

# amicus

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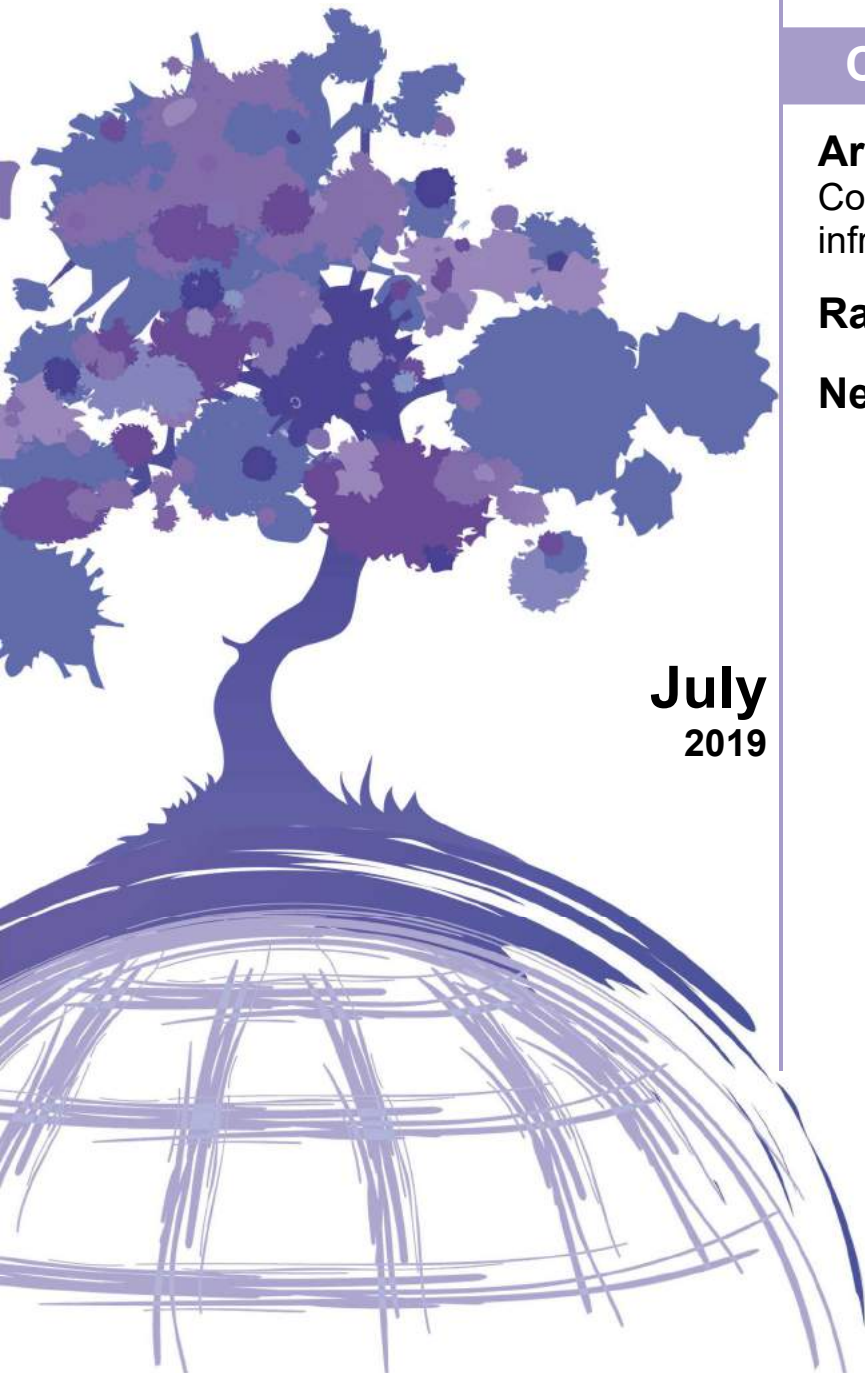
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**July**  
2019





## Article

### Contradiction & consensus: Mode of infringement of a cinematograph film

By **Saksham Garg**

#### *Introduction*

In *MRF Limited v. Metro Tyres Limited*,<sup>1</sup> many important issues of law arose before the Delhi High Court regarding the extent of copyright infringement of cinematograph films under the Copyright Act, 1957 (the Act). While the interim application filed by the Plaintiff was dismissed, the learned single judge, after discussing the legal issues at length, attempted to minimize the contradiction created by the diametrically opposite views of the Bombay and Calcutta High Courts on the interpretation of the expression ‘to make a copy of the film’.

The issue at hand arose out of an interim application<sup>2</sup> filed by the Plaintiff for the grant of an injunction under Order XXXIX and Rules 1 and 2 of the Code of Civil Procedure, 1908 on infringement by the Defendant. Specifically, the copyright alleged to have been infringed was of the plaintiff’s advertisement on the manufacturing of tyres which was first aired in 2015, by the defendant airing an allegedly ‘similar’ advertisement in 2016 for its tyres. While, the Delhi High Court decided the matter in favor of the defendant due to lack of ‘similar’ substance and foundation in both the advertisements and dismissed the present application without an order as to the costs, the Ld. Judge has given a reasoned and detailed ruling as to the scope of copyright infringement in respect of a cinematographic work such as a film or an advertisement.

#### *Facts of the case*

Plaintiff produced an audio-visual advertisement titled as ‘*MRF NV Series present REVZ*’ for its specific range of tyres, which was first aired on 27<sup>th</sup> June 2015 on TV media and was posted on the internet by 29<sup>th</sup> June 2015. In October 2016 plaintiff claimed to have knowledge that defendant, who is also involved in the business of manufacturing and marketing tyres, had produced an allegedly ‘similar’ advertisement entitled ‘*Bazooka Radial Tyres*’.

As a result, plaintiff filed intra-industry complaint with the Advertising Standards Council of India (‘ASCI’) upon which no substantial action was claimed to have been undertaken by the ASCI, who forwarded the complaint to the defendant. Defendant did not reply to the complaint and filed a suit before the Delhi High Court seeking an order to restrain the plaintiff from issuing groundless threats and to restrain the ASCI from proceeding with the said complaint. However, the suit was dismissed *in limine*, and an appeal is pending before the Division Bench of the Delhi High Court.

Thereafter, plaintiff filed the present suit before the Delhi High Court with an application seeking an interim injunction against the defendant for using the alleged infringing advertisement.

#### *Contentions of the parties*

To prove copyright infringement of its advertisement, plaintiff contended that a comparison of its advertisement with that of defendant’s advertisement showed a similar

<sup>1</sup> CS (COMM) 753/2017.

<sup>2</sup> I.A. 12770/2017.

sequencing, form, treatment and expression, and contained material and broad similarities which indicates that defendant's intent was to copy its advertisement. It was further argued by the plaintiff that the "coincidences" which appeared in the two advertisements were neither incidental nor based on mere chance, as there were numerous instances of copying including a similar spaceship like gate/door which opens to take the viewer into a futuristic chamber and a similar looking motorcycle with the same color combination.

Plaintiff argued that the similarities between the advertisements were on fundamental and substantial aspects of the mode of expression adopted in the copyrights works. As for a suit of copyright infringement of a cinematograph film, plaintiff argued that the test is of an overall impression of an average viewer and not a microscopic analysis which underscores differences/divergences, the immaterial differences between the two advertisements being unimportant. Reliance was placed by the plaintiff on the findings in the case of *R.G. Anand v. M/s Deluxe Films*<sup>3</sup> to elucidate that in order to be actionable, the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.<sup>4</sup> Further, plaintiff provided a tabular comparison of the illustrations and sequence of events of both the advertisements to show the "material similarities" between them.

On the other hand, the defendant contended that the non-use of the word 'original' in Section 13(1) of the Copyright Act, 1957 with respect to a cinematograph film and that cinematograph film is to be treated differently under Section 13(3) of the Act. It was also argued that by a joint reading of Sections 2(m)(ii), 14(d)(i) and 51 of the Act it was apparent that to establish copyright infringement in a cinematograph film, it was

essential to show that the impugned work was an actual copy of the advertisement by the process of duplication. Thus, according to the defendant the Copyright Act granted a very limited protection to a cinematographic film.

Reliance was placed on the Bombay High Court judgment of *Star India Private Limited v. Leo Burnett (India) Pvt. Ltd.*<sup>5</sup> by the defendant to establish that copyright infringement of a cinematograph film can ensue only when an actual copy is made of a film by the process of duplication i.e. by using mechanical contrivance that falls under Section 14(d)(i). Therefore, if the film has been filmed or shot separately by a person and it resembles the copyrighted film, the subsequent film is not a copy of the first film and, therefore, does not amount to infringement of whole of the copyright of the first film.<sup>6</sup> Defendant also extensively referred to the judgment in *Norowzian v. Arks Ltd and Others*<sup>7</sup> which was also relied upon heavily by the Bombay High Court in the aforesaid judgment. The defendant also provided a tabular comparison of the two advertisements highlighting the differences between the two advertisements.

In rejoinder, the plaintiff argued that the concept of dual protection provided to a cinematographic film in India and certain European countries, meant that the Berne Convention of 1908 provided an owner of the cinematographic work with the same rights as the author of an original work under Article 14. Additionally, plaintiff argued that the right to reproduce the work provided under Article 9 also extended to a cinematograph film under Article 14. The counsel for the plaintiff also informed that the judgment in *Norowzian v. Arks Ltd and Others* relied upon by the Bombay High Court in *Star India Private Limited* case had been

<sup>5</sup> (2003) 27 PTC 81 (Bom).

<sup>6</sup> *Star India Private Limited v. Leo Burnett (India) Pvt. Ltd.*, (2003) 27 PTC 81 (Bom).

<sup>7</sup> 1996 FSR 394

<sup>3</sup> (1978) 4 SCC 118.

<sup>4</sup> *R.G. Anand v. Deluxe Films*, (1978) 4 SCC 118.

specifically overruled in an appeal on the question of law<sup>8</sup>.

In sur-rejoinder, counsel for the defendant submitted that under the Copyright Act, 1957 a different usage has been allotted to 'copy' and 'reproduce' denoting distinct meanings to both the terminologies.

### Observations of the Court

The Court, after hearing both the parties, held that a copyright subsists in a cinematograph film as a work independent of underlying works that come together to constitute it. Although the copyright subsists in the constituent parts, yet the copyright vests separately and independently in the composite whole – the film. The Court arrived at this decision by a joint reading of Sections 2(f), 2(y), 13(1) and 13(4) with the Report of the Joint Committee for the Copyright Bill, 1955 which stated that cinematograph film is an independent work which will enjoy copyright apart from its component parts. The meaning of the term 'cinematograph film' was also interpreted, for this purpose, in consonance with the Berne Convention.

In addition to that, the Court observed that a cinematograph film is recognized as, greater than the sum of its parts, which has been subsisting as being held by Justice V.R. Krishna Iyer in the case of *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association*.<sup>9</sup> The Hon'ble Court also observed that even the Calcutta High Court in *Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah*,<sup>10</sup> has taken a similar view by treating the original underlying works as raw materials from which an entirely different work like a cinematograph film may be created.

On the question of originality of a cinematograph film, the Court held that even though the expression 'original' is missing in Section 13(1)(b), still the requirement of originality is brought in through Section 13(3)(a) which has to be read with the definitions of 'cinematograph film' and 'author' under Sections 2(f) and 2(d). Section 13(3)(a) implies that a copyright in a film cannot subsist if a substantial or material part of the said film is an infringement of copyright in any other work. It was held that the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work.<sup>11</sup> Thus, a cinematograph film is held to be an original work as it is an intellectual creation.

On the main issue in the case, the Court observed that the expression 'to make a copy of the film' in Section 14(d)(i) does not mean just to make a physical copy of the film by the process of duplication. As the scope of protection of a film was held to be at par with other original works, the Hon'ble Court opined that the test laid down in *R.G. Anand v. Deluxe Films*<sup>12</sup> would apply as it is not confined to a literary work and is of general application. Furthermore, the Ld. Judge observed that this test of 'substantiality' is found in the opening words of Section 14 and therefore it applies equally to Section 14(d).

While substantiating its observations, the Hon'ble Court, in agreement with the decision of the Calcutta High Court, affirmed that where there is substantial similarity in the film taken as a whole with another film, then there is infringement of the copyright in the film.<sup>13</sup> It rejected the view held by the Bombay High Court

<sup>8</sup> *Norowzian v. Arks Ltd. & Ors.*, (2000) FSR 363

<sup>9</sup> (1977) 2 SCC 820.

<sup>10</sup> 2009 SCC OnLine (Cal.) 2113.

<sup>11</sup> *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

<sup>12</sup> (1978) 4 SCC 118.

<sup>13</sup> *Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah*, 2009 SCC OnLine (Cal.) 2113.

in *Star India Private Limited*<sup>14</sup> case as being narrow and restricted and not in consonance with the Berne Convention inasmuch as it does not protect a cinematograph work as an original work; and as it was not brought to the notice of the Bombay High Court that the judgment in the case of *Norowzian v. Arks Ltd and Others*, upon which extensive reliance was placed while deciding said case, had been overruled on the issue of law by the Court of Appeal<sup>15</sup>. Thus, the Hon'ble Court stipulated that the Court will have to compare '*the substance, the foundation, the kernel*' of the two advertisements in question to consider whether one was by and large a copy of the other and whether an average viewer would get an unmistakable impression that one work was a copy of the other.

The Court further elucidated that Article 14(1) of the Berne Convention stipulates the width and scope and extent of copyright protection in a film. It expressly provides that a cinematographic work shall be protected as an original work and that the owner of such a work shall enjoy the same rights as the author of an original work and since, it is a settled law under Article 51(c) of the Constitution of India that India is obligated to foster respect for international law and treaty obligations, it is essential to follow the Berne Convention in the present matter. It also observed that it was settled that where India is a signatory to international treaty, the statute would be given a '*purposive*' construction in favor of the international obligation. Consequently, it was held that the Copyright Act, 1957 is required to be interpreted in consonance with the Berne Convention which protects the film not merely as a fixation, but also as an original work.

## Conclusion

Although the Court applied the test laid down in *R.G. Anand v. Deluxe Films*<sup>16</sup> in the present case, it was still of the *prima facie* view that the two advertisements were neither substantially nor materially or essentially similar. It held that expressions behind both the advertisements are different as the Plaintiff's advertisement lays emphasis on the manufacturing process of the tyre while the Defendant's advertisement was to display the durability of the tyre. It held that there was no copyright infringement as the substance and foundation of both the advertisements were different. Moreover, since the present suit was filed more than one year after Metro's advertisement was first aired in September 2016, the Court held that the plaintiff was not entitled to any interim order. Thus, the application for interim injunction was dismissed.

The present judgment has provided interpretation to the term '*original*' while determining the extent of copyright infringement of a cinematograph film under the Copyright Act, 1957. It has widened the scope of the '*substantiality*' test and has provided a definite foundation to the purposive construction to be applied to the Copyright Act, 1957 in consonance with the Berne Convention. The judgment has laid out the test of fundamentally similar substance and foundation of a cinematograph film to determine any copyright infringement while at the same time cured the contradiction created by the judgments of Calcutta and Bombay High Court by forming a consensus with the former.

**[The author is a Senior Associate, IPR practice, in Lakshmikumaran & Sridharan, New Delhi]**

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<sup>14</sup> *Star India Private Limited v. Leo Burneet (India) Pvt. Ltd.*, (2003) 27 PTC 81 (Bom).

<sup>15</sup> (2000) FSR 363

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<sup>16</sup> (1978) 4 SCC 118.



## Ratio decidendi

### Trademark - Adoption of prominent word of the label mark is infringement

The Delhi High Court has held that the adoption of prominent word of the label/device mark amounts to infringement. It observed that Section 17 of the Trademarks Act which confers exclusive right only to the use of the trademark as a whole is not applicable where the trademark contains matter common to trade or otherwise non-distinctive. The plaintiff had instituted the suit to restrain the defendant from providing any services under the name MAXCURE HOSPITAL / MAXKURE / MAXCURE MEDICITI, alleged to be confusingly similar to the plaintiff's trade mark MAX HOSPITAL. The defendant on the other hand contended that they had not used and not sought registration of MAX as a standalone mark but as part of a larger phrase.

The Court was of the view that the two marks were similar / deceptively similar and are likely to cause confusion, resulting in the hospital / healthcare services of the defendant being confused by public at large with that of the plaintiff. It observed that the defendant did not take any objection to registration sought by the plaintiff of the label / device marks with the word MAX in relation to hospital / healthcare services in the last 16 years, and on the contrary applied for registration of label / device marks with the said word. The contention that test of infringement is not in the mark or its use but on paper, was also rejected.

Relying on precedents, the Court observed that the test for infringement of a label / word mark is the test of prominent word of the mark and that adoption of a prominent word in the label / device mark amounts to infringement. It observed that

the business of providing hospitals / healthcare services is such, where people / consumers pay least attention to the device or the label mark and read generally the first word of the label mark by which the hospital / healthcare services come to be known. While restraining the defendant from using the said mark, the Court was of the view that once registration of trademark is valid throughout India, there is no ground to deny injunction noting that defendant has no intent to enter National Capital Region. [*MAX Healthcare Institute Ltd. v. Sahrudya Health Care Pvt. Ltd.* - CS(COMM) No. 866/2016, Order dated 4-7-2019, Delhi High Court]

### Plant Variety Protection – Application for DNA test maintainable even if DUS test successful

Setting aside the order directing registration of a plant variety, the Delhi High Court has rejected the contention that application for DNA test by the petitioner-objector was not maintainable where Distinctiveness, Uniformity and Stability (DUS) test was successful. Application for special test, by Petitioner opposing registration, was restored. The Court observed that the DUS test report is not binding on the objector and he is at liberty to contest the DUS test on any grounds as available.

It was also held that the tests referred to under Section 19(1) of the Plant Variety Protection Act also includes tests for determining whether the variety conforms to the DUS criteria and that it is necessary for the Registrar to await the results of the DUS Test before accepting an application. The Court observed that the scheme of Chapter III of the Plant Variety Protection Act regarding registration of the varieties makes it clear that

qualifying the DUS test is an essential criterion for acceptance of an application under Section 20.

The High Court also held that considering Section 21(4) of the Plant Variety Protection Act, failure to file a counter statement must be construed as abandoning the application. It noted that the applicant did nothing to meet objections or seek extension of time. [*Pioneer Overseas v. Chairperson, Protection of Plant Varieties and Farmers Rights* – Judgement dated 1-7-2019 in W.P.(C) 6208/2014 & CM No.15019/2014, Delhi High Court]

### Chairman IPAB & Member, Plant Varieties Protection can hear urgent patent matter

Invoking the doctrine of necessity, the Delhi High Court has ordered that Chairman, Intellectual Property Appellate Board (IPAB) along with Technical Member, Plants Varieties Protection can hear urgent matters on patents, copyright and trademark, pending before the IPAB, till vacancies of Technical Members are filled by the government. It also held that if the Technical Member (Plant Varieties Protection) is not available for any reason or recuses, the IPAB can hear urgent matters and such orders passed would not suffer any invalidity on ground of lack of Coram.

The Court was also of the view that in patent matters, the Chairman, IPAB is at liberty to take the expert opinion of a scientific advisor from the panel of scientific advisors notified under Section 115 of the Patents Act. Relying on precedents, it observed that legislative intent was of continuity of IPAB and not its cessation due to the vacancies in its technical membership.

The Court was pained to note that no Technical Member (Copyright) had been appointed since inception of IPAB and that the post of Technical Member (Patents) was lying vacant since 4th May, 2016 whereas the post of Technical

Member (Trade Marks) was lying vacant since 5th December, 2018. The Court also took note of the fact that in many cases, due to lack of Coram, the patents have expired and the matters have become infructuous with the rights of parties being severely prejudiced. [*Mylan Laboratories Ltd. v. Union of India* – Judgement dated 8-7-2019 in W.P.(C) 5571/2019 & C.M. Appln. 24540/2019 & 26833/2019, Delhi High Court]

### Sale of a Direct Selling Entity's products on e-commerce platforms violates entity's trademark

The High Court of Delhi has answered in positive the question as to whether the sale of a Direct Selling Entity's products on e-commerce platforms violates the entity's trademark rights or constitutes misrepresentation, passing off and results in dilution and tarnishes the goodwill and reputation of the entity's brands. The High Court observed that sellers/platforms have to take consent of the Direct Selling Entities to offer, display and sell the latter's products on their platforms, in compliance with clause 7(6) of the Direct Selling Guidelines, 2016. It also took note of the fact that under the garb of selling genuine products, completely tampered products were being sold on e-commerce platforms.

It was held that the brand equity is considerably diluted by such unbridled sales from unauthorized sources, especially when platforms are not willing to take responsibility for the sale on the ground that they are intermediaries and when the so-called sellers are unknown, untraceable, unauthorised and dubious. The Court was of the view that in order to be able to use the Direct Selling Entity's / Plaintiffs' marks, for advertising, promotion and to depict the Plaintiffs as the source of the products, on the websites, the products have to be genuine, untampered and consent would be required. It was held that in the absence of the same, there is clear infringement of the Plaintiffs' trademarks

and the doctrine of exhaustion does not come to the aid of the websites/platforms.

On the question as to whether e-commerce platforms are *intermediaries* and are entitled to protection under the safe harbour provided in Section 79 of the Information Technology Act and the Intermediary Guidelines of 2011, the Court was of the view that in order for the platforms to continue to enjoy the status of intermediaries, subject to adjudication at trial, the due diligence requirements would have to be met and complied with, as per the platforms' own policies, and as per the Intermediary Guidelines, 2011. It was observed that if the intermediaries have to be exempt from liability, they ought to satisfy the conditions contained in Section 79(2) and should not fall foul of Section 79(3) of the IT Act. [*Amway India Enterprises Pvt. Ltd. v. 1MG Technologies Pvt. Ltd.* – Judgement dated 8-7-2019 in CS (OS) 410/2018 and Ors., Delhi High Court]

### Suits on design and copyright infringement and passing off can be tried together

The Delhi High Court has held that where three suits pertaining to infringement of designs, infringement of copyright and passing off are filed in proximity with each other it would be appropriate that they are tried together if aspects are common to all suits. The Court rejected the plea that suits cannot be tried together as different provisions of law are applicable in suits pertaining to infringement of designs, infringement of copyright in industrial drawings and passing off and that the defence available in the said three suits are different. It held that it is inconceivable that cause of action can be split and presented in different suits. The Judgement of the full Bench of the Court in the case of *Carlsberg Breweries v. Som Distilleries* was relied on. [*Anurag Sanghi v. Knitpro International* - TR. P. (C) No.93/2018 and 94/2018, decided on 11-6-2019, Delhi High Court]

### Cautionary message of sugar content cannot be termed as disparagement

Observing that defendant was highlighting a healthier option of sugar-free *Chyavanprashad*, the Delhi High Court has held that the cautionary message of sugar content in the product *Chyawanprash*, is not disparagement. The High Court was of the view that the modified advertisement did not disparage or denigrate plaintiff's product or the generic product itself, either overtly or covertly. It noted that the defendant was not stating that the product *Chyawanprash* was harmful.

It held that comparative advertising is permissible in law and that comparison in the impugned advertisement was limited to show that the product traditionally contains 50% sugar and that the defendant has a sugar-free variant. The Court observed that the impugned advertisement only gave the information and a choice or option to the viewers/consumers who would like to buy a product that is giving the benefit of *Chyawanprash* without sugar. It also observed that the comparison in the present case is inevitable as the benefit of a product without sugar can be best showcased by juxtaposing with the variant that has sugar in it.

The Court finally noted that the defendant's limited comparative analysis cannot be comprehended to be depicting the rival product negatively, and that Courts have said that the plaintiff ought not to be hypersensitive. Taking note of the fact that advertisements often contain valuable information for the consumers and can promote healthy competition in the market, and if this is the message conveyed, the courts would be resilient and allow the negative derivatives of comparison, it was held that the comparative advertising campaign should thus be 'comparison positive'. [*Dabur India Ltd. v. Emami Ltd.* – Judgement dated 3-7-2019 in CS (COMM) 1074/2018, Delhi High Court]



## 'Dish' may be generic to business of food and utensils but not to DTH services

Observing that the word *Dish* may be generic to business of cooked food or utensils, but not for providing television services, the Delhi High Court has restrained the defendant from incorporating the word *Dish* in its mark. It was noted that the 'dish' or 'Dish Antenna' is not a vital part for DTH service and that 'Dish' is not generic to DTH service or *publici juris* and/or common to the trade of DTH service.

The Court observed that it cannot oversee that the defendant provided its services as 'DD Direct+' for ten years and then changed to 'DD Free Dish' without disclosing any need for such change. The defendant had also pleaded that the

difference of paid and free and the difference in subscriber base, distinguishes their services from that of the plaintiff and that the mark 'DD Free Dish' is not similar or deceptively similar to 'DISHTV'.

Possibility of confusion among users was also noted by the Court while it observed that even though the defendant's mark has the word 'DD', considering the complex public private partnerships / ventures and different business modules prevalent today, it cannot be said that the same is capable of breaking the connection or identity which is bound to be formed in the minds of subscribers or public at large. [*Dish TV India Ltd. v. Prasar Bharti* – Order dated 16-7-2019 in CS(COMM) 347/2016, Delhi High Court]



## News Nuggets

### Draft guidelines for use of GI logo and tagline published

The Department for Promotion of Industry and Internal Trade had in 2018 launched common GI logo and the tagline to act as certifying mark on Indian products registered as Geographical Indications (GIs). Draft guidelines regarding correct usage of GI Logo and tagline now published on 24-6-2019 seek comments from all stakeholders. As per the draft, GI logo can be used by all the authorized users registered under GI without any permission. Use of logo is not allowed for foreign GI products whether registered in India or not. Guidelines also list terms and conditions for use of the logo and the tagline.

### Music composer holds complete special and moral rights in musical works composed

A common judgment was delivered in the High Court of Judicature at Madras on 4 June 2019, in the matters of *Agi Music Sdn Bhd v. Ilayaraja & Anr.*, and *Ilayaraja v. B. Narsimhasn & Ors.*, holding that the composer holds complete special and moral rights in regard to the musical works composed/created by him. The Court was of the view that a composer of the work is entitled to special, moral rights in regard to the musical works composed by him and take all measures to preserve the integrity and purity of his work, honour and reputation and exploit such musical works in any manner as he may desire, excluding recordings that are an integral part of cinematograph films.

## EU Court upholds invalidation of Adidas mark representing 3 parallel stripes

The General Court of EU has confirmed invalidity of Adidas EU trade mark consisting of 3 parallel stripes applied in any direction. It held that appellant did not prove that the mark has acquired, throughout EU, distinctive character following the use which had been made of it. The EU Court in the case *Adidas AG v. EUIPO* observed that the mark was an ordinary figurative mark and not a pattern mark and that forms of use which fail to respect the other essential characteristics of the mark, such as its colour scheme, cannot be taken into account.

## Patents - Govt cannot file post-issuance review petition: US Supreme Court

The US Supreme Court has, by a majority ruling in the ratio 5:3, held that a federal agency cannot file post-issuance review petition against a patent since it does not fall under the definition of *Person*. The Court in the case *Return Mail, Inc. v. US Postal Services* held that it will be an awkward situation forcing a civilian patent owner to defend patentability in an adjudicating proceeding initiated by one federal agency and overseen by another federal agency. The presumption that *person* does not include the sovereign, and thus excludes a federal agency, was applied.

## Trademark in compound expression when not registrable

The Court of Justice of the European Union has held that the word sign *MicroGarden* in respect of agriculture tools and machines is devoid of any distinctiveness and that relevant public will readily understand the compound expression as a place for gardening or for intensive cultivation in a small place. Upholding the Board of Appeal finding, the Court in the case *Arcelik AS v. EUIPO* observed that there was no perceptible difference between the meaning of the sign and that of mere sum of its two components *Micro* and *Garden*. It was held that the sign was not a neologism which was suggestive or allusive.

## Restoration of expired mark if notice to proprietor before expiry is absent

In an Order passed in the case of *Modern Namkeen Bhandar v. Union of India* by the Delhi High Court, it has been held that the Registrar is obligated to send a notice regarding the expiry of validity of a mark to its proprietor, before the said expiry. Absence of such a notice is a ground for restoration of a mark removed for want of renewal within the prescribed time. The High Court also directed the Registry to consider the application for renewal for all cases in which the registered mark had been removed without record of mandatory notice under Section 25(3) of the Trade Marks Act, 1999.

#### NEW DELHI

5 Link Road, Jangpura Extension,  
Opp. Jangpura Metro Station,  
New Delhi 110014

Phone : +91-11-4129 9811

-----

B-6/10, Safdarjung Enclave  
New Delhi -110 029

Phone : +91-11-4129 9900

E-mail : [lsdel@lakshmisri.com](mailto:lsdel@lakshmisri.com)

#### MUMBAI

2nd floor, B&C Wing,  
Cnergy IT Park, Appa Saheb Marathe Marg,  
(Near Century Bazar)Prabhadevi,  
Mumbai - 400025

Phone : +91-22-24392500

E-mail : [lsbom@lakshmisri.com](mailto:lsbom@lakshmisri.com)

#### CHENNAI

2, Wallace Garden, 2nd Street  
Chennai - 600 006

Phone : +91-44-2833 4700

E-mail : [lsmds@lakshmisri.com](mailto:lsmds@lakshmisri.com)

#### BENGALURU

4th floor, World Trade Center  
Brigade Gateway Campus  
26/1, Dr. Rajkumar Road,  
Malleswaram West, Bangalore-560 055.

Ph: +91(80) 49331800

Fax:+91(80) 49331899

E-mail : [lsblr@lakshmisri.com](mailto:lsblr@lakshmisri.com)

#### HYDERABAD

'Hastigiri', 5-9-163, Chapel Road  
Opp. Methodist Church,  
Nampally

Hyderabad - 500 001

Phone : +91-40-2323 4924

E-mail : [lshyd@lakshmisri.com](mailto:lshyd@lakshmisri.com)

#### AHMEDABAD

B-334, SAKAR-VII,  
Nehru Bridge Corner, Ashram Road,  
Ahmedabad - 380 009

Phone : +91-79-4001 4500

E-mail : [lsahd@lakshmisri.com](mailto:lsahd@lakshmisri.com)

#### PUNE

607-609, Nucleus, 1 Church Road,  
Camp, Pune-411 001.

Phone : +91-20-6680 1900

E-mail : [ls pune@lakshmisri.com](mailto:ls pune@lakshmisri.com)

#### KOLKATA

2nd Floor, Kanak Building  
41, Chowringhee Road,  
Kolkatta-700071

Phone : +91-33-4005 5570

E-mail : [lskolkata@lakshmisri.com](mailto:lskolkata@lakshmisri.com)

#### CHANDIGARH

1st Floor, SCO No. 59,  
Sector 26,

Chandigarh -160026

Phone : +91-172-4921700

E-mail : [lschd@lakshmisri.com](mailto:lschd@lakshmisri.com)

#### GURGAON

OS2 & OS3, 5th floor,  
Corporate Office Tower,  
Ambience Island,

Sector 25-A,  
Gurgaon-122001

phone: +91-0124 - 477 1300

Email: [ls gurgaon@lakshmisri.com](mailto:ls gurgaon@lakshmisri.com)

#### ALLAHABAD

3/1A/3, (opposite Auto Sales),  
Colvin Road, (Lohia Marg),

Allahabad -211001 (U.R)

phone . +91-0532 - 2421037, 2420359

Email: [lsallahabad@lakshmisri.com](mailto:lsallahabad@lakshmisri.com)

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