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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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EXPLORING INTELLECTUAL PROPERTY RIGHTS IN TOURISM SECTOR: INDIAN LEGAL IMPLICATIONS AND INDUSTRY PERSPECTIVES

AUTHORED BY - SRINIDHI S

ABSTRACT

The Tourism industry has witnessed a steady expansion and has become a key contributor to the global business, serving as a major source of income. Being a resilient economic sector in the world, it has become hub for competitive innovations and entrepreneurship. The competitiveness of each destination includes both tangible (such as the geographical places) and intangible (such as the images and slogans like “Incredible India”, “I love NY” and “Malaysia-truly Asia”) resources. Intellectual Property Rights, thus develop with the competitive growth of the tourism industry, fostering the tourism products and the reputational value of destinations. Better understanding of the IP system ensures the exclusive protection of a protected intellectual property, earn recognition and attract investments and market. The paper identifies the main types of Intellectual Property rights used in this sector and how it can enhance the competitiveness. It also aims to analyse IP strategies and policies implemented and recommended by various countries and organizations like destination branding etc. and suggest potential strategies.

INTRODUCTION

Tourism is one of the fastest growing service sectors fostering economic and social development, rising numerous job opportunities and encompassing various businesses and activities related to travel, accommodation, entertainment and cultural experiences. It is a major player in the global economy and an important source of income for developing countries.

The worldwide travel and tourism sector contributed more than 5.8 billion USD to the GDP in 2021. Because of the profitable nature of the journey and tourism enterprise, many countries have invested in legislation and projects to promote its growth. The tourism business is a service-orientated industry

that consists of a variety of different services inclusive of travel, accommodations, the airline area, enjoyment, restaurants, and so on. The World Tourism Organization claims that the volume of trade in the tourism industry has been expanding rapidly and is currently similar to or even surpasses that of exports of meals, vehicles, and oil. It claims that tourism has become one of the most essential assets of earnings for plenty developing countries. (Iplf, 2022)

In a market-oriented and globalised society, intellectual property (herein after referred to as IP) is regarded as a tool for technical and economic growth. The word "intellectual property" refers to categories of property that are created by the human mind, or intellect. Because intellectual property assets are so vital in today's knowledge-based economy, protecting them should be a top concern for corporate success. They include inventions, designs, trademarks, copyrights, patents and trade secrets. These assets provide exclusive rights to owners and prevent unauthorised third parties from benefiting. In the context of the tourism industry, IP protection is crucial for preserving the rights and interests of individuals, businesses, and destinations involved in tourism-related activities. IP legal mechanism strengthens the competitiveness in the tourism industry, as competition is intense and these intangibles play a crucial role in product differentiation and value addition. (Speriusi-Vlad, 2014)

Understanding the relationship between the two, the World Intellectual Property Organisation (WIPO) and the World Tourism Organization (UNWTO) have published a report titled "Boosting Tourism Development through Intellectual Property". This publication aims to outline the relationship between the various IP rights and tourism and recommend ways to use the IP system's full potential to boost sustainable tourism industry. (*Boosting Tourism Development Through Intellectual Property*, 2021)

LITERATURE REVIEW

Intellectual assets are generally known as the drivers of the 21st century knowledge economy and the "crown jewels" of an innovation-driven corporation. They provide significant economic prospects for tourist business owners. Many diverse tourism stakeholders, such as hotels, restaurants, transportation, travel agencies, tour operators, and trip guides, can benefit from intellectual property rights. From a commercial standpoint, it is vital to boost competitiveness through the uniqueness of

the tourism product. The most essential intellectual property instruments in the 'smart marketing strategy' are found in the unique signs system, which includes trademarks, collective and certification marks, and geographical indications. (Punchihewa, 2020)

Intellectual property protection is crucial for creative industries that contribute to tourism experiences, such as music, film, literature, and visual arts. Copyright protection allows creators to control the use and reproduction of their works, ensuring fair compensation and incentivizing the creation of new cultural products. These creative outputs enhance the tourism offerings of a destination, attracting visitors interested in cultural and artistic experiences. (Richards, 2011)

Intellectual property rights may be commercialised, making them especially significant to the tourist industry. They can be used in the promotion or marketing of any commodities, services, activities, products, or places. Companies' competitive advantage can be gained through various factors like business methods, pricing systems, distinctive identity, etc. To protect their logos, tourism businesses might consider design rights and copyright. Design rights, which were previously used to protect the shape and form of industrial objects, have become valuable for protecting logos due to their application to two-dimensional products such as textiles. These factors in the form of promotional materials, brochures booking systems and advertisements are protected under IP rights. (*Intellectual Property and Tourism*, n.d.)

RESEARCH GAP

While existing studies have analysed IP laws and emerging issues in tourism, there is limited empirical research evaluating the on-ground implementation and enforcement of these laws from the perspective of industry stakeholders.

RESEARCH QUESTIONS

1. What are the key IP assets in the tourism industry?
2. How do intellectual property frameworks and mechanisms support or hinder tourism practices?

3. How adequate are existing legal frameworks and enforcement mechanisms from the perspective of industry?

RESEARCH METHODOLOGY

This research is a secondary study. Primary and secondary legal sources were explored extensively in this process. Desk research was carried out by reviewing a variety of sources on the use of intellectual property instruments in the tourist business, including legal literature, case law, specialised publications, and prior studies. Furthermore, empirical evidence was used to assist legal study and analysis of the domestic legal framework.

SCOPE

Trademark

Trademarks enable tourist businesses to position themselves as distinctive in the market. A memorable and unique trademark allows them to develop a strong brand identity that attracts many clients and restricts others from launching a business with the same or a name that is too similar to the trademarked firm. Customers will be able to link a tourism-related business with certain ideas, concepts, feelings, and emotions if the business registers a trademark. (Exy Intellectual Property, 2021)

1. **Brand Recognition:** Trademarks allow tourism businesses, such as hotels, resorts, travel agencies, and airlines, to distinguish their products and services from competitors. Strong and recognizable trademarks can create a positive brand image, build trust among consumers, and enhance brand recognition. This, in turn, can attract tourists and contribute to the success of a tourism-related business.
2. **Destination Promotion:** Trademarks can also be used to promote tourism destinations, representing their unique features, cultural heritage, or natural attractions. These destination trademarks can be used in marketing campaigns, on promotional materials, and in digital platforms to attract tourists and create a distinct identity for the destination. For example, the tagline Kerala- God's own country.
3. **Tourist Services:** These trademarks help consumers identify and differentiate the services offered by different providers, such as tour operators, travel agencies, and transportation

companies. Well-known travel agencies or hotel chains often have trademarks that signify a certain level of quality and reliability, which can influence tourists' decisions when choosing service providers. For example, “A great way to fly” by Singapore airlines, “Fly better” by Emirates.

4. **Souvenirs and Merchandise:** Trademarks are essential for branding and protecting souvenirs and merchandise associated with tourism destinations. Tourists often purchase items as mementos of their travels, and trademarks on these products can indicate their origin and authenticity. Trademarks on souvenirs can also contribute to the overall branding and reputation of a destination.
5. **Event and Festival Branding:** Many tourism destinations organize events, festivals, or cultural celebrations to attract tourists. Trademarks in the form of event names, logos, and associated branding elements are used to create unique identities for these events, which can help with marketing and promotion.
6. **Licensing and Partnerships:** Third parties can licence trademarks in the tourist business, enabling them to use the brand name or emblem in their own products or services. Licencing arrangements may benefit both the trademark owner and the licensee by expanding the brand's reach and providing other revenue sources.

It's important for tourism businesses to protect their trademarks by registering them with the appropriate intellectual property offices. Before adopting a new trademark, the business should conduct a trademark search to avoid conflicts with existing trademarks in the industry. They contribute to brand recognition, consumer trust, and economic growth in the tourism industry.

Patents

A patent is a legal privilege that provides the owner of an invention exclusive rights to that innovation for an exclusive period of time (Ministry of Tourism, Commerce, Industry and Cooperatives, 2023). Patents can have an impact on the tourism industry by fostering innovation, protecting inventions, and encouraging technological advancements in various aspects of the industry.

1. **Transportation and Infrastructure:** Innovations in areas such as aviation, maritime transportation, high-speed rail, electric vehicles, or sustainable transportation solutions may be protected by patents. These developments can enhance travel experiences, improve

- connectivity, and contribute to the overall efficiency and sustainability of the tourism industry.
2. **Accommodation and Hospitality:** Inventions related to hotel technologies, energy management systems, room automation, security systems, or improvements in guest experiences may be protected by patents. These innovations can enhance guest comfort, safety, and convenience, ultimately contributing to a positive tourism experience.
 3. **Information Technology and Digital Solutions:** Innovations in areas such as online booking systems, travel platforms, mobile applications, virtual reality experiences, or data analytics can be protected by patents. These technologies can streamline processes, improve customer engagement, and provide personalized experiences for tourists.
 4. **Tourism Activities and Experiences:** Inventions related to adventure tourism equipment, recreational devices, specialized tour guides, or unique attractions may be protected by patents. These innovations can differentiate tourism offerings, create new experiences, and drive tourist interest in specific destinations.
 5. **Sustainable Tourism Solutions:** Innovations related to renewable energy systems, waste management technologies, water conservation methods, or eco-friendly practices may be protected by patents. These inventions can help minimize the environmental footprint of the tourism industry and support sustainable tourism practices.
 6. **Medical and agritourism:** These types of tourism attract experts of the respective fields to explore the latest inventions of the medical, agricultural or other institutions, that are also protected by patents.

Patents provide innovators legal protection, enabling them to spend in R&D and share their technical advances with the industry. Patents can encourage innovation by offering the patent holder exclusive rights to commercialise their innovations and potentially earn cash.

Collaboration between the tourist sector and innovators can also result in mutually beneficial agreements. Tourism organisations may improve their offers, increase efficiency, and deliver unique experiences to attract and please travellers by employing innovative technology.

Geographical Indications (GI)

A geographical indicator is a label placed on items that have a specific geographical origin and have traits or a reputation that stem from that origin. Because geographical indicator products have a higher

brand price, they contribute to local job development, which may help to reduce rural flight. Furthermore, geographical indicator goods frequently have significant spillover impacts especially in tourism industry. (World Intellectual Property Organization, 2021)

Geographical indications can have a significant impact on tourism, as they are closely linked to the reputation and promotion of specific regions and their products. Here's how geographical indications intersect with the tourism industry:

1. **Destination Branding:** GIs are often associated with specific regions known for producing unique and high-quality products in branding and marketing of a tourism destination. Tourists may be attracted to visit a region specifically to experience and purchase products associated with a particular geographical indication. For example, Pamplona bull run
2. **Culinary Tourism:** GIs are commonly used for food and beverage products, such as wines, cheeses, meats, fruits, and other agricultural products. Culinary tourism, which involves traveling to experience the local cuisine and drink culture, often revolves around GIs. For example, tourists might visit Champagne in France to taste and learn about the region's renowned sparkling wine and Jura Mountains of Switzerland and France to explore the flavours of Comté cheese.
3. **Cultural Heritage:** GIs are closely tied to a region's cultural heritage and traditions. They reflect the unique characteristics and expertise of local producers, often passed down through generations. This cultural aspect can be appealing to tourists seeking authentic and traditional experiences. Tourists may be interested in visiting regions with geographical indications to learn about the history, production methods, and cultural significance of the products associated with those indications. For example, kecak dance of Indonesia, Taj Mahal of India.
4. **Agro-tourism and Farm Visits:** GIs often involve agricultural activities and rural landscapes. Tourists interested in agro-tourism or farm visits may be drawn to regions with geographical indications. They can engage in activities like vineyard tours, olive grove visits, or farm stays, where they can learn about the production processes behind the products associated with the geographical indications.
5. **Local Economy and Sustainable Tourism:** Geographical indications can contribute to the local economy by promoting and supporting local producers and artisans. This can have a positive impact on sustainable tourism development by fostering local entrepreneurship, preserving

traditional practices, and supporting small-scale producers. Tourists interested in sustainable tourism may choose destinations that prioritize the protection and promotion of geographical indications.

It's important for tourism stakeholders, including destination management organizations, tour operators, and local producers, to leverage the potential of geographical indications in their marketing efforts. Collaborative initiatives that combine tourism promotion with showcasing local products protected by geographical indications can enhance the overall visitor experience and contribute to the economic development of the region.

Copyrights

The term “Copyright” refers to the rights of creators over their literary and artistic work. It protects the works of authors, performers and artists from unlawful use and incentivizes them. (Boosting Tourism Development Through Intellectual Property, 2021) Copyright plays a significant role in the tourism industry, particularly in relation to IP protection for various creative works. Here are some key aspects of copyright in the tourism industry:

1. **Marketing Materials:** Copyright protects original works of authorship, including brochures, photographs, maps, logos, websites, and promotional videos used in the tourism industry.
2. **Literary Works:** These include written content in the form of travel guides, itineraries, and tour descriptions. The reproduction or adaptation of these works without permission from the copyright owner constitute copyright infringement.
3. **Visual and audiovisual Works:** Photographs, illustrations, graphics, videos, documentaries, audio recordings of guided tours or audio guides and multimedia presentations used in tourism-related materials are protected by copyright. This includes images of landmarks, cultural sites, and natural attractions.
4. **Architectural Works:** Unique architectural designs of hotels, resorts, and other tourism-related structures are subject to copyright. This means that unauthorized replication or use of the architectural plans or designs infringes the copyright owner's rights.
5. **Tourism Product Differentiation:** Intellectual property protection allows tourism businesses to differentiate themselves from competitors. By developing unique offerings and protecting them through IP rights, businesses can attract tourists seeking distinct experiences. For

example, a hotel with patented sustainable technology or a tour operator with a copyrighted itinerary can stand out in a crowded market.

6. **Database Rights:** In some cases, tourism-related businesses compile and maintain databases of information, such as hotel listings, tourist attractions, or travel-related data. These databases are protected by copyright as compilations.

Businesses in the tourism industry should be aware of the copyrights law and obtain proper licenses for the use of copyright protected material in their marketing products. These rights not just protect the businesses but also cultural institutions like museums and the Ministry of tourism.

Trade secrets

Trade secrets are IP rights on sensitive knowledge that may be licenced or sold. They are the information about a trade or business that are only known to a small number of individuals yet have an economic worth. These are instruments that help and motivate a company's invention, set the groundwork for contracts like Non-Disclosure Agreements (NDAs) and employment contracts, and safeguard a company's market strategy. (Kumbhar, 2023)

1. **Protection of Trade Secrets:** Trade secrets can include proprietary information like customer databases, marketing strategies, pricing models, or unique service offerings. These secrets are valuable assets that companies strive to protect from competitors to maintain their position in the market.
2. **Intellectual Property Rights:** While trade secrets are one form of intellectual property, other forms such as patents, trademarks, and copyrights also apply. For example, a hotel chain may have trade secrets related to its guest loyalty program, but it may also hold trademarks for its brand name and logo. Protecting these intellectual property rights is essential for maintaining brand identity and preventing unauthorized use by others in the tourism sector.
3. **Industrial Espionage:** Trade secrets, particularly in the highly competitive tourist business, are vulnerable to theft or unauthorised disclosure. Industrial espionage, in which rivals seek to obtain access to the trade secrets of another firm, can have catastrophic implications. Tourism businesses must implement appropriate security measures to safeguard their trade secrets, both physically and digitally, to prevent economic loss and reputational damage.
4. **Innovation and Competition:** Companies continuously seek to develop new products, services,

or experiences to attract tourists. Trade secrets often play a significant role in fostering innovation within organizations. Maintaining the confidentiality of these secrets allows companies to maintain a competitive advantage and drive growth in the tourism sector.

5. Collaborative Partnerships: In some cases, trade secrets may be shared between tourism businesses engaged in collaborative partnerships. For instance, when two hotel chains collaborate on a joint marketing campaign, they may exchange trade secrets related to their marketing strategies or customer segmentation techniques.

Designs

"Design" refers to the look of some or all of a product as a consequence of aspects such as the object's lines, contours, colour, form, texture, or materials, or its ornamentation. A registered design gives the owner the right to assign, transfer, licence, or utilise. (Designs Explained, n.d.)

1. Architectural and Interior Designs: In the tourism industry, architectural and interior designs play a significant role in creating unique and distinctive infrastructure for hotels, resorts, restaurants, and other tourism-related establishments.
2. Branding and Logos: These distinctive elements ensure that consumers can easily distinguish between different tourism brands and helps businesses build brand recognition and reputation.
3. Packaging and Product Designs: Unique and visually appealing packaging designs for travel products, souvenirs, or promotional materials can contribute to the overall experience and brand image.
4. Website and User Interface Designs: With the increasing prominence of online tourism services, the design of websites, user interfaces, and mobile applications has become crucial. These designs can be protected under design patents or registered designs, ensuring that the visual appearance, layout, and graphics of a website or application are not copied or used without permission.
5. Industrial Design Protection: Industrial design protection offers legal rights to the visual ornamental features of a product. This includes the design of furniture, fixtures, equipment, or transportation vehicles used in hotels, resorts, or tourism facilities. Registering industrial designs can prevent others from manufacturing, selling, or using identical or similar designs, providing a competitive advantage to tourism businesses.

These designs can be protected through copyright and design rights, which cover the specific aesthetic features and visual aspects of a product's design.

RESULTS AND DISCUSSION

IN INDIA

Trade Marks Act

The Trade Marks Act, 1999 and the Trade Marks Rules, 2002 (as amended) govern trademark protection in India. Businesses in the tourism industry, such as hotels, resorts, and travel agencies, often rely on trademark protection to safeguard their brand identities in the form of distinctive logos, names and slogans. The “Incredible India” logo has been registered under the Trademark Act 1999 in the name of the Ministry of Tourism, Government of India. Under the "Incredible India" byline, the Ministry of Tourism has conducted massive media campaigns in both foreign and domestic markets, and it is now one of the most established and recognised brands in the world. (GOVERNMENT OF INDIA MINISTRY OF TOURISM, 2011)

In *Sony Corporation v. K. Selvamurthy* (2021), Sony Corporation sued a sole proprietor running a tours and travel firm under the name Sony Tours and Travels for trade mark infringement, citing dilution of its well-known 'SONY' trade mark. After reviewing the evidence, the District Court decided that Defendant had not unjustly exploited or harmed Plaintiff's SONY mark's distinctive character or reputation as Sony Corporation's business is limited to electronics and media, as opposed to the defendant's tours and travels business. The Court further acknowledged that there was no consumer confusion as a result of the Defendant's use of the word "Sony." Furthermore, the court noticed the plaintiff's unreasonable delay in approaching the court and fined the defendants Rs. 25,000 in costs.

In *ITC Limited v. Maurya Hotel (Madra) Pvt Ltd* (2021), the Madras High Court allowed the plaintiff to add a trade mark infringement remedy to a passing off suit based on the plaintiff's later registration of the trade mark. The Court held that adding a remedy is allowed and helps to avoid several lawsuits and that the finding may alter if the plaintiff's claim was for conversion from passing off relief to an infringement remedy. (Garg, 2022)

Patents Act and Patents Facilitation Programme

Intellectual property (IP) rights are controlled by national legislation, which must be in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) for WTO members. The Patents Act, 1970 included significant provisions aimed at lowering the societal costs of foreign-owned patents. It abolished patents on medical and food items, decreased the life of chemical process patents, and considerably increased the availability of forced licencing. This gave rise to a thriving Indian pharmaceutical generic pharmaceuticals sector. (*An International Guide to Patent Case Management for Judges*, n.d.)

In the case *ITC Limited vs. Britannia Industries Limited*, 2017 (70) PTC 66 (Del) ITC Limited, a diversified conglomerate with interests in hospitality and tourism, filed a patent infringement suit against Britannia Industries Limited, a food processing company. ITC alleged that Britannia's packaging design for its biscuits was similar to ITC's patented packaging design, which ITC claimed was distinctive and associated with its hospitality and tourism offerings. The Delhi High Court granted an interim injunction in favour of ITC, restraining Britannia from using the infringing packaging design. The case highlighted the significance of protecting patented designs associated with tourism-related products and services.

Several patents based on Indian Traditional Knowledge have been awarded to third parties inadvertently across the world. Calls for traditional medical knowledge protection are frequently based on a number of cases involving misappropriation by unauthorised third parties who have patented compounds derived from traditional medicines without the prior consent of traditional medical knowledge holders and without fair compensation. Examples of such patents include the use of turmeric to treat wounds, neem's anti-fungal qualities, and a diabetic drug derived from jamun extract. (Mukherjee, 2013)

The Department of Science and Technology, which is part of the Ministry of Science and Technology, has been conducting the Patent Facilitation Programme since 1995. It has created a Patent Facilitating Cell at the Technology, Information, Forecasting Assessment Council (a departmental autonomous entity) and, as a result, 26 patent information centres in various states. Patent enabling cells and patent information centres raise knowledge of and provide support in safeguarding intellectual property

rights at the state level, including patents, copyright, industrial designs, and geographical indications. To expand the network, these centres have also constructed IP cells in universities throughout their respective states. They also provide continuous technical and financial help to the government, research and development agencies, and academic institutions in the filing, prosecution, and maintenance of patents.

Geographical Indications Act

The Geographical Indications of Goods (Registration and protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2020, govern the protection of geographical indications in India. In the tourism industry, GI protection can be relevant to region-specific products like handicrafts, textiles, food items, or natural resources. GI registration preserves the distinctiveness and cultural heritage associated with such products, attracting tourists seeking authentic experiences. In India, several tourism-related products have obtained GI tags, such as Darjeeling tea, Kanchipuram silk sarees, Amroha Dholak, Kashmir Saffron and Pashmina shawls. These GIs help prevent unauthorized use of the geographical names and protect the quality and reputation of the products.

In *The Scotch Whisky Association & Another v. Golden Bottling Ltd.*, 129 (2006) DLT 423, 2006 (32) PTC 656 Del, the Scotch Whisky Association sued Golden Bottling Limited for infringement of geographical indications, claiming the company was manufacturing "Red Scot" which was misleading consumers. The Delhi High Court heard the case, which was not based on the UK Scotch Whisky Act, 1988, and the Scotch Whisky Order, 1990, which granted a geographical indication to the product. As the product was not registered as a Geographical Indication (GI) in India, the court could not apply the definition, and action was only available through the tort of passing off. The case was settled outside the courts. (Sunipun, 2017)

In *Taco Bell Corporation vs. Taco Bell*, 2000 PTC 554 (Bom), the plaintiffs were the proprietors of a network of restaurants known as "TACO BELL" in numerous countries, including India. Defendants, who operated their businesses under the name "Dunhill Fast Food" at first, eventually changed their name to TACO BELL. Affidavits from three individuals who said that they believed the Defendants' business was a branch of the Plaintiff's were included as evidence, and an interim

injunction was granted. (*Vakilsearch*, n.d.)

Copyright Act

The Copyright Act, 1957 and Copyright (Amendment) Rules, 2021, govern copyright protection in India. It grants exclusive rights to creators of original literary, artistic, musical, and dramatic works. Tourism businesses need to ensure that they have proper authorization or licenses for using copyrighted works and avoid infringing on the rights of others. Copyright protection also extends to architectural works, which can be relevant in the context of heritage sites, museums, and other tourism-related buildings.

In *Westin Hospitality Services Ltd. Vs. Caesar Park Hotels & Resorts Inc.*, 1998 IPLR 189 (Mad.), the plaintiff used WESTIN as a service mark for its hotel business in several countries, except India. Westin was part of their subsidiary's corporate name. The defendants provided consultancy services for hotels and resorts and an automatic hotel reservation system since 1989. The plaintiffs' materials were insufficient to establish goodwill in India for the mark. On appeal to the Supreme Court, the interim order was modified, allowing the defendants to use WESTINN as part of their corporate name, with the condition that "No connection whatsoever with Westin Hotels & Resorts" be added in letter heads and advertisements. (*Vakilsearch*, n.d.)

In the case *Ritu Kumar vs. Biba Apparels Pvt. Ltd.*, **230 (2016) DLT 109**, renowned Indian fashion designer Ritu Kumar filed a copyright infringement suit against Biba Apparels Pvt. Ltd., a popular apparel brand. Ritu Kumar claimed that Biba had copied her original textile designs in their garments. The Delhi High Court found in favor of Ritu Kumar, stating that the designs were original and protected by copyright. The court granted an injunction restraining Biba from manufacturing or selling the infringing garments and awarded damages to Ritu Kumar. (Devadhar, 2023)

Designs Act

The Designs Act of 2000 intends to encourage the production of unique, original ideas while balancing conflicting interests by allowing the owner a time-limited exclusive right to utilise registered industrial designs. The Act includes provisions for design registration, copyright in registered designs, industrial and international exhibits, restoration of expired designs, penalties for

violation of registered designs, and other topics. (Garg, 2022)

"Kerala - God's Own Country" is a well-known tourism slogan used to promote the state of Kerala in India. The logo associated with this slogan features a green-colored, stylized leaf with the words "God's Own Country" written below. The logo represents Kerala's lush green landscapes, serene backwaters, and abundant natural beauty, reflecting the state's unique selling proposition as a tourist destination. This logo is registered under the Designs Act and protects the exclusive right of The Kerala Tourism Development Corporation (KTDC). This destination brand resulted in significant growth in the state of Kerala and served as a tremendous inspiration for the other of India's states to establish their own destination brands and marketing strategies. Other such designs can be seen in the railways in form of the SMART coaches, Vande Bharat express, Tejas Express, etc.

In *Hello Mineral Water Pvt. Ltd. versus Thermoking California Pure*, 2000 (56) DRJ 700, the issue concerned a cylindrical-shaped water dispenser. The Delhi High Court ruled that simply form or shape is insufficient for innovation. The ultimate test is to examine the design with a trained eye in order to distinguish between the previously published design and the registered design. (Garg, 2023)

Traditional Cultural Expressions (TCEs)

India recognizes the importance of protecting traditional knowledge and folklore associated with its diverse cultural heritage, including traditional medicine systems like Ayurveda, yoga, or indigenous practices. Traditional Knowledge (TK) and Traditional Cultural Expression (TCE) that reflect a community's cultural and social identity are local community innovations and creative expressions, as well as products of creative intellectual activity, that must be protected and safeguarded to avoid misuse. Traditional cultural expressions, sometimes referred to as traditional knowledge or traditional cultural heritage, are manifestations of traditional culture and folklore that are passed down through generations. In the tourism industry, TCEs such as traditional dances, music, handicrafts, and culinary practices often play a significant role. Protecting TCEs involves addressing issues of misappropriation, unauthorized commercialization, and cultural exploitation. In India, efforts have been made to protect TCEs through various legal mechanisms, including the Biological Diversity Act, 2002, the Traditional Knowledge Digital Library (TKDL) and the Traditional Knowledge Resource Classification (TKRC).

The Traditional Knowledge Digital Library (TKDL) is a pioneering endeavour in India to conserve and prevent the theft of Indian traditional medical knowledge. It was founded in 2001 as a partnership between the Council of Scientific and Industrial Research and the Government of India's Ministry of Ayush. The Council of Scientific and Industrial Research is a modern research and development organisation that was a pioneer in India's intellectual property movement. With the help of information technology tools and an innovative classification system called the Traditional Knowledge Resource Classification, the TKDL has overcome the language and format barrier by systematically and scientifically converting and structuring the available contents of ancient texts on Indian systems of medicine into five international languages - English, Japanese, French, German, and Spanish. It has also established international standards and specifications, hence improving the quality of research and examination on Indian TK. (*An International Guide to Patent Case Management for Judges*, n.d.)

Cell for IPR Promotion and Management, constituted under the National Intellectual Property Rights Policy

On May 12, 2016, the Central Government's Cabinet of Ministers adopted the National Intellectual Property Rights Policy. This policy outlined a future path for intellectual property rights in India and offered various proposals. Following one of the 2016 policy's recommendations, a specialised professional body - the Cell for IPR Promotion and Management - was established under the auspices of the Department for Promotion of Industry and Internal Trade, and it has been instrumental in advancing the policy's objectives and visions. Since the policy's approval, the cell has sought to change the country's IP landscape, which has included, IP rights awareness programmes in over 200 institutions for industry, police, customs, and the court; reaching out to remote regions using satellite communication (EduSat); emphasising on generating e-content and spreading material via online means; incorporating IP rights content in the National Council of Educational Research and Training commerce curriculum; and holding contests for high school and college students in collaboration with business to cultivate the "innovative spirit," such as the production of mobile applications, movies, and online games.

In association with the European Union Intellectual Property Office, the Cell for IPR Promotion and Management produced India's first IP mascot, "IP Nani," as part of the awareness campaign. IP Nani

is an animated granny that sends forth messages on intellectual property protection and enforcement. There is also a series of animated videos on intellectual property rights for school students on YouTube. (*An International Guide to Patent Case Management for Judges*, n.d.)

Intellectual Property Office (IPO), Intellectual Property Facilitation Centres (IPFCs) and Office of the Controller General of Patents, Designs and Trade Marks

The Intellectual Property Office (IPO), Intellectual Property Facilitation Centres (IPFCs), and the Office of the Controller General of Patents, Designs, and Trade Marks play important roles in promoting and protecting intellectual property rights in India. While their direct impact on Indian tourism may not be significant, they indirectly contribute to the growth and development of the tourism industry through various means.

IPO: The Intellectual Property Office is the primary government agency responsible for administering and managing intellectual property rights in India. It grants patents, trademarks, and copyrights to individuals and businesses, ensuring that their innovative ideas, inventions, and creative works are protected. While the IPO's primary focus is not on tourism, it indirectly supports the tourism industry by safeguarding the intellectual property of businesses operating in the sector. This encourages innovation and creativity in the tourism industry, leading to the development of unique tourist attractions, services, and products.

IPFCs: Intellectual Property Facilitation Centres are established by the government to provide assistance and support to individuals and businesses in matters related to intellectual property rights. These centers offer services such as patent searches, trademark registrations, and copyright filings. While IPFCs may not have a direct role in tourism, they can assist tourism-related businesses, such as hotels, resorts, and travel agencies, in protecting their intellectual property assets. For example, they can help in registering trademarks for tourism brands or protecting unique designs related to hospitality services.

Office of the Controller General of Patents, Designs, and Trade Marks: This office is responsible for the examination and granting of patents, designs, and trademarks in India. It ensures that the intellectual property rights granted meet the legal requirements and provides legal protection to the

owners. While the office's primary focus is not specific to tourism, it plays a significant role in protecting intellectual property rights related to tourism businesses, such as innovative travel technologies, hospitality designs, or unique tourism-related products. This protection encourages businesses to invest in research, development, and design in the tourism sector, which can enhance the overall tourism experience.

In *Intellectual Property Attorneys Association v. The Controller General of Patents, Designs & Trade Marks & Anr.*, 2019 (80) PTC 486 (Del), The Intellectual Property Attorneys Association filed a Writ Petition against the Trade Marks Office for not giving speaking orders for refusal of trade mark registration. They argued that Rule 36 of the Trade Marks Rules, 2017 is inconsistent with Section 18(5) of the Trade Marks Act, 1999, which mandates the Registrar to record the grounds for refusal or conditional acceptance in writing. The High Court of Delhi ruled that Rule 36 is arbitrary, unreasonable, and inconsistent with the mandatory provision of the statute. The Registrar of Trade Marks is directed to strictly implement Section 18(5) of the Trade Marks Act, 1999, and the order containing the grounds must be sent to the applicant within two weeks. (Rastogi, 2020)

LIMITATION

Latest Challenges

Intellectual property (IP) law plays a crucial role in protecting the unique assets and creations within the tourism industry. However, the dynamic nature of the industry and advancements in technology have brought forth new challenges for IP protection.

1. **Online Piracy and copyright infringement:** With the rise of internet usage and advanced technologies, unauthorized use and distribution of copyrighted materials pose a significant challenge to the destinations and tourism industry. Businesses of this industry rely majorly on the digital realm and thus protecting and enforcing copyrights become increasingly complex and requires sophisticated monitoring and enforcement strategies. (Lei et al., 2024)
2. **Counterfeiting and Trademark Infringement:** Counterfeit goods, including luxury items, souvenirs, and merchandise, are often sold to unsuspecting tourists, damaging the reputation and economic value of genuine products. Furthermore, the online marketplace has made it easier for counterfeiters to reach a global audience, making it crucial for businesses and destinations to implement robust trademark protection and enforcement strategies.

3. **Protection of Traditional Knowledge and Cultural Expressions:** Indigenous communities and local cultures contribute significantly to tourism experiences, and their traditional knowledge and cultural expressions must be respected and protected. However, the appropriation and unauthorized use of traditional knowledge by businesses and destinations can lead to cultural misappropriation and exploitation. Striking a balance between protecting traditional knowledge and fostering cultural exchange in tourism is a complex challenge that requires collaboration and understanding between stakeholders.
4. **IPR in the Sharing Economy:** Platforms such as Airbnb, Uber and online travel agencies have disrupted traditional business models, raising questions about the scope of IP protection and liability. Though Information Technology Act addresses them as an intermediary, issues on trade secrets in the sharing economy and copyright infringement in user generated content are not fully addressed by the existing laws.
5. **International IP Enforcement and Jurisdictional Challenges:** The global nature of the tourism industry presents challenges in enforcing intellectual property rights across different jurisdictions. Inconsistencies in IP laws, varying levels of enforcement, and the cross-border nature of online infringement make it difficult to combat IP violations effectively. Harmonization of IP laws and international cooperation among countries are necessary to address these challenges and ensure consistent protection for businesses and destinations worldwide. (Ezell & Cory, 2022)
6. **Emerging Technologies and IP protection:** Protecting new forms of creative expression, ensuring the ownership of digital assets, and regulating the use of emerging technologies such as virtual reality, augmented reality and artificial intelligence require continuous adaptation and updates to existing IP laws.

Addressing these challenges will help safeguard the authenticity, economic value, and sustainability of the tourism industry in the digital age.

RECOMMENDATIONS

Conduct IP Audits: Perform periodic IP audits to assess the status, value, and legal protection of your IP assets. Identify any gaps or vulnerabilities and develop strategies to address them. An IP audit can also uncover potential opportunities for IP commercialization or licensing. (*Intellectual Property*

Audits, n.d.)

Collaborate with Industry Associations: Cooperation between industry, communities, voluntary organizations and government agencies is needed for education, enforcement and regular policy reviews. Public-private partnerships for content banks and experience curation using blended IP models can optimize both protection and innovation in tourism.

Documentation and Preservation of Traditional Cultural Expressions: Establishing comprehensive documentation systems, creating databases, and collaborating with relevant stakeholders can help preserve traditional cultural expressions and protect them from misappropriation. (*Documentation of Traditional Knowledge and Traditional Cultural Expressions, n.d.)*

Develop Internal IP Policies: Establish internal policies and procedures to manage IP assets effectively. Educate employees about IP rights, confidentiality, and the importance of respecting third-party IP. Implement measures to monitor and enforce IP compliance within the organization.

Strengthening Enforcement Mechanisms: Enhancing enforcement mechanisms, including increased awareness, training, and capacity-building for law enforcement agencies, can help combat piracy, counterfeiting, and infringement of intellectual property rights.

CONCLUSION

IP rights are crucial in various sectors, including the key source of foreign exchange, the tourism industry, and can enhance competitiveness. They protect brands and related rights, creating a favorable ecosystem for innovation, entrepreneurship, and investment. Properly managed IP rights strengthen the economic sector, creating jobs and promoting social inclusion in developing countries. Strategic modernization of laws combined with collaborative implementation models can pave the way for a sustainable and vibrant visitor industry nationwide. It is essential to include IP techniques for local and regional tourist attractions in national tourism plans and strategies. Major participants in sports and mega-events must be aware of the importance of developing and implementing sound IP plans to enhance the benefits of these events for tourism development.

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