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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

INTELLECTUAL PROPERTY RIGHTS AND SPORTS LAW: NEED FOR ADAPTIVE LAW IN LIGHT OF EMERGING OF SPORTS IN THE WORLD

AUTHORED BY - ADITI MAURYA

INTRODUCTION

As sports are estimated to contribute one to five percent of GDP, they are crucial to the economy and several associated businesses. Indian Premier League (IPL) is the best example to comprehend the relationship between sports, marketing, and business as it relates to the current trend. Every team in this instance has a unique set of marketing materials, player performance plans, logos, taglines, theme tunes, ads, and brand values that are all included in intellectual property rights (IPR). As part of IPR, each of these resources needs to be defended from being exploited by competitors.¹

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Something has no market worth until it can be appealed, therefore in order to be considered for investment, it must have generated some value. According to trademark dilution under Section 29(4)³ of the Trademark Act, these logos and other intellectual property rights have to be secured so that no one else might imitate them or use them in their operations and make money from the well-known image of the players or the team.

¹ 25 Santa Clara High Tech. L.J. 765 (2012).

² Anita Roy, "Shield of IPR around IPL",

³ (2019) PL (IPR) July 91

The owners may suffer significant losses if a third party were to create these marks or designs. They could also damage their reputation by selling subpar goods under the players' or teams' names and confusing customers. Which took place in the well-known PayPal or Paytm case in point. As a result, IP is crucial to the marketing of sports, and sports and IP regulations interact.⁴

IP and SPORTS

In all international sporting events, Money have become extremely important. Beyond all other essential elements of a game, franchising and the branding of sports, individuals, and events have become the most important marketing strategies. As the commercialization of sports continues to rise, unused intellectual property rights (IPRs) entrenched in almost every aspect of the sports sector are being leveraged and made profitable.

Intellectual property rights are important assets that are used as the advertising instruments to promote sports, athletic events, sports teams, clubs, celebrity status, and other associated aspects of sports culture.

There has been a noticeable advancement in the growth of sports in India over the years. Cricket, which is generally considered to be the best sport in the country, is a good example of this claim. A market-oriented approach to sports is likely to appeal to those working in the industry who seek to infuse sports with business ideas. Many sports leagues allow people to profit from sports. The Indian Super League, the Pro Wrestling League, the Hockey India League, and the Pro Kabaddi League are just a few of the numerous sports leagues that exist today.

Sports TV has become a multimillion-dollar industry via years of funding and labor. The way these sports are promoted and offered for sale has changed the lives of a large number of athletes and those employed in the sports sector. Nevertheless, since the risks are so high because of the public's broad interests, some people lie to obtain an unfair edge. To get an edge, they engage in activities such as drug use and game manipulation. To ensure that the participants are not misbehaving and the teams function properly, these teams require a customized set of norms. Investors must also to monitor the management of sports in India.

⁴ Zia Akhtar, "Sports development, legal infrastructure and protecting Intellectual Property rights"

POSITION IN INDIA

Sports moves are protected as sui generis right or a neighboring right under the Copyright Act, but they are not protected as a principal work as they are in the UK. "Performers rights" is the notion used to achieve this. Performers were not granted any such protection prior to the 1994 Amendment Act to the Copyright Act. The 1994 Amendment Act introduced Sections 2(q), 2(qq), 38, and 39, all of which concerned with the rights of performers. "Performance" was defined in Section 2(q) as any live acoustic or visual presentation by one or more artists.

Some games, like hockey, polo, chess, archery, and wrestling, are believed to have their origins in India. Cases involving public order, drugs, safety, disciplinary measures, behaviour, and more general issues like trade restraint, match-fixing, and sports exploitation have all been addressed by the legislation. Sports law also takes privacy rights and defamation into account. India has a track record of performing poorly in international competitions like the Olympics. The absence of uniform sports laws in India is one of the main reasons behind this. A legislation that unites all pertinent agencies and regulates sports is required.

Sports law has developed largely without much assistance from the Indian courts. Adjudication in the sports world often involves applying any applicable laws. It has been noted that courts have refrained from making decisions about issues pertaining to sports. This issue could be linked to the incompetence of Indian courts since issues pertaining to sports require technical knowledge of the gaming industry, which judges in India and other countries lack the necessary training to deliver.

TRADEMARK, BRAND NAMES & LOGOS

PROTECTION IN SPORTS

The purpose of trademarks is to set products and services apart from one another. In order to benefit commercially, many firms are involved in today's sporting events and incorporate them in their logos and trademarks. This is mostly done to draw in viewers or establish a sense of value for the brands associated with the goods utilized in these activities. For instance, Champions Rise is used in FIFA, and each team in the IPL has its own symbol and emblem. It facilitates the fans' ability to connect with the team or match and select their preferred side. Some athletes, like David Beckham, have

registered their names as trademarks.⁵

In the current craze for online gaming, teams and events should have unique brand names so that viewers are able to identify them individually. Should a sports event or team need to make some money, it's critical that they have some level of market recognition, which can be achieved by trademark registration.

Trademarks have a big impact on the sports business. With the introduction of sports event branding through the incorporation of components like a logo, captions, taglines, slogans, and team names (together referred to as trademarks), brand value is generated in athletic teams, organizations, players, and products.

By fostering a sense of association with the public and fan base, team names and emblems raise a team, club, or player's popularity ratings. Even the athletes' names have become trademarks due to their fame. This fame and brand image eventually converts into a financial gain through advertisements, brand ambassadors, the generosity and reputation of the sponsors, and other methods. In essence, trademarks grant sui generis or take over regimes, which give sportsmen complete merchandising rights. In the well-known case *STJUE Arsenal v. Reed*⁶, the defendant violated the law by using the branded products outside of the stadium in an unauthorized commercial setting.

The sports gear manufacturer benefits from having a trademark on a club or player's name when those names become highly well-known and help build goodwill around the team or player's brand value. The percentage of a sports team's enterprise worth that can be attributed to local revenue streams, such as broadcast, advertising, merchandising, and ticket sales, that surpasses the revenue generated by a normal team in the same sport, is what Forbes ranks as established.⁷

A player can manage the extent to which his public persona can be used to build a brand or establish product recognition through the use of personality rights that are linked to trademarks.

⁵ Paras Sharma, "Intellectual Property Rights In Sports" Volume 8, Issue 3, IJCRT, (2020).

⁶ 2003 EWCA Civ 696 (21 May 2003).

⁷ M Ozanian "The Forbes Fab 40: The World's Most Valuable Sports Brands 2017", Forbes, Forbes Fab 40: Teams (2017).

Under Section 29(4) of the Indian Trademark Act, it is obvious that trademark dilution has occurred when a person utilizes a player's name on their products and fails to capitalize on the player's goodwill. Because broadcasters can utilize the brand value established by employing players' or teams' names to draw viewers, IP law is a complex issue in the sports industry.

COPYRIGHT AND SPORTS SECTOR

Sports copyright can be found in many places, such as artwork linked to trademarks and logos, advertisements, slogans, and pictures of athletes or events. It also includes broadcaster and performer rights under the Act, which grants a broadcaster the right to telecast a specific sporting event and to own that right.

The businesses pay enormous sums, all of which are covered by India's Copyright Act, 1957. It is also very easy to protect under Indian law, and copyright registration is not necessary. Even though India is a signatory to the International Copyright Order, 1999 and the Berne Convention of 1906 for the Protection of Literary and Artistic Works, which guarantees the protection of international copyrights, copyright registration is still advised because the certificate of copyright registration is recognized as "proof of ownership" in courts and by law enforcement and is handled with ease.

In India, copyright law not only offers civil remedies like accounts of profits or damages, receiving infringing material for annihilation and permanent injunctions, but it also makes copyright infringement a criminal offence punishable by a fine of not less than INR 100,000 and an imprisonment period of not less than six months or more than three years. In addition to sporting events, computer games also include software, which, when paired with hardware, may be protected by copyright laws and patents. However, software and computer programs by themselves are not patentable.⁸

Since internet gaming and events involving video games are becoming just as popular as field sports, characters and images used in video games are likewise protected by copyright laws.⁹

⁸ S.K. Verma, "IP Protection of Software and Software Contracts In India", Vol. 17 JIPR (2012).

⁹ Molly Torsen, "Intellectual Property and Sporting Events: Effective Protection of Event Symbols through Law and Practice", International Intellectual Property Institute, https://iipi.org/wp-content/uploads/2010/07/Sporting_Events_and_Intellectual_Property.pdf.

There are two types of sports that might be explored when it comes to copyright in sports: purposeful or non-aesthetic sports and aesthetic sports¹⁰. Sports are obviously not included in the works that Section -13 refers to as having copyright. One famous case that addressed why sports are not granted copyright protection was *Institute for Inner Studies v. Charlotte Anderson*.¹¹ The High Court noted that since yoga poses are not classified as dramatic or literary works under the Act, they are not eligible for copyright protection.

The Court further concluded that, in terms of copyright, sports do not meet the primary requirement of fixation in a physical medium. Additionally, because it will lessen the opportunity for other players to employ comparable maneuvers in the future, it is regarded as anti-competitive.

Aesthetic sports, such as dance, gymnastics, and skating, are exempt from this since they need a certain level of originality and may entail choreography that is covered by copyright. Section 38 of the Act grants performers' rights to dancers and gymnasts as well. They qualify for protection since they also meet the qualifications for performers under Section 2(qq) of the Act and performers under Section 2(q) of the Act. Aesthetic sports meet the requirements for copyright protection in terms of novelty or uncertainty.

Like the majority of copyrighted works, they are also fixed because they consist of particular, predetermined movements.

Furthermore, the Single Bench noted that cricket matches are covered by the copyright act's protection of performers' rights in the *Star India Pvt. Ltd. v. Piyush Agarwal & Ors.*¹² case. However, this ruling was eventually overturned, and the Delhi High Court noted that because performers' rights are expressly stated as "special rights" under Section 38 of the Act, they are not protected by copyright. However, it's still unclear where copyright protection for sports stands in India.

¹⁰ Seemantani Sharma, "A Copyright Incentive for Promoting 'Aesthetic Sports' in India", *The Entertainment and Sports Law Journal*, 17(1), 7, <http://doi.org/10.16997/eslj.232>.

¹¹ CS(OS)-2252/2011.

¹² MIPR 2013 (1) 201; 2013 (54) PTC 222 (Del).

SPORTS INDUSTRY AND PATENT

As stated by WIPO, "Patents encourage technological advances that result in better sporting equipment. "The history of sports' development may be narrated through the patent literature. While sportsmen, teams, and athletes work to break records, win titles, or just have fun, patents reveal cutting-edge technology that can assist players in overcoming obstacles or increase public access to and enjoyment of sports. For example, basketball was originally played with a football, but it later changed and was granted a patent in 1929.

Similar to how hockey was a sport, however the number of hockey matches on television has not increased in line with the sport due to limited visibility and puck distortion. In 1996, a method for increasing the hockey puck's visibility to television viewers was patented. Therefore, any technological advancement related to sports would be patentable.

Examples of these patents are "Nolan Ryan's baseball pitch" and "D.S. Miller's Dominant Hand Putting Method," both of which aim to either improve a player's skill or get over obstacles brought on by a disability.

According to TRIPS Article 27(1)¹³ and ingrained in Indian Patent Law, a patent can only be awarded for something that is new, non-obvious, and useful in industry. It is crucial to remember that even if a player creates a move, technique, or piece of equipment to improve the game, he must obtain the first patent on it before using it in opposition players in order to satisfy the primary objective of novelty for sports patents. If he doesn't, it is deemed that the patent has previously been made public and is neither original nor non-obvious.

Since the maneuvers or techniques employed by the players are only limb motions and are therefore frequently discussed and observed among the players, it is crucial to determine novelty that the technique—or anything to be patented—should not be known to the general public by someone who is already an expert in the field. As a result, participants typically lose out on patents since they don't meet the novelty requirements¹⁴. Another need is industrial use, although there is no evidence that a

¹³ Article 27 TRIPS 1994, "Patentable Subject Matter"

¹⁴ Global Innovation Policy Centre, <https://www.theglobalipcenter.com/introducing-leveraging-intellectual-property-in-the-global-sports-economy/>.

patent relating to sports can be employed in the business world or by an industry. This requirement may or may not be met since it varies from patent to patent.

In sports, players mostly pull up new techniques from one another. However, if these moves were patented, the other competitors would have an unfair edge. Occasionally, a player may employ a trademarked move during a match, stopping play and negating the fundamental purpose of sports. As a result, this would force the players to act first and then think through a move or technique, which would go against the fundamentals of sportsmanship.¹⁵

In terms of India's stance on game patenting, section 3(m)¹⁶ of the Indian Patent Act expressly prohibits the granting of a patent for "a mere scheme or rule or method of performing mental act or method of playing a game." Hence, in contrast to the US, which maintains that everything can be patented as established in the *Diamond v. Chakraborty*¹⁷ case, India is still closed to patenting sports or the actions involved.

Therefore, no determination can be made regarding the patent grant position regarding sports moves as it is still unclear and inconsistent worldwide.¹⁸

Sports and domain names Domain names are crucial to the protection of sports-related intellectual property rights in India, where they are regarded as trademarks as well. Gigabytes of data are shared and events are streamed live over the worldwide web, including sports-related online games. This has given rise to cyber squatters, who can now profit from confusion created by domain names alone, as well as a significant portion of the marketing and income generating market. Websites are now effective instruments for brand promotion and advertising. Due to the fact that using the internet to spread the word about an athletic match, team members, etc. is an affordable way to engage with the public,

Online competitions, online ticket sales for sports games, online shopping portals for item sales, and other activities are carried out by different sponsor companies. On the other side, a sloppy strategy for handling domain names could make it more unlikely that a sporting event will provide any

¹⁵ Harvard Journal of Law & Technology Volume 18, Number 2 (2005).

¹⁶ The Patent Act, 1970

¹⁷ 447 U.S. 303 (1980).

¹⁸ (2012),

benefits. Domain names support SEO, portability, and the creation of a unified brand image. It should be required to register a domain name with well-known gTLDs (like com.net.org.biz.info,.asia,.name,.in,.co.in, etc.) and inexpensive ccTLDs (like.at.be.cc.eu.ch.co.uk.dk.it.nl.ru.tv.us.ws) in order to promote and protect against trademark infringement and brand misuse. Additional guidelines for domain name registering could include registering several trademark and phrase variations, as well as frequent and careless spelling mistakes.

TRADE SECRET IN SPORTS AND GAMING

In addition to the aforementioned intellectual property rights, there is another right that is significant to the sports sector but is not yet recognized by IP. It is a trade secret that is included into all of the teams' intricate winning techniques, as well as any dietary components or secret substances that make playing easier and competitive. Unlike patent rights, it is not disclosed to the general public. These assets should be safeguarded to prevent any person or team from unfairly benefiting from them, even though other teams may attempt to take them.

The protection of data analysis from unauthorized usage by competitors is another critical trade secret. It could entail examining the tactics used by the opposition, their weaknesses, and the team's strengths and weaknesses from the previous games. Later on, this aids the team in formulating their game plan and identifying trends in the players' psychological and physiological responses. Big data is another term for this type of information, and while trade secret laws are not recognized in India, the US and UK have recently enacted laws that give it particular importance.

RIGHTS OF DESIGN IN THE SPORT INDUSTRY

The main distinction between design rights and trademark and copyright laws is that the former solely refers to a product's visual appeal; the latter cannot include any technical information or details about how the product works. To draw in spectators, teams or sporting events utilize attractive designs on bats, balls, and other equipment used in play. It is extremely creative in nature and seeks to improve the goods' appearance so that, should someone purchase the product later, they would be able to connect it to the player's or team's design.

For instance, rider Lucio Tortola invented a clever bicycle to lessen back pain and the possibility of

damage when riding a bicycle. This was intended to serve as a shock absorber and benefit riders in the future. Nowadays, the majority of bikers worldwide adopt this style because to its increased fame. Therefore, design serves a purpose beyond aesthetics by resolving some of the game's problems and assisting future players.¹⁹

AMBUSH MARKETING

The term "ambush marketing" describes a business's attempt to profit on the fame of a well-known asset or occasion without the required parties' knowledge or approval²⁰. Ambush marketing, according to Sandler and Shani, is a means used by another person to profit from a sporting event's success without the required parties' (owner/creator) prior consent and authority. Nevertheless, ambush marketing was defined as "cheating" by Michael Payne, a former marketing director of the International Olympic Committee. Ambush marketing is really a kind of corporate exploitation. For example, if Etisalat asserts that it is the official sponsor of the Nigerian Premier League, this would be the same as ambush marketing since the telecommunications company is profiting from the league's popularity when Glaucoma Nigeria Limited is the league's legitimate sponsor.

One of the most important features of intellectual property rights in sports is protection against ambush marketing²¹. Ambush marketing, which is the practice of businesses promoting their brands or products by linking them to a team, league, or event without paying for the privilege, has taken up a lot of space at sporting events. In *Pepsi Co., Inc. and Ors. v. Hindustan Coca Cola Ltd.*²², the court imposed a permanent injunction to the defendant, preventing the transmission of its advertising. This case, which pitted Pepsi against Coca-Cola, is a prime example of ambush marketing in India.

SPORT'S PERSONALITY RIGHTS

These days, athletes become superstars over night, and being a celebrity opens up a world of opportunities for monetizing renown, image development, cash generating, and brand endorsement. For sports personalities, endorsements, prestige, and image through the use of personality are therefore important sources of income. The right to restrict the commercial exploitation of one's name,

¹⁹ https://www.wipo.int/ipadvantage/en/articles/article_0159.html.

²⁰ Journal of Advertising Research 29(4) (1989) 9

²¹ <http://blog.ip.com/2012/02/intellectual-property-rights-in-sports/>

²² [2003 (27) PTC 305 Del],

image, likeness, or any other component of one's personal identification is known as a personality right. Furthermore, a sports personality may apply for and get a trademark pertaining to their name under the Indian Trademark Act, 1999. Sachin Tendulkar, for instance, has his name registered as a trademark.

In order to prevent their image from being used unfairly for financial benefit, celebrities and other well-known individuals are entitled to certain personality rights. However, certain athletes and sports superstars frequently expand the use of their personality rights by starting businesses or ventures that create, market, and sell goods featuring their likenesses and rights. An additional instance of the exploitation of personality and public image rights is when a sports team launches a merchandise campaign featuring its most well-liked players.

However, it is argued that sports organizations can only legitimately utilize these kinds of personality rights because athletes are part of teams that compete and, as such, cannot use their personal rights to extend the sportsman's personality rights to his individual rights. The Delhi High Court expounded upon this point in the case of *ICC Development (International) Ltd v Arvee Enterprises and Anr.*²³

CONCLUSION

The entertainment value of the sports sector has skyrocketed. With the aid of many IPRs, the same has been commercialized and has made enormous profits. Key intellectual property issues including trademarks, copyright, design, licensing, and franchising are highlighted in the latest edition of commercial sports. All of this suggests that in circumstances similar to the one mentioned above, IPR protection is inevitable. Legal contractual structures must be in place to protect all types of intellectual property developed in athletic events, teams, individual players, and so on in order to protect all stakeholders and their financial interests.

Based on the claims mentioned earlier, it's critical to understand the significance of different intellectual property rights in sports and the ways in which they might be safeguarded. Intellectual property is always a necessary component of any business endeavor, and since sports are increasingly more commercial in nature, protecting it is crucial. In order to help businesses and companies

²³ 2003 VII AD Delhi 405

involved in sports avoid such behaviors, the author of this article will go over how patent, copyright, trademark, designs, trade secret, and other intellectual property rights are intimately tied to sports and how they might be violated. Preserving the intellectual property associated with a firm is crucial for its survival; this also applies to the sports industry.

Different kinds of intellectual property protection, such as registrations and agreements with suitable terms and conditions, are available. Currently, one of the most lucrative industries in which sports teams own a larger share is merchandising. Merchandising involves numerous minor yet crucial matters, like intellectual property ownership, income sharing, confidentiality, and so forth. Celebrities today are highly aware of and watchful of safeguarding their personality rights due to the various ways in which these rights are violated worldwide.

Sports law specialists are desperately needed in India to advance moral behavior in the sports sector. In order to safeguard the value of sports and sporting assets as well as thoroughly guard intellectual property from infringement and misuse, proprietors or owners must now invest heavily in appropriate licenses, registration, and contracts. To protect all parties involved and their financial interests, it is advised that formal contractual arrangements be in place to protect all types of intellectual property developed in sporting events, teams, individual players, etc. To preserve the reputation and stature of our nation's superstars, India should create legislation safeguarding personality rights and work to establish a profitable sponsorship industry.

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