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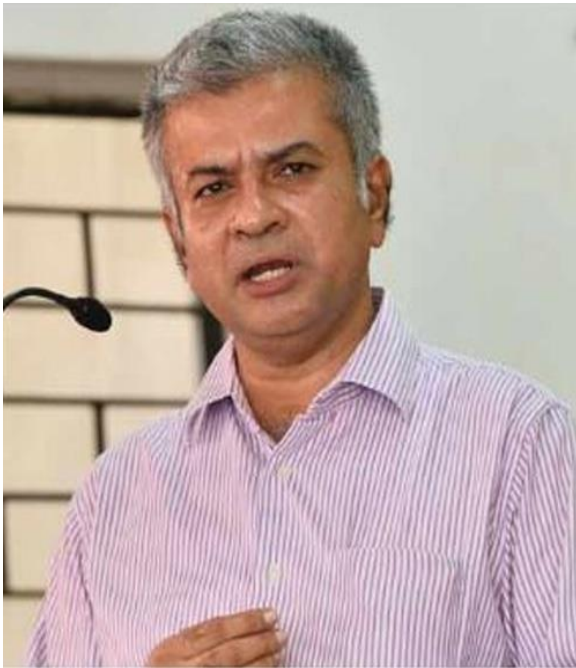
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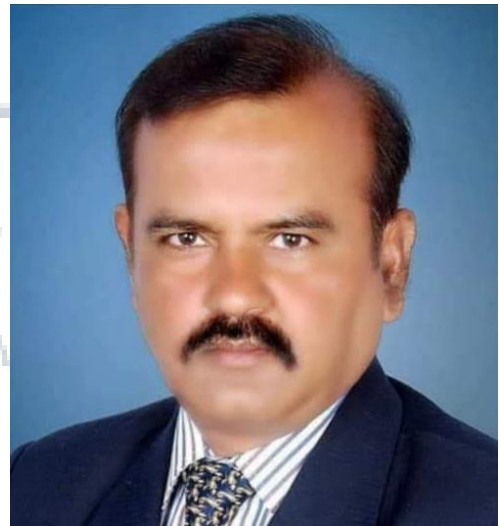


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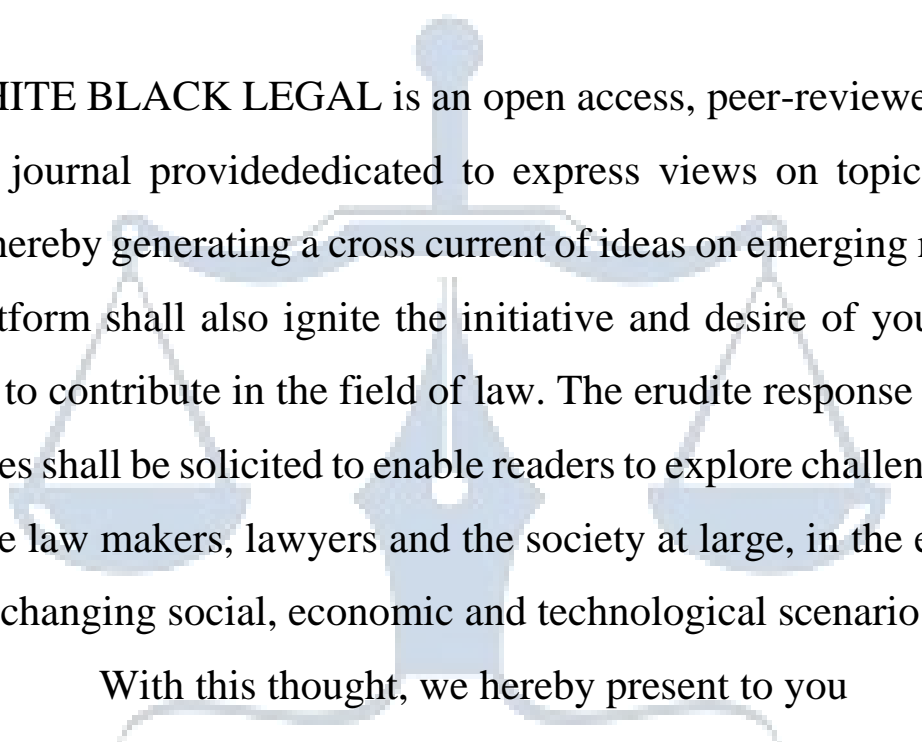


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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

NAVIGATING INTELLECTUAL PROPERTY RIGHTS: THE LEGAL BATTLE OVER CAPTAIN MARVEL'S TRADEMARK AND COPYRIGHT

AUTHORED BY - SHRUTI GATTANI

Christ (Deemed to be University)

ABSTRACT

The legal landscape of intellectual property (IP) is complex, particularly when it comes to the protection of popular comic book characters. This article explores the intricate legal dispute surrounding the character Captain Marvel, emphasizing the interplay between copyright and trademark law within the comic book industry. Captain Marvel's story begins with Fawcett Comics in the late 1930s, where a young boy named Billy Batson transforms into the superhero Captain Marvel. However, this character soon became the subject of a significant legal battle when DC Comics claimed that Captain Marvel was an unauthorized copy of their iconic character, Superman. The case, *National Comics Publications, Inc. v. Fawcett Publications, Inc.*, saw DC Comics alleging substantial similarities between the two characters, leading to a protracted legal battle that ended with Fawcett ceasing publication of Captain Marvel.

The narrative then shifts to Marvel Comics, which registered the trademark for Captain Marvel in the 1960s after the name had fallen out of use. This move allowed Marvel Comics to create their own Captain Marvel character and secure exclusive rights to the name. Meanwhile, DC Comics, having acquired the rights to the original Captain Marvel from Fawcett, was forced to publish the character under the title "Shazam!" due to Marvel's trademark.

The article highlights the importance of IP rights in the comic book industry, using this case as a focal point to discuss broader themes of copyright infringement and trademark disputes. Additionally, it references notable case laws such as *Sholay Media and Entertainment Pvt Ltd. v. RGV Productions Pvt. Ltd.* and *Arbaaz Khan v. Northstar Entertainment Pvt. Ltd.*, which further illustrate the nuances of protecting character rights. The Captain Marvel saga underscores the necessity for creators to diligently secure and defend their IP rights to prevent unauthorized use and maintain the integrity of their creations.

KEYWORDS: Captain Marvel, copyright, trademark, DC Comics, intellectual property, legal dispute, copyright infringement

INTRODUCTION

The audience's fascination with comic book and movie characters is a testament to the profound impact these creations have on popular culture and individual lives. Iconic figures like Mickey Mouse, Chotta Bheem, and Shaktiman have become more than just sources of entertainment; they are cultural landmarks that have shaped the imaginations and experiences of millions. These characters' wide appeal translates into significant opportunities for profit and goodwill for their owners and creators. To forge such memorable and engaging characters, artists channel their creativity to develop unique styles and distinct features, allowing them to express novel ideas and concepts that captivate audiences.

Characters like Mickey Mouse, with his timeless charm, or Shaktiman, with his heroic persona, are crafted with meticulous attention to detail and imagination. This creative process not only brings these characters to life but also ensures that they stand out in a crowded entertainment landscape. The creators behind these beloved figures invest considerable effort and ingenuity in their development, aiming to create personas that resonate deeply with viewers and readers.

Given the significant investment of time, creativity, and resources in developing these characters, it is only natural for character designers to seek ways to protect their work and derive financial benefits from it. Intellectual property rights, particularly copyright, play a crucial role in safeguarding these creations from unauthorized use. Copyright protection ensures that creators retain control over their characters, allowing them to monetize their efforts through various channels such as merchandising, licensing, and adaptations.

Advertisers and licensees, recognizing the lucrative potential of popular characters, are equally motivated to secure the rights to use these personas. They aim to leverage the established popularity and emotional connection these characters have with audiences to drive their own commercial success. However, without proper protection, characters can be vulnerable to unauthorized usage, leading to potential financial loss for both creators and legitimate licensees.

The compelling justification for intellectual property rights in the realm of character creation lies in the balance it provides: protecting the creators' interests while fostering an environment where

creative expression can thrive. By ensuring that characters are shielded from exploitation, copyright law not only rewards creators for their ingenuity but also encourages the continual development of new and innovative personas that enrich our cultural landscape.

In essence, the protection of intellectual property rights for character designs is a vital strategy that underpins the sustainable success of both creators and the industries that rely on these characters. It ensures that the magic of beloved figures like Mickey Mouse, Chotta Bheem, and Shaktiman can continue to captivate and inspire future generations, while also enabling creators to reap the financial rewards of their creative endeavors.

CAPTAIN MARVEL'S INTRIGUING STORY

This article discusses the dispute within the comic verse (comic book universe) regarding the name and persona of Captain Marvel. The significance of copyrights and trademarks and their maintenance are among the legal ramifications. The practical implications here address issues with names for comic books that become complicated. The problem is in the copyright protection of comic book titles. Nevertheless, character names are protected by trademarks, and characters themselves are covered by copyright.ⁱ A trademark is not automatically granted to an author (although legal registration is the best approach to secure the copyright).ⁱⁱ

This resulted in the situation below.

The 2019 film's lead character, Captain Marvel, gets her start from the same-titled Marvel Comics comic book superhero. Marvel Comics' Captain Marvel ought to have been a natural fit, right? False. Originating in the late 1940s and early 1950s, Captain Marvel (the original Captain Marvel wasn't even a woman) had his start in the pages of Fawcett Comics. Billy Batson, a young child, assumed the persona of Captain Marvel up until Detective Comics (DC) sued them. Furthermore, Marvel Comics was nowhere to be seen. In the case of **National Comics Publications, Inc. v. Fawcett Publications, Inc., et al.**ⁱⁱⁱ, the plaintiff claimed that Captain Marvel bore an excessive resemblance to Superman, citing approximately 160 instances of plagiarism. Superman made a progressive appearance in the comic book scene. The hero class was introduced by him in "Action Comics #1" in 1938. Another legend was Captain Marvel, who debuted in "Whiz Comics #2" (published by Fawcett Comics) in late 1939. DC made a simple claim. Because Captain Marvel's motivations and characteristics were too similar to those of Superman, it violated Superman's copyright. According to Fawcett, these two characteristics were comparable, but not to the extent of incursion. Comparable successes have only been achieved by other anecdotal figures, such as Tarzan or Popeye. National Comics created a cover that was more than 150 pages long and included

comparison boards between the two exceptional likenesses from their "Superman" and "Captain Marvel" jokes to demonstrate their point of view.

Ultimately, the designated authority determined that "Superman" and "Captain Marvel" were identical. Still, Fawcett prevailed in the preliminary. The news company that published the "Superman" jokes, McClure Syndicate, was determined by Fawcett's attorneys to have forgotten to add the copyright images to a couple of its strips. They also claimed that DC did not own the copyright to "Superman," a claim that the court agreed with. DC made a fast bid, and the outcome was reversed. Judge Hand, who presided over the lawsuit, declared "Captain Marvel" to be a deliberate and bold rip off of "Superman" and mandated that Fawcett cease all of its releases and reimburse DC for any losses it sustained. A settlement of up to two or three hundred thousand dollars was reached in 1953 between Fawcett and DC, and Fawcett agreed to stop selling Captain Marvel.^{iv}

Fawcett agreed with DC to never publish Captain Marvel stories until "Kingdom Come," thus by 1967, the character's name had vanished from circulation. Marvel Comics thus seized the opportunity to register the trademark on their own.

After five years, DC finally bought the rights to Fawcett's Captain Marvel in 1972, hoping to reintroduce and purge several of the character's long-forgotten superhuman abilities.

However, Marvel Comics had already released Captain Marvel-themed comics for a while before that point. Long since out of use by DC, trademarks operate under the maxim "use it or lose it." Once "Captain Marvel" appeared in Marvel Comics, they were granted exclusive usage of the title. Therefore, they were unable to use the term Captain Marvel in merchandise or call the book that same. Rather, DC released Shazam! Billy Batson says this to change into Captain Marvel. For a long time, a lot of people who weren't comic book readers thought the Fawcett/DC Captain Marvel was called Shazam.

However, as the trademark rights are clear, this hasn't resulted in a protracted legal battle between Marvel Comics and DC Comics over the usage of "Captain Marvel." DC was forced to give up using the name eventually. They were still the owners of "Shazam!" and the characterization. They simply renamed their superhero Shazam and did away with the Captain Marvel moniker with the "New 52" revamp. They are attempting to come up with a character name, which then resulted in one of the major jokes in the most current "Shazam!" film. Naturally, they are unable to use "Shazam!" as it causes them to alternate between being mortal and superhuman. It follows that doing research in advance is preferable to filing a case later.

CASE LAWS

Sholay Media and Entertainment Pvt Ltd. v. RGV Productions Pvt. Ltd.^v: The renowned film director Ram Gopal Varma was compelled to pay a punitive punishment of Rs. 10 lakhs by the Honorable Delhi High Court. It was imposed for "intentionally and deliberately" ripping off the popular 1975 Hindi film "Sholay," for infringing on Sholay Media and Entertainment Pvt Ltd's exclusive copyright, and for incorrectly using the film's original Gabbar Singh, Jai, Veeru, and Radha protagonists. "The promotional material coupled with the impugned film gives an overall impression that it is a remake of the film Sholay," Justice Manmohan Singh said in his ruling. Copyright of the original film Sholay is violated by the use of the same plot and characters in the contested picture, as well as the use of background music, lyrics, and language from the original movie."

Arbaaz Khan v. Northstar Entertainment Pvt. Ltd.^{vi} : In this case, the character "Chulbul Pandey" from the Hindi movie "Dabangg" was granted copyright protection by the Bombay High Court. The judge stated that this character is unique due to his distinctive style, which sets him apart from others. From the whole movie, it's easy to recognize this character. The court's decision emphasized that even though the storyline may have elements similar to other works, the distinctive characterization of Chulbul Pandey—his mannerisms, dialogues, and appearance—constituted a protectable creative expression under copyright law.

CONCLUSION

The saga of Captain Marvel's legal battles provides a compelling case study in the importance of intellectual property rights within the comic book industry. The intricate disputes between DC Comics and Fawcett Comics, and later between DC Comics and Marvel Comics, highlight the delicate balance between protecting creative works and fostering an environment of innovation and fair competition.

The resolution of the Captain Marvel disputes underscores several critical lessons for creators and companies alike. First, the clear delineation and registration of intellectual property rights are paramount. The early oversight by Fawcett Comics in securing robust copyright protections and the subsequent proactive trademark registration by Marvel Comics illustrate the necessity of vigilance in IP management. The maxim "use it or lose it" is particularly poignant in the context of trademarks, as evidenced by Marvel's ability to claim the Captain Marvel name due to its period of non-use by DC.

Additionally, the importance of understanding the nuances between different types of intellectual property rights is essential. While copyrights protect the creative expression of characters and stories, trademarks secure the names and symbols associated with these characters, ensuring brand recognition and commercial exploitation. The Captain Marvel case demonstrates how these two forms of IP protection can interact and, at times, conflict, necessitating careful strategic planning by rights holders.

Beyond the specifics of the Captain Marvel disputes, broader implications for the entertainment industry become evident. As demonstrated in the cases of *Sholay Media and Entertainment Pvt Ltd. v. RGV Productions Pvt. Ltd.*, *Arbaaz Khan v. Northstar Entertainment Pvt. Ltd.*, the global and cross-media nature of contemporary storytelling requires a robust and dynamic approach to IP protection. These cases reinforce that unique characters, regardless of their medium, warrant and merit legal protection to preserve their creators' rights and maintain the integrity of their stories.

The dynamic and evolving landscape of digital technologies further amplifies the need for comprehensive IP strategies. As new platforms for content distribution emerge, the risk of unauthorized use increases, making it imperative for creators to adapt and update their IP protections continually. The Captain Marvel narrative, along with the supplementary cases discussed, illustrates the ongoing need for vigilance and proactive measures in safeguarding creative works.

Ultimately, the protection of intellectual property rights serves a dual purpose: it rewards creators for their ingenuity and labor, ensuring they can benefit from their creations, and it fosters an environment of continued innovation and creativity. By protecting the unique expressions that characters like Captain Marvel represent, the legal system helps sustain a vibrant and diverse cultural landscape that can continue to captivate and inspire audiences for generations to come.

In conclusion, the Captain Marvel legal battles serve as a quintessential example of the complexities and necessities of intellectual property rights in the creative industries. They highlight the importance of early and proactive IP management, the interplay between different types of IP protections, and the broader implications for the global entertainment landscape. As the industry continues to evolve, the lessons from these cases will remain pertinent, guiding creators and companies in navigating the ever-changing terrain of intellectual property law.

ⁱ “Copyright in General” (Copyright) <<https://www.copyright.gov/help/faq/faq-general.html>> accessed November 19, 2020

ⁱⁱ “Trademark Basics” (United States Patent and Trademark Office - An Agency of the Department of Commerce September 25, 2020) accessed November 19, 2020

ⁱⁱⁱ National Comics Publications, Inc v Fawcett Publications, Inc et al, 191 F2d 594 (2d Cir 1951) (US Court of Appeals for the Second Circuit)

^{iv} Lee N, “How a \$4 Million Lawsuit Created 'Shazam!' and 'Captain Marvel' as We Know Them Today” (Business Insider April 5, 2019) accessed November 19, 2020.

^v Sholay Media and Entertainment Pvt Ltd. v. RGV Productions Pvt. Ltd [2015] [CS (OS) 1892/2006]

^{vi} Arbaaz Khan v. Northstar Entertainment Pvt. Ltd. (Suit (L) No. 301 of 2016)



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