a Malaysian court determined that the "Mc" prefix coupled with a food-related word was allowable even when it was the name of a fast-food restaurant.

* **THE McCurry LOWER COURT**

One small Malaysian family-owned restaurant won an eight-year-long legal battle over McDonald's American-based powerhouse.'13 The following will discuss the case as it progressed through trial along with an analysis of the cases that influenced it. In 2001, McDonald's commenced an action at the High Court of Malaysia against the owners of McCurry Restaurant, P. Suppiah, and his wife Kanagewary. McCurry restaurant offers Indian and Malaysian cuisine and is promoted based on the concept of a fast-food restaurant. At the time of this decision, McDonald's had over 30,000 outlets worldwide, with 185 in Malaysia.

McDonald's had been present in Malaysia since 1982, while McCurry was established in 1999.17 McCurry has a "Western-style ambiance." At the time of this suit, McDonald's had registered its trademark as having the said prefix "Mc" in countries around the world, including Malaysia." The lower court acknowledged that McDonald's had created a family of marks in relation to its products and services. The court stated that by "reason of its established goodwill and reputation created and generated by the extensive trade and publicity campaigns the prefix 'Mc' is distinctive of the plaintiff in Malaysia and around the world in connection with food, beverage, and restaurant business."

The court analyzed the case under the tort of 'passing off, under both the traditional classic form and the extended form. For the traditional form, McDonald's had to prove that they had acquired the necessary goodwill by their endeavors or those of their predecessors. Next, proof of acts by McCurry which were and are calculated to damage the goodwill and reputation of McDonald's had to be proved, along with a corresponding unfair advantage. For McDonald's to prevail under the extended form of passing off, all they had to show was that there was an "appropriation of their trademark resulting in loss and damage."

Among other defenses, the defendant stated that the defendant's trademark "McCurry" was created based on the abbreviation of "Malaysia Chicken Curry" which is distinctly a Malaysian concept. The defendant further asserted that McDonald's had no exclusive right to the prefix "Mc." The court concluded after hearing much testimony that the plaintiff had proven all elements to show the existence of the act of passing off both under the traditional and extended form. The court stated that it was their "duty to protect the goodwill and reputation of the plaintiff which has been legally recognized worldwide."

* **THE McCurry COURT OF APPEALS**

The Court of Appeals disagreed and reversed the decision. The Court of Appeals determined that the evidence did not support the conclusion that McCurry restaurant was passing off McDonald's business as their own. The conclusion of the court was that the "irresistible inference to be drawn from the totality of the evidence was that the defendant's signboard could not result in reasonable persons associating McCurry with the plaintiff's mark."

In its claim, McDonald's pled that McCurry had copied and adopted the distinctive "Mc" identifier for its own food and beverage outlet. McDonald's said that this was done with full knowledge of the plaintiffs' proprietary rights in the goodwill and reputation of its trade and business in food and beverages conducted under the distinctive "Mc" identifier.

In discussing the cause of action resting on the tort of passing off, the court analyzed the history of the tort and concluded that the defendant need not misrepresent his goods to be those of the plaintiff if he misrepresents his goods or his business as being in some way connected or associated with the plaintiff's goods or business. The elements of passing off include misrepresentation by the defendant made in the course of the trade, calculated to injure the goodwill and reputation of the plaintiff from which the plaintiff must suffer resulting damages.

The court determined that the defendant did not represent his business to be that of the plaintiff. The court of appeals looked at the mark or get-up or logo as a whole and not merely an element in the whole. McDonald's get-up consisted of a distinctive golden arched 'M' with the word McDonald's against a red background.' McCurry's signboard carried the words 'Restoran McCurry' with the lettering in white and grey on a red background with a picture of a chicken giving double thumbs up along with the words 'Malaysian Chicken Curry. Therefore, the defendant's presentation of its business is a style and getup which is distinctively different from that of the plaintiff.

The Court of Appeals was also persuaded by the fact that the items of food available at the McDonald's outlet all carry the prefix "Mc" but none of the food items served at McCurry's restaurant carry the prefix "Mc." The third factor the court discussed was that the type of food available in the plaintiff's outlet and the defendant's restaurant was very different in that the former served fast food, where the later catered only typically Indian and local food. Lastly, the court determined that the type of customers who patronize the plaintiffs' outlets are very different from those who eat in defendant's outlet.

The Court of Appeals believed that just because the defendant chose the name McCurry, this cannot by itself lead to the inference that it sought to obtain an unfair advantage from the usage of the prefix "Mc." It would have been different if the defendant had offered to its customers items that were labeled either the same as or similar to those sold by the plaintiff, for example, McFish or McLamb. Criticizing the lower court's decision, the Court of Appeals stated that it was an error to assume that the respondent had a monopoly in the use of the prefix "Mc" on a signage or in the conduct of business. McDonald's of course appealed this decision to the Malaysian Federal Court, the country's highest court, which then ruled that McDonald's could not appeal against the lower court's verdict.

**MY TAKE**

* Based on the Principles of Consumer Behaviour, I suggest that Mccurry was at wrong-footing and is infringing on the McD's Trademark and is Deceiving. Customers even if a minority by banking on the brand image of McDonald's.
* The McCurry Mark is closely similar to McD's.
* It may be argued that they have a different customer segment to which they cater too.
* But, their signage is represented using the prefix 'Mc' in the same manner and color scheme of Mcdonald's mark leads us to the conclusion that it is trying to capitalize on Mcdonald's goodwill and reputation.
* If the 'McCurry Mark is represented in a different way and adopted another color scheme, they could have been proven not guilty.

**CONCLUSION**

These decisions could chill the expansion of McDonald's and other American companies from moving across borders and into uncertain legal terrain. Although it has increasingly become more popular to cheer for the little family-owned company in these types of disputes, one must remember that about 75% of McDonald's restaurants operate as independent franchisees and are staffed by local residents.' This largerthan-life corporation was founded in the mid-1950s when Ray A. Kroc opened a single restaurant in Des Plaines, Illinois. Kroc paid Richard and Maurice McDonald several million dollars for the right to use the mark. Therefore, at one time, McDonald's was a small family-owned business the difference is that Mcdonalds' has since created in itself a mark matched by none other.

When questioned about the McCurry decision, a McDonald's spokesperson said the company respects the court's decision, and "will continue to vigorously defend our trademarks and brand around the world as we always have." The corporation has a network of volunteer informants in every city and hamlet in the country searching for any possible trademark violations. McDonald's has asserted that one of the reasons they have policed so heavily is a response to the fate of trademarks that were not properly protected, such as Xerox, Windbreaker, Thermos, and Kleenex. After all, according to Merriam-Webster, "McJob" now has the meaning for a dead-end job."' Others have even gone so far as to suggest that the prefix "Mc" has become "shorthand for anything generic."

In closing, I suggest that corporate counsel continue their respect for the local culture when expanding into new populations. However, they also must prepare themselves to take a gracious bow when met with an unfavorable trademark infringement decision. Differences in the laws come from differences in cultures, and perhaps there is no other culture and country in the world that protects their trademarks with so much vigor

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