

THE IP ODYSSEY

INTELLECTUAL PROPERTY

INSIDE THIS ISSUE

- Trademarks
- Copyrights
- Patents
- Domain Name



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TRADEMARK TAPESTRY

DELHI HC GRANTS INJUNCTION IN FAVOR OF 'SAKRNI PLASTER'

In Ashok Kumar Gupta & Anr. V. Vikas & Ors, the Plaintiff had approached the Delhi High Court in order to prevent the infringement of its trademarks registered under several classes and claimed that it had a distinctive color scheme, layout, and lettering style. Coupled with the trademark registration the Plaintiff also had copyright registration over the unique colour combination layout and lettering style in relation to their goods since 2004. The ad-interim order granted in May 2022 had permitted appointment of Local Commissioners to make inventories and seize the infringing products. The Court upon perusal of Local Commissioners' reports as well as pleadings was satisfied that the Defendants have blatantly infringed upon the Plaintiffs' rights in their mark 'SAKARNI'. The Plaintiffs' marks are registered trademarks, and they also have copyright registrations in respect of the unique colour combination and lettering style as well. In view of the same, the suit was decreed as the Defendants had not filed any written statement.

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DELHI HIGH COURT RULES IN FAVOUR OF 'MONSTER ENERGY' IN TRADEMARK INFRINGEMENT CASE

In a trademark infringement suit brought before the Delhi High Court, the Plaintiff, a renowned energy drink supplier 'Monster Energy' sought legal remedies against the Defendant for using the Plaintiff's registered trademark 'Monster' and deceptively similar device mark for selling sportswear, sports apparel and associated products. The court observed that the word **MONSTER** clearly constitutes the prominent, and dominant, feature of the impugned mark. A customer of average intelligence and imperfect recollection, who knows of the plaintiff's **MONSTER** mark, and encounters, later, the defendant's mark, is bound to regard both as belonging to the same person, with a mere figure of a monster added over the word by way of embellishment. In view of the same, the suit came to be decreed in favour of the Plaintiff.

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'BETNESOL' GRANTED THE STATUS OF A WELL-KNOWN MARK

In Glaxo Group Limited And Anr. V. Manoj Kumar Jain And Ors., the Plaintiffs sought inter alia the declaration of 'BETNESOL' as a well-known mark in accordance with Section 2(zg) of the Trademarks Act, 1999. The Plaintiffs contended that the mark was extensively used for tablets and other ophthalmic and pharmaceutical preparations. Further evidence was presented showing the conception of mark since early 1960s and products being made available as far back as 1962. Further evidence attesting to its extensive use for more than five decades, sales figures, parallel publicity and newspaper clippings of the mark. Were presented before the Hon'ble Court. Reliance was also placed upon *Hermes International v. Crimzon Fashion Accessories Pvt Ltd* 2023 SCC OnLine 883. On the strength of averments in the plaint, and the documents placed on record, and the reputation in the mark 'BETNESOL' as gleaned from the record, the Court stated that it is clear that the Plaintiffs' mark 'BETNESOL' has acquired a 'well-known' status. Accordingly, a decree of declaration declaring the mark 'BETNESOL' as a 'well-known' mark in respect of pharmaceutical and medicinal items as also cognate and allied products was granted.

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DELHI HIGH COURT ISSUES FINAL CLARIFICATIONS IN THEOS .V. THEOBROMA TRADEMARK DISPUTE CASE

In the trademark infringement suit between confectionery brands Theos and Theobroma, the Delhi High Court issued final clarifications after the parties failed to reach a settlement in line with the Court's earlier order. The dispute arose when Theos sought to restrain Theobroma from using the mark 'THEOS'. The settlement terms outlined specific restrictions, including product limitations and geographical boundaries. The Court clarified key points, such as the use of the mark 'THEOS', geographical limitations, Nice classification, and QR menu cards. With these clarifications, the Court decreed the suit and disposed it off. This case highlights the importance of detailed settlement terms in trademark disputes.

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TERRITORIAL JURISDICTION FOR FILING A RECTIFICATION PETITION CAN BE EXERCISED BY ANY HIGH COURT

The Delhi High Court in Dr. Reddy's Laboratories Limited V. Fast Cure Pharma And Anr. recently ruled on an issue of territorial jurisdiction for rectification & removal of mark namely 'RAZOFAST'. In this case, a judgement had initially been passed in favor of Plaintiff, and subsequently the Plaintiff filed a petition to cancel the Respondent's mark. The question addressed was whether a petition under section 47 or 57 of the Trade Marks Act, 1999 for removal of trademark and consequent rectification of the register would lie only before the High Court having territorial jurisdiction over the office of the Trademark Registry where the impugned mark was registered (in the instant case Kolkata) or could be filed in another High Court. Section 47 of the Trade Marks Act empowers the High Court to, on an application by an aggrieved person, take a registered mark off the Register of Trade Marks on the ground of non-use. Section 57 empowers the Registrar or the High Court to cancel or vary the registration of a trade mark on the ground of contravention or failure to observe a condition entered on the register in relation to the registered mark, or where the entry was made in the register without sufficient cause, or where the entry is wrongly remaining on the register or suffers from any error or defect. The court noted an inherent ambiguity in the expression 'High Court' as mentioned in Section 124(ii) of Trademarks Act. Further the Court observed that it has not expressly excluded any High Court from being competent to exercise jurisdiction either under Section 47 or 57. There is, therefore, no express statutory proscription against any High Court exercising jurisdiction either under Section 47 or 57. Hence, while deciding upon the question, the Delhi HC upheld its jurisdiction to adjudicate the matter.

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MERE APPEARANCE OF ADWORDS DOES NOT CONSTITUTE TRADEMARK INFRINGEMENT

In Policybazar Insurance Web Aggregator V. Coverfox Insurance Broking Pvt. Ltd & Ors, the Plaintiff Policybazaar alleged that the defendant companies were using identical keywords to the PolicyBazaar marks, such as "Policy Bazaar" and "PolicyBazaar" for its business through the Google Ads/AdWords program. The plaintiffs are aggrieved of the defendant no.1 bidding for the plaintiff's Policybazaar Marks as AdWords through the defendant nos. 2 and 3's AdWords Program, resulting in the defendant no.1's website being displayed as a sponsored link on the search engine of the defendant nos.2 and 3 when a person searches for keywords containing the plaintiffs' Policybazaar marks. The plaintiffs claimed that the defendant no.1 was illegally bidding and using the keywords identical to the plaintiffs' Policybazaar Marks with the intent of diverting business from the plaintiffs' website by causing confusion and association with the plaintiffs, thereby violating common law and statutory rights of the plaintiffs in the said registered marks of the plaintiffs. The Delhi High Court applying the principles as laid down in DRS Logistics (P) Ltd & Ors and observed that the plaintiff were themselves using the registered trade marks of the Defendant No.1 of the instant suit therefore accepting it as a fair and honest commercial practice.

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COPYRIGHT CORNER

SAP IMPLEADS ADDITIONAL DEFENDANTS IN COPYRIGHT INFRINGEMENT SUIT

In Sap Se V. Erp Training India & Ors, the Plaintiff, who owns the trademark "SAP" and related copyrights over training materials thereunder, succeeded in impleading additional defendants to the suit. These defendants were using "SAP" marks for similar training and online courses as the Plaintiff. The court permanently injunctioned all contesting defendants from using "SAP" marks and from using the Plaintiff's copyrighted materials for SAP training and courses. The court also stated that The Defendant DNRs shall lock and suspend the domain names as stated in para 17 of the judgment during their current registration cycle and that when the said domain names fall into public domain, then the Plaintiff is free to take steps in accordance with law. The Hon'ble Court further directed that the Domain Name Registrars shall also provide the details of the Subscribers/Registrants of the said domain names including email details, phone number, KYC details, credit card details or any other payment details which may be available in their database.

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DELHI HIGH COURT RESTRAINS ILLEGAL BROADCAST OF ICC MEN'S CRICKET WORLD CUP MATCHES.

The Delhi High Court has issued an interim order preventing the unauthorized real-time broadcast of matches from the upcoming ICC Men's Cricket World Cup. Star India Private Limited, the media rights owner for international cricket matches under BCCI and ICC, filed a copyright lawsuit as it was concerned about potential rogue websites streaming matches illegally. The court acknowledged the significant investment made by Star India and the potential revenue loss due to unauthorized broadcasts. It restrained nine rogue websites from disseminating matches and directed internet service providers to block them. If more websites are found streaming matches illegally, Star India can report them for real-time blocking. The court emphasized that blocked websites could seek modification of the order with an undertaking of lawful conduct.

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DELHI HIGH COURT IMPOSES STRINGENT MEASURES AGAINST COPYRIGHT INFRINGEMENT OF 'JAWAN' FILM.

Red Chillies Entertainment recently sought Delhi High Court's aid to combat unauthorized sharing of 'Jawan' film content via platforms like WhatsApp. Justice C. Hari Shankar issued a set of directives for Meta Platforms, Telegram, and other websites to prevent copyright infringement linked to the film. The court's earlier order already limited unauthorized reproduction and distribution. The identified individual must halt all unauthorized activities and remove infringing content. Meta Platforms were instructed to suspend the individual's WhatsApp account and disclose crucial subscriber information. This underscores the court's robust stance in protecting copyright holders from content piracy.

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DELHI HIGH COURT ISSUES SUMMONS TO 'PEOPLE OF INDIA' PORTAL IN COPYRIGHT INFRINGEMENT SUIT.

The Delhi High Court has issued summons to Instagram handle viz. 'People of India' (POI) in a copyright infringement suit filed by storytelling platform 'Humans of Bombay' (HOB). The suit seeks to restrain POI from using HOB's unique storytelling format without authorization. HOB alleges that POI replicated a significant amount of content, including images and videos, from HOB's platforms. The court found prima facie evidence of substantial imitation, leading to the issuance of summons. The matter is scheduled for further hearing on October 11, 2023. The court has also directed the defendants to be notified about the consideration of ad interim relief in the next hearing.

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DELHI HIGH COURT CLARIFIES COPYRIGHT PROTECTION FOR SPIRITUAL SCRIPTURES AND INTERPRETATIONS.

The Delhi High Court clarified that while no copyright can be claimed in scriptures like the Bhagavad Gita or Bhagavatam, any adaptations, explanations, or dramatic works derived from them are entitled to copyright protection. This ruling came during a copyright infringement suit filed by Bhaktivedanta Book Trust, which holds the rights to works authored by 'Srila Prabhupada', the founder of ISKCON. The Court noted large-scale infringement of the Plaintiff's works and issued an ex-parte interim injunction against the defendants, restraining them from further infringement. Additionally, Google and Meta were also ordered to take down the infringing content, and authorities were directed to pass blocking orders against the rogue websites. This decision upholds the rights of authors and organizations in creating transformative works based on spiritual scriptures.

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DELHI HIGH COURT GRANTS INJUNCTION AGAINST UNAUTHORIZED SHARING OF COPYRIGHTED EDUCATIONAL MATERIAL

In a case filed by Jainemo Private Limited, a company providing educational material and vocational courses, the Delhi High Court granted an injunction under Order 39 Rules 1 and 2 of the Civil Procedure Code. The injunction restrained defendants from unlawfully sharing copyrighted course materials. The plaintiff's courses, which included recorded videos, live sessions, and reading material, were deemed original copyrighted works. The defendants were found distributing these materials on various platforms, collecting fees for access. The Court held that the plaintiff's exclusive rights under the Copyright Act were violated, and granted the injunction to prevent further infringement. The court also issued specific directions to platforms like Telegram, YouTube, and GoDaddy for immediate action.

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ARTIST KHESARI LAL YADAV INJUNCTED FROM SELLING ANY NEW SONGS TILL 2025

In an appeal before the Delhi High Court, in Global Music Junction Pvt. Ltd V. Shatrughan Kumar Aka Khesari Lal Yadav & Ors, the Division Bench of the Hon'ble Court has held that in light of the Specific Relief (Amendment) Act, 2018, nature of specific relief has been changed from an equitable, discretionary remedy to a statutory remedy. The parties to dispute viz., Global Music("Appellant") and Khesari Lal ("Respondent") had entered into an agreement which provided that all intellectual property and ownership rights would vest with the Appellant. The dispute arose when Respondent created content and monetized it thereby infringing the copyright vested in the Appellant. The single judge observed that agreements were for mutual gain and could be terminated by the Artist by providing a reasonable notice. It further held that held that since the Respondent terminated the contract, negative covenant cannot be enforced. This order was dismissed by the division bench of the Delhi HC which held that Respondent cannot be permitted to renege his promises under the garb of a restriction allegedly violative of any law. The Court also noted that the conduct of Respondent 1 in the present case has been neither honest nor fair.

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PATENT PULSE

INJUNCTION GRANTED AGAINST CADILA HEALTHCARE IN A PHARMACEUTICAL DISPUTE

The Delhi High Court recently extended passing off in a case involving an expired patent in F Hoffmann-La Roche Ltd & Others V. Drugs Controller General Of India & Other. F Hoffmann-LA Roche Ltd. filed a lawsuit to challenge the approval granted to Cadila's drug for pre-clinical/ clinical trial protocols as well as manufacturing authorization granted by Drugs Controller General of India ('DCGI') under the provisions of Drugs and Cosmetics Act, 1940 (hereinafter referred to as the 'Drugs Act') read with Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 'Drugs Rules') and Guidelines on Similar Biologics: Regulatory Requirements for Marketing Authorization in India, 2012, for manufacturing and marketing the biosimilar version of 'Trastuzumab' to be declared invalid as also for permanent injunction restraining Cadila from selling, marketing and/or distributing its drug in the Indian market as 'Trastuzumab' and from representing its drug as biosimilar version of 'Trastuzumab' or of HERCEPTIN, HERCLON and BICELTIS. The lawsuit was based on the claim that these companies were marketing a drug similar to Roche's 'Trastuzumab,' which was previously protected under a patent that expired in 2013. In view of the same "Extended passing off" was invoked to protect the product's characteristics, composition, and quality, beyond trademark protection.

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DELHI HIGH COURT UTILIZES LIVE TRANSCRIPTION IN PATENT INFRINGEMENT SUIT

In the case of Communication Components Antena Inc v. Rosenberger Hochfrequenztechnik GmbH And Co. KG And Ors, the Delhi High Court, presided over by Justice Prathiba M Singh, employed live transcription during the hearing of a patent infringement suit. The court facilitated the cross-examination of witnesses from both the plaintiff and defendant sides using live transcription services provided by Opus 2 Limited. The suit was filed by Communication Components Antena Inc, alleging patent infringement by Rosenberger in relation to a patent titled 'Asymmetrical Beams for Spectrum Efficiency'. The court commended both parties and the witnesses for adhering to the schedule, successfully concluding the evidence over two days. The matter is listed for further consideration on January 09, 2024.

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DOMAIN NAME DECODED

BURGER KING SEEKS INJUNCTION ORDER AGAINST USE OF FAKE DOMAIN NAMES

In an earlier suit filed by Burger King it was held that multiple fake franchises were using 'Burger King' mark to deceive unsuspecting persons into paying large sums of money. Consequently, an injunction was granted in favor of Burger King with regards to domain names used by such fraudulent franchises. Subsequently, it was discovered that some of the Defendants were offering fake franchises under the Burger King Trade Mark to unsuspecting persons and duping them of large sums of money. Recognizing the urgency of matter, Delhi High Court has extended the interim injunction to include all of these domain names. Additionally, the court has directed GoDaddy.com LLC, FastDomain Inc, NIXI, DoT and MeitY from blocking all domains where the words 'Burger' and 'King' are used together. Furthermore, a Mareva injunction is granted to freeze bank accounts of the perpetrator who deceived an unsuspecting customer.

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FIRM HIGHLIGHTS



ANM GLOBAL RECOGNISED BY ASIALAW 2023/24

ANM Global has been recognized as an overall 'Highly Recommended' Firm in the 2023/24 Edition of asialaw.

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MR. NIDHISH MEHROTRA APPOINTED TO INTA COMMITTEE

Our Managing Partner, Mr. Nidhish Mehrotra has been appointed to the Enforcement Committee of the International Trademark Association (INTA).

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MS. ANUSHREE RAUTA RECOGNISED BY ASIALAW 2023/24

Ms. Anushree Rauta has been recognised as 'Notable Practitioner'.in the 2023/24 Edition of asialaw.

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MR. UMANG SHETH CONDUCTED A LECTURE ON GAMING AND SPORTS LAWS AT PRAVIN GANDHI GANDHI COLLEGE OF LAW

Our senior associate Mr. Umang Sheth conducted a lecture at Pravin Gandhi Gandhi College of Law (Shri Vile Parle Kelvani Mandals Pravin Gandhi College of Law Vile Parle (W) Mumbai 400 056), on the contractual perspectives in the Gaming and Sports Industry along with the business and legal mind of Mr. Alok Shah (Head of business Affairs at Loco).

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DELHI HIGH COURT REFUSES TO RESTRAIN USE OF SATINDER SARTAAJ SONG JALSA IN MISSION RANIGANJ

The Delhi High Court refused an interim injunction for the song "Jalsa" in "Mission Raniganj" as singer Satinder Pal Singh Sartaaj agreed to deposit ₹25 lakhs. Saga Music's claim conflicted with Sartaaj's earlier assignment of rights to Sony Music.

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