

NEWSLETTER JANUARY, 2023

TRADEMARK

“SWISS MILITARY” MARK HELD INELIGIBLE AS IT COULD BE CONFUSED AS A PRODUCT OF SWISS GOVERNMENT

In *Armasuisse Vs. The Trademark Registry and Anr*, the Plaintiff was the defence procurement office of the Switzerland government who challenged the Deputy Registrar's Trademark order which allowed the registration of the mark of Promoshirts. The registered mark was a “SWISS MILITARY” with a white cross on a red background. It was registered in Class 25 in respect of clothing, readymade garments, coats, jackets etc. Armasuisse, the Plaintiff contended that use of the registered mark could be misconstrued as indicating the product to be of Swiss origin.

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THE RIGHT TO OPPOSE REGISTRATION OF A TRADE MARK IS JUST AS SACROSANCT AS THE RIGHT TO SEEK REGISTRATION.

In *V-GUARD INDUSTRIES LTD vs. THE REGISTRAR OF TRADEMARKS & ANR*. case, the Appellant, V-Guard Industries had delayed by three days to “leave with the Registrar” the evidence in support of their opposition to the registration of the Trade Mark by the second respondent. The Appellant contended that they had in fact tried to file the evidence on the last day however they could not due to non-functional website.

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TRADEMARK TO BE PUT IN NEGATIVE KEYWORD LIST ON THE GOOGLE ADS PROGRAM: SETTLEMENT TERM TO LOOK OUT FOR

In *Global Car Group PTE LTD and Anr Vs. Ola Fleet Technologies Private Limited and Anr* the Plaintiff are the proprietors of the trademarks “Cars24, Bikes24, CARS24 UNNATI, CAR BECHNI HO TOH CARS24” respectively. The Plaintiff alleged that the Defendants were infringing the aforesaid trademarks of the Plaintiff.

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SUBWAY BEING A WELL-KNOWN MARK CANNOT BE CONFUSED WITH SUBERB

In *Subway IP LLC vs. Infinity Foods & Ors*, the Court observed that any such possibility as alleged in the instant case stands conclusively foreclosed even by the reputation that the plaintiff commands in the market. The Plaintiff in the said case alleged that the Defendant was infringing the mark of the Plaintiff in the following manner:

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TRADEMARK ENFORCEMENT OF WELL-KNOWN MARK LIKE SANDISK ESSENTIAL

In Sandisk LLC & Anr vs. Laxmi Mobile & Ors, Sandisk, the Plaintiff who is one of the world's leading manufacturer of flash drive storage was aggrieved as the Defendants were indulging in unauthorized third-party distribution of counterfeit microSDHC cards and USB flash drives bearing Plaintiffs' registered trademarks 'SanDisk', ' ' and its Red Frame Logo Plaintiffs' registered trademarks with identical packaging as that of Plaintiffs' products. While the Court issues an ex-parte interim order local commissioners were appointed to visit the premises of the said Defendants to prepare an inventory of infringing articles. As the Defendant did not file written statement despite service of summons, this Court is empowered to pass a judgment in terms of Order VIII Rule 10 of Code of Civil Procedure, 1908.

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UNLESS THE INFRINGING MARK AND THE INFRINGED MARK ARE BOTH THE SAME, THE ACT OR TRANSACTION CANNOT BE TREATED AS ONE

In Jindal Stainless (Hisar) Ltd. Vs. Suncity Sheets Private Limited and Anr, Jindal Stainless Ltd., the Plaintiff alleged that the mark of the defendants "R N Jindal Tubes" infringed its Jindal device mark in which the Plaintiff holds valid registrations. The Plaintiff contended that the very use of the word "JINDAL" infringes each of the plaintiff's registered trademark.

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COPYRIGHT

ENFORCEMENT OF NEGATIVE COVENANTS IN CONTRACTS OF PERSONAL SERVICE AND GRANT OF INTERIM INJUNCTION

In Global Music Junction Pvt. Ltd Vs. Annapurna Films Pvt. Ltd. & Ors., Global Music Junction Pvt. Ltd, the Plaintiff is engaged in the business of production, aggregation, distribution and monetization of music and entertainment content. They entered into an agreement with the Keshari Lal Yadav (Artist) to create 200 songs for a period of 30 months with exclusive rights to the Plaintiff. The Plaintiff in the instant case alleged that the Defendant No. 6 had blatantly infringed the copyright vested in the Plaintiff company and the exclusivity/'right of first refusal' in favour of the plaintiff

company as the Artist created content and allowed third parties, i.e., the other Defendants in the suit to promote the said content by uploading the same on the defendant no.5's platform i.e. Youtube. Consequently an Addendum agreement was signed between the parties which according to Defendant No. 6 suspended the exclusive rights of the Plaintiff. As per the submissions made by the aforesaid Defendant, the Agreement and Addendum came to be terminated by the artist upon sending a Notice in this regard. The Plaintiff contended that since the Original Agreement was a commercial contract, it should be held valid and enforceable.

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PATENT

NOVARTIS SUCCESSFUL IN ENFORCING ITS PATENT RIGHTS OVER CERITINIB DRUG

The Delhi High Court in *Novartis AG & Anr. vs. Natco Pharma Ltd.* issued an order restraining Natco, its management and distributors from infringing the patent rights of Novartis on its cancer drug Ceritinib.

The Plaintiff in the said suit alleged that the Defendants without obtaining license were liable for infringing the patent rights in Ceritinib as they were manufacturing and selling the drug in the market.

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DESIGN

KENT RO SUCCESSFUL IN PROTECTING ITS REGISTERED DESIGN

In *Kent Ro Systems Limited & Anr vs.. Bajrang Impex Private Limited*, the Plaintiff is engaged in the business of manufacture and sale of water purifiers. In July 2022, the plaintiff came across cabinets having a similar design to the plaintiff's water purifier in which it had a registered design. The plaintiff was aggrieved by the use by the defendant of a logo, and name similar to that of the plaintiff. Hence, Plaintiff had filed the present suit against the defendant.

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PRIOR PUBLICATION ARGUMENT RENDERED THE REGISTRATION OF DESIGN BEING QUESTIONED

In the dispute between *Novamax Industries LLP Vs. Prem Appliances & Anr.* the issue was regarding the design of coolers for which the Plaintiff argued to have a valid and subsisting registration. Prem Appliances, the Defendant invoked Section 22(3)1 of the Designs Act read with Section 19(1)(b) to plead prior publication of the design as a ground to urge that, on account of prior publication, the suit design is vulnerable to cancellation i.e. the Defendant due to prior publication of its design claimed that the registration of design of the Plaintiff had to be cancelled.

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CONCEPTUAL DESIGN NOT APPLIED TO ARTICLE DOES NOT CONSTITUTE PRIOR PUBLICATION: DELHI HIGH COURT

In Novateur Electrical & Digital Systems Pvt Ltd. vs. V-Guard Industries Ltd the plaintiff alleged that the MATTEO range of switch plates manufactured and sold by the defendant infringes Design Registration held by the plaintiff in respect of its LYNCUS switch plates within the meaning of Section 22(2) of the Designs Act. The Defendant on the other hand contended that the communication of the "Concept 6" design by NIPA, first to Orient and thereafter to the defendant, by the emails as annexed to the written statement are sufficient in order to constitute –publication within the meaning of Section 4(b) of the Designs Act.

The Court however observed that "Communication of such a conceptual design, which was not applied to any article, by one person to another, cannot amount to disclosure to the public by publication in tangible form within the meaning of Section 4(b) of the Designs Act." Further the court opined and decided that such a computer image cannot constitute a depiction of the design in a tangible form, so as to enable the court to apply the design and visualize the final product which would emerge by application of the design. Thus, the Court was not convinced, therefore, that it can be said that the said suit design was prohibited from registration under Section 4(b) of the Designs Act.

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GEOGRAPHICAL INDICATION

THE DEPARTMENT OF HANDICRAFTS AND HANDLOOM FILED APPLICATION TO GET GI REGISTRATION FOR KASHMIR TWEED

The Union Territory of J&K has two major facilities for processing of the wool, one at UNDP under the ambit of Directorate of Handicrafts and Handloom

Kashmir and another facility at Jammu Kashmir Industries which has been at fore front in ensuring a sustained supply of raw material as well as manufacturing of Tweed in the valley. The Handicrafts and Handloom Department has been facilitating the promotion of GI-tagged products in order to symbolize the empowerment of the artisans.

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Compiled by :
Ruddhi Bhalekar & Surbhi Talreja