



THE IP ODYSSEY

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TRADEMARK TAPESTRY

DELHI COURT AFFIRMS DECEPTIVE SIMILARITY IN 'ROYAL STAG' AND 'INDIAN STAG' MARKS

In the present case, the Court observed that each of the rival marks was a composite mark consisting of two parts; in Plaintiff's case, 'ROYAL' and 'STAG' and in Defendant's case, 'INDIAN' and 'STAG' and the second part of each of these marks was the same 'STAG'. The Court further opined that the marks 'ROYAL STAG' and 'INDIAN STAG', have necessarily to be regarded as deceptively similar as both were used for IMFL and defendant had not been able to cite a single other mark, used for IMFL, which contained the word STAG or even used the Stag device. The Court opined that once the essential features of Plaintiff's mark were replicated in Defendant's mark, infringement, within the meaning of Section 24(2)(b) of the Trade Marks Act, 1999. The Court said that it seemed likely that the Defendants were using a mark very similar to the Plaintiff's mark, which could be considered an initial sign of infringement. This led the Court to grant a temporary order to stop this use. However, the Court also mentioned that there wasn't enough evidence to support the claim that consumers would confuse the two products in foreign markets. Because of the noticeable differences in how the products look and the fact that the Defendants were only selling their product overseas, the Court didn't find enough proof to say that the Defendants were trying to pass off their product as the Plaintiff's. Therefore, the Court decided that, for now, there wasn't enough proof to support the claim of passing off against the Defendants in favour of the Plaintiff.

JUDGEMENT

DELHI HIGH COURT BARS IKEA LUXURY FURNITURE FROM USING 'IKEA' MARK

The Delhi High Court has restrained a Kerala based furniture store "Ikea Luxury Furniture" from using the mark "Ikea" either as a trademark or trade name on hoardings, including stationery, banners, handbills, and promotional materials.

Ikea accused the Defendant furniture store of using the 'IKEA' mark on various furniture items, inside the store on hoardings, and on product boxes. The Court recognized 'IKEA' as a highly reputed and well-known mark owned by the Plaintiff company. It concluded that the Plaintiff's 'IKEA' mark deserves legal protection based on the evidence provided in the pleadings and documents. Considering that the Defendant used the mark for similar goods and targeted the same consumer base as Ikea, the Court deemed it appropriate to grant an ex-parte ad-interim injunction in favor of Ikea. Despite receiving a legal notice, the Defendant continued using the 'IKEA' mark. Consequently, the court ordered the Defendant to refrain from using the mark 'IKEA' or any confusingly similar mark as a trademark or trade name on store hoardings, stationery, banners, handbills, promotional materials, etc.

JUDGEMENT

DELHI HIGH COURT RESTRAINS PLASTIC CHAIR MANUFACTURERS FROM USING THE 'NILKRANTI' DEVICE MARK IN A SUIT BY NILKAMAL

The Delhi High Court has restrained two plastic chair manufacturers from using "Nilkranti" device mark or any other device mark which is confusingly or deceptively similar to the device marks of Nilkamal.

Justice Shankar highlighted that the mark 'NILKRANTI' cannot be considered confusingly similar to 'NILKAMAL' as they are distinct when viewed as whole marks. Emphasizing the principle of considering rival marks in their entirety rather than dissecting them into individual components, Justice Shankar referred to Section 17 of the Trade Marks Act. This section underscores that unless specific parts are registered as separate marks, exclusivity is granted over the entire registered mark, not its individual components. As the plaintiffs lacked registration for the "NIL" prefix of the 'NILKAMAL' mark, the Court reasoned that they couldn't assert monopoly over 'NIL' as a prefix for marks concerning plastic moulded chairs or furniture. Hence, the comparison of the marks needed to be holistic. Consequently, the Court concluded that there was no phonetic similarity between 'NILKAMAL' and 'NILKRANTI.' Additionally, Justice Shankar asserted that there was no basis to presume that an average consumer, with imperfect recall, would confuse or associate 'NILKAMAL' with 'NILKRANTI.'

JUDGEMENT

DELHI HIGH COURT RESTRAINS TELANGANA HOSPITAL CHAIN FROM USING 'MAXI CURE' MARK

The Delhi High Court has restrained a Telangana based hospital chain from using the mark "Maxi Cure" for its healthcare services in a trademark infringement suit filed by Max Healthcare. Max Healthcare Institute Limited, operating hospitals under the trademark "Max," filed a lawsuit against Maxi Cure Hospitals, which runs healthcare centres in Telangana. Max argued that the usage of "MAX" by Maxi Cure Hospitals, even with an additional term, could weaken Max's reputation due to negative online patient reviews about Maxi Cure Hospitals' services. Max contended that this could lead to confusion among patients, assuming Maxi Cure Hospital as part of the Max hospital chain. Justice Singh noted that in healthcare and pharmacy, preventing confusion is crucial. The trademark "Max," owned by the Plaintiff, is a significant and prominent element in the Defendant's name "Maxi Cure," potentially infringing upon the Plaintiff's legal rights and affecting the patient community. Consequently, the Plaintiff established a preliminary case for an interim injunction based on these grounds.

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DELHI HIGH COURT: GLOBAL REPUTATION NOT ENOUGH FOR TRADEMARK CLAIM

The Delhi High Court has ruled that mere global reputation or asserted goodwill of a trademark is not sufficient to answer claim of trans-border reputation. The Court highlighted the vital need for a strong and recognizable reputation of a trademark among consumers in a specific territory to claim protection. A global reputation alone doesn't suffice; proving significant recognition in the relevant area is essential. In the case involving Bolt Technology OU and Ujoy Technology Private Limited over the use of the "BOLT" mark in EV charging stations, the Court upheld the earlier decision rejecting Bolt's request for an interim injunction. The Court stressed Bolt's failure to show a substantial reputation in India, specifically in the EV charging services sector. Despite technological advancements, it emphasized the necessity of strong evidence demonstrating goodwill or reputation in the Indian market for a transnational reputation claim. Additionally, the court dismissed the idea that app downloads or media coverage alone prove a significant consumer base in India. It emphasized the requirement for substantial usage by Indian consumers, especially in the context of ride-hailing and mobility services abroad, to establish a strong presence in the market.

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DELHI HIGH COURT GRANTS SUN PHARMA INTERIM RELIEF IN TRADEMARK CASE

The Delhi High Court has granted interim relief to pharmaceutical giant Sun Pharma in a trademark-infringement case against Delhi-based nutritional-supplement company Protrition Products LLP. The Court issued a restraining order against Protrition Products, barring them from producing, selling, or advertising goods under the brand name 'Abzorb' while the case is ongoing. Sun Pharma accused Protrition Products of trademark infringement for using 'Abzorb Nutrition,' similar to Sun Pharma's registered trademark 'Abzorb' for anti-fungal pharmaceuticals. The Court found the names phonetically identical and potentially confusing for consumers. Protrition Products argued that 'Abzorb' was a common word and questioned its uniqueness, emphasizing price differences between the products. However, the Court deemed it a case of trademark infringement, rejecting Protrition's claims. In the pharmaceutical industry, distinct brand names are crucial for consumer safety. This case highlights conflicts arising over trademark usage in a limited pool of generic names used by pharmaceutical companies.

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DELHI HIGH COURT SIDES WITH SOPARIWALA IN TRADEMARK DECEPTION CASE

The Delhi High Court has decreed renowned tobacco exporter-Sopariwala's trademark suit, holding that the Defendant had a clear intent to adopt a mark deceptively similar to Sopariwala's and to pass off its own products as the latter's.

The Plaintiffs, holders of the trademark "AFZAL" for tobacco products in India, alleged infringement by the Defendant using the mark "AFSAL" with a deceptively similar trade dress. They claimed substantial revenue from their "AFZAL" branded products, asserting it as a well-established identifier since 1977. Justice C. Hari Shankar noted the visual and phonetic resemblances between the marks, recognizing the potential for consumer confusion, especially in the tobacco market. Considering the health risks associated with tobacco consumption, the Court stressed the need for heightened caution.

As the Defendant didn't appear or respond to the allegations, the Court invoked the "principle of non-traverse," treating the claims in the plaint as admitted. Under Order 8 Rule 10 CPC, the court decreed in favour of the Plaintiffs, granting a permanent injunction to prohibit the defendant from using the Plaintiffs' marks or any deceptively similar marks or trade dress.

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DELHI HIGH COURT HOLDS RESTAURANT IN CONTEMPT FOR CHANGE OF NAME ON FOOD APPS.

The Delhi High Court has held a Meerut based restaurant owner guilty of disobeying a last court order which restrained him from having any online listing on Zomato or Swiggy using the name "Veer Ji Malai Chaap Wale" by "subverting" the injunction and using a different name "Veer Di Malai Chaap Wale."

The court previously ordered Ankit Kumar, a restaurant owner, to remove online listings of his restaurants named "VEER JI MALAI CHAAP WALE" due to a trademark infringement suit by Veerji Restaurant Private Limited. Despite this, Kumar allegedly used a variant, "VEER DI MALAI CHAAP WALE," on invoices for orders placed through Zomato, contrary to the Court's order. The court found this action as an attempt to deceive and undermine its directives, labelling it as a calculated fraud on the Court.

Justice Shankar determined that Kumar's actions were deliberate attempts to disobey the Court's orders and undermine the legal process. Kumar was instructed to disclose the earnings from orders placed using the altered name and provide reasons why the court should not take action against him for wilfully disobeying its directives. The case is scheduled for further hearing on December 07.

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DELHI HIGH COURT GRANTS INJUNCTION IN DR. REDDY'S TRADEMARK CASE

Finding a prima facie case of infringement, the Delhi High Court recently granted injunction in favour of Dr. Reddy's-AZIWOK against Defendant's AZIWAKE, noting that the minuscule difference between the two words was too slight to detract from the overall phonetic similarity between them.

In an interim ruling, the Delhi High Court barred Smart Laboratories from using the trademark "Aziwake," which was found deceptively similar to Dr. Reddy's Lab's registered trademark "Aziwok." The injunction applies to the use of "Aziwake," regardless of any added prefixes or suffixes, specifically within the context of pharmaceutical preparations and related products or services. Regarding existing stock yet to expire, the Court allowed Smart Laboratories to sell it in the market after submitting an affidavit within five days, detailing the batch numbers and expiry dates. Additionally, copies of the invoices for the sold stock must be presented on affidavit. The Court highlighted the potential for confusion between "Aziwok" and "Aziwake," particularly in the context of azithromycin. It stressed that an average consumer with imperfect recollection encountering both products might experience confusion, as the distinction between the two marks might not be apparent, potentially leading to uncertainty or bewilderment.

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DELHI HIGH COURT DEEMS SALE OF COUNTERFEIT GOODS DETRIMENTAL TO TRADEMARKS

The Delhi High Court has observed that sale of counterfeit goods goes against public interest and may render a trademark or brand completely useless.

In a trademark infringement case, Justice Prathiba M Singh awarded Rs. 11 lakhs in damages and costs to Woodland, a company whose registered trademark "Woodland" was used by M/s Sahara Belts to sell counterfeit products like belts, belt-buckles, and wallets. The Court highlighted that the sale of counterfeit goods not only violates Woodland's legal rights but also damages its brand equity and the market for genuine products. Over 11,000 counterfeit items were seized from the Defendant's premises. The Court decreed the suit in favour of Woodland, permanently restraining the Defendant from manufacturing, selling, or advertising any products bearing the "Woodland" word mark, "Tree" device, or any similar mark.

JUDGEMENT

"MADRAS HIGH COURT UPHOLDS INJUNCTION ON ITC'S SUNFEAST COOKIES PACKAGING"

The Madras High Court recently refused to interfere with an order of a single judge injunctioning ITC Limited from selling their "Sunfeast Mom's Magic Butter Cookies" in a blue wrapper similar to that of Britannia Good day biscuits.

Britannia alleged that ITC, through its "Sunfeast" products in blue packaging, mimicked Britannia's identical blue packaging, causing confusion and benefiting from Britannia's reputation. They sought a permanent injunction, delivery of the offending materials, damages, and accounts. ITC argued that the change in color to blue was standard practice for butter-related products, denying any similarity between the wrappers and refuting Britannia's motives. Initially, the single judge restrained ITC from using the blue wrapper. During appeal, ITC contended that color couldn't be exclusively claimed, citing differences in various elements on the wrapper. However, the court determined that while individual elements differed, the overall arrangement resembled Britannia's packaging, deeming ITC's adoption deliberate. The court found the wrappers deceptively similar, potentially causing confusion among consumers, particularly on supermarket shelves. It noted ITC's copying of the overall style and arrangement, akin to someone replicating a story by reusing alphabets. Emphasizing that trademark and trade dress distinctiveness arises from the overall combination and style, the court upheld the single judge's decision, considering the prima facie case for an injunction.

JUDGEMENT

DELHI HIGH COURT RESTRAINS USE OF "DIALMYTRIP" MARK IN TRADEMARK INFRINGEMENT SUIT FILED BY MAKEMYTRIP

The Delhi High Court has restrained a travel and hotel booking company from using "Dialmytrip" mark in respect of tour, travel, hospitality and other services in a trademark infringement suit filed by online travel company MakeMyTrip.

Justice Prathiba M Singh granted an ex-parte ad interim injunction favoring MakeMyTrip, finding the marks "MakeMyTrip" and "Dialmytrip" confusingly similar. The Court opined that Dialmytrip's business might be seen as an extension or affiliate of MakeMyTrip, potentially leading to dilution of the latter's well-established brand equity.

The injunction restrained Dialmytrip from using the domain name "www.dialmytrip.com" for travel-related services but allowed the use of "www.dmtgroup.in" for such services. Justice Singh stated that the balance of convenience favoured MakeMyTrip, a well-known entity in the travel industry, with the absence of an injunction potentially resulting in irreparable loss to the Plaintiff. MakeMyTrip alleged infringement, passing off, and dilution of its mark due to Dialmytrip's use of the name "Dialmytrip" in any services related to travel, hospitality, and others. The order explicitly restricts Dialmytrip from using the name "Dialmytrip" in these service categories.

JUDGEMENT

COPYRIGHT CORNER

DELHI HIGH COURT ORDERS SHARECHAT AND MOJAPP TO TAKE DOWN ZEE ENTERTAINMENT'S CLIPS

In an order dated November 1, 2023, the Delhi High Court ordered ShareChat and MojApp to remove 134 film clips and recordings in which the copyright is owned by Zee Entertainment Enterprises from their libraries.

In a legal dispute between Zee Entertainment Enterprises Ltd. (Zee) and Mohalla Tech (P) Ltd. (MTPL), Zee sought an interim injunction to prevent MTPL from allowing access to copyrighted recordings owned by Zee through ShareChat and Moj Apps and websites. Zee had a prior license agreement with MTPL, which expired and was not renewed. Despite MTPL's claims of removing Zee's licensed content post the agreement's expiration, Zee alleged that its copyrighted songs continued to be accessible through MTPL's platforms, constituting copyright infringement and breach of the expired license agreement. MTPL argued that the accessible recordings were remixes, cover versions, or user-generated content and that the specifically mentioned 134 films/clips were not part of Zee's copyrighted content.

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BOMBAY HIGH COURT DENIES STAY ON OTT RELEASE OF YASH RAJ FILMS' WEBSERIES

The Bombay High Court rejected a plea to stay the release of Yash Raj Films' web series "The Railway Men - The Untold Story of Bhopal 1984." The series faced opposition from two former Union Carbide employees convicted in the Bhopal Gas Tragedy case. They sought to exclude references to the tragedy in the series, alleging it could affect ongoing legal proceedings. The Court deemed the plea untenable, noting the appellants' convictions, the fictional nature of the series, and the disclaimer preceding it. It highlighted the delay in approaching the Court, dismissing the stay request due to the high threshold not being met.

JUDGEMENT

DELHI HIGH COURT ORDERS ACKO GENERAL INSURANCE TO REMOVE MURAL-RELATED POSTS

The Delhi High Court has directed insurance company Acko General Insurance to take down its social media posts using a mural titled "Humanity" in a copyright infringement suit filed by St+art India, an organization that works on art projects in public spaces.

Justice Prathiba M Singh directed the insurance company to remove social media and online posts featuring a mural within 72 hours, based on a suit by St+art India asserting copyright and moral rights over the artwork. The mural, created under an agreement with St+art India, was allegedly used by the insurance company in advertisements without rights licensing. Although the insurance company removed the physical hoarding, online posts remained, prompting the Court's intervention. The court noted that using the mural in an advertisement without permission raised questions regarding fair dealing under the Copyright Act, 1957. It clarified that its order was interim and didn't form an opinion on the legal issues, acknowledging the need for further examination.

JUDGEMENT

DELHI HIGH COURT SUSPENDS ROGUE WEBSITES FROM DISTRIBUTING COPYRIGHTED CONTENT OF SIX AMERICAN STUDIOS

Justice Prathiba M. Singh of the Delhi High Court recently granted an ex-parte ad-interim injunction in favour of content creators Universal, Warner Bros, Netflix, Paramount Pictures and Disney in a suit filed against rogue websites disseminating their copyrighted content.

The court invoked a "Dynamic+ injunction" based on prior precedent, extending protection not just to existing content but also future works of the plaintiffs. Concerned with the unauthorized reproduction and distribution of copyrighted films and TV series, the court emphasized the dynamic nature of content and the significant losses incurred due to infringement. It highlighted the challenges posed by rogue websites hiding behind domain registrations and privacy protections, leading to continual piracy despite previous injunctions. The court recognized the rapid emergence of mirror websites when blocking orders are issued, echoing the need for effective measures to address piracy and protect copyright holders' interests.

JUDGEMENT

PATENT PULSE

DELHI HIGH COURT EXPLORES JURISDICTIONAL CHALLENGES IN PATENT OFFICE ASSIGNMENT

A hearing of an application filed before the Bombay Patent Office seeking grant of patent, was assigned to the Delhi Patent Office.

The case involved an appellant contesting the territorial jurisdiction for an appeal in a patent matter. The appellant's patent application was originally filed at the Bombay Patent Office but was assigned to the Delhi Patent Office for examination. The appellant approached the Delhi High Court under Section 117A of the Patents Act, asserting territorial jurisdiction.

The respondents argued that, as per precedent in *Dr. Reddys Laboratories Ltd. v. The Controller of Patents*, the appeal should lie before the Bombay High Court since the application was initially filed in the Bombay Patent Office.

Justice C. Hari Shankar highlighted the absence of provisions permitting the assignment of a patent application from one office to another for examination in a different geographical location. The court addressed two key issues: whether the delegation of the entire examination process to the Delhi Patent Office was permissible without statutory provisions, and whether the unsuccessful appellant could be barred from approaching the Delhi High Court despite the Bombay Patent Office's lack of involvement in the application process.

JUDGEMENT

DELHI HIGH COURT STRESSES PRECISION IN DEMONSTRATING THERAPEUTIC EFFICACY IN PATENTS

The Delhi High Court recently held that when a patent applicant wishes to demonstrate enhancement in therapeutic efficacy in terms of Section 3(d) of the Patents Act, 1970, the same must be done 'precisely' by filing data before the Patent Office during prosecution of the application.

The matter involved an isomer patent claim and highlighted the significance of demonstrating therapeutic efficacy as per Section 3(d) of the Patents Act. The court stressed the importance of timely and comprehensive explanations during the review process. Justice Prathiba M Singh emphasized the necessity of presenting thorough comparative data and explanations showcasing the substantial enhancement in therapeutic efficacy during patent application proceedings. Refraining from delving into the merits, the court directed submission of this data, cautioning against late submissions hindering proper assessment.

JUDGEMENT

FIRM HIGHLIGHTS



MR. PURAZAR FOUZDAR, JOINED ANM GLOBAL AS A PARTNER

We are thrilled to introduce a dynamic addition to our ANM Global family. Please join us in welcoming Mr. Purazar Fouzdar, who has joined us as a Partner in our esteemed Dispute Resolution Practice.

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MR. RAHUL DHOTE ATTENDED THE 20TH GENERAL ASSEMBLY AND THE 74TH & 75TH COUNCIL MEETINGS OF THE ASIAN PATENT ATTORNEYS ASSOCIATION (APAA).

Our Partner, Mr. Rahul Dhote had the privilege of attending the 20th General Assembly and the 74th & 75th Council Meetings of the Asian Patent Attorneys Association (APAA), hosted at the Sands Expo and Convention Centre, Marina Bay Sands, from 3 to 7 November 2023.

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MR. ADARSH HIMATSINGHKA WAS ONE OF THE DISTINGUISHED INSTRUCTORS FOR THE IP PRESS CERTIFICATE COURSE ON MEDIA AND ENTERTAINMENT LAW HELD RECENTLY.

ANM Global is delighted to share that our Senior Associate, Mr. Adarsh Himatsinghka was one of the distinguished instructors for THE IP PRESS Certificate Course on Media and Entertainment law held recently.

During the session, Mr. Himatsinghka, shared his valuable insights on the Introduction to Media and Entertainment Laws.

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