



2021

JULY ISSUE



SINGHANIA & PARTNERS LLP
SOLICITORS AND ADVOCATES

In this issue

IP AWARENESS INITIATIVES

- Singhanian & Partners LLP and CII-TNTDPC Organized Patent Training Program (19 July 2021 - 23 July 2021)

PATENTS

- The Court Upheld Interim Injunction against the Defendants from Using Patented Agrochemical Ingredients
- SMS Pharmaceuticals Allowed to Export Merck Sharp and Dohme Corporation's Patented Drug "Sitagliptin"
- AstraZeneca Denied Interim Injunction against Indian Pharmaceutical Companies

TRADEMARKS

- The High Court of Delhi Grants Interim Injunction Protecting the Mark 'CrossFit'
- The High Court of Bombay Provides Protection against the Infringement of the Mark 'Diavit'
- The High Court of Delhi Grants ex-parte Interim Injunction for Protection of the Mark 'Mangla'
- Sony Corporation Fails to get an Injunction Against a Travel Service Company in Bangalore
- Rights in Trademark once Relinquished cannot be claimed unless the Relinquishment Term is revoked: High Court of Delhi¹

COPYRIGHT

- The High Court of Bombay Accepts Acknowledgement of Defendant
- Trivandrum District Court Orders Facebook India to Remove Videos of Shri Ravi Shankar

GEOGRAPHICAL INDICATIONS

- Application filed by Goa State Council for GI Tag for Three Mango Varieties

GENERAL

- Intellectual Property Division in Delhi High Court
- Extension of TRIPS transition period for LDCs until 1 July 2034
- Amazon Launches IP Accelerator programme in India

IPR AWARENESS INITIATIVES

Singhanian & Partners LLP and CII-TNTDPC Organized Patent Training Program (19 July 2021 - 23 July 2021)

Bhawna Sharma, Head - Patent & Designs, addressed the students and faculty members, in the "Live 5-Day Certificate Course on Patent Laws", jointly organized by Singhanian & Partners LLP, Confederation of Indian Industry (CII), Tamil Nadu Technology Development and Promotion Centre (TNTDPC) and ISERD India Analytics, in collaboration with Central Law College, Salem, Tamil Nadu, from 19 July 2021 - 23 July 2021. The course focused on the principles underlying Patent Law in India including Patentability Searches & Technical Drafting to Patent Enforcement & Protection and the related Laws.

PATENTS

The Court Upheld Interim Injunction against the Defendants from Using Patented Agrochemical Ingredientsⁱ

The High Court of Delhi (Court) passed a landmark judgement and enjoined Best Corp Science LLP and Natco Pharma Limited (Defendant) from infringing the granted patents of FMC Corporation (Plaintiff).

The Plaintiff owned the patent 201307 (IN307) for method of preparation and the actual/precise molecular structure and formula of CTPR. CTPR is one of 148 compounds specifically exemplified in the

patent IN307, which was granted as no pre-grant or post-grant opposition was filed by anyone, including the Defendant. Also, the counterparts of the suit patent had been granted in more than 40 countries.

Further, the patent 213332 (**IN332**), is the process patent. Moreover, the counterparts of IN332 had been granted patents in over 40 countries, where they have been neither revoked nor invalidated.

Further, the patent 204978 (**IN978**) contains a ‘Markush’ formula, from which the compounds in patent IN307 were asserted to be novel and inventive. The Plaintiff acknowledged that CTPR falls within the scope of the numerous compounds and forms a part of the class of ‘anthranilamides’, included in the Markush formula, disclosed and claimed in the patent IN978, but asserted, with equal emphasis, that CTPR is not specifically disclosed in IN978 and that a person skilled in the art would not be able to synthesise CTPR based on the claim and disclosure in IN978.

The Defendant mainly defended their impugned actions based on the invalidity of the patents of the Plaintiff.

The Defendant further raised contentions to support the submission that CTPR was disclosed by the genus patent, i.e., Claim 22 in IN978 and stated that Section 11(2)(b) of the Patents Act, 1970, creates a presumption of the existence of a disclosure in a patent to which the priority date has been assigned. The Court did not agree with

the same and held that once the Defendant accepts that Markush claims are patentable, it no longer remains open to the Defendant to rely on Section 11(2)(b) of the Patents Act, 1970, to advance an argument that, as Claim 22 in IN978 was patented, there must be a presumption of disclosure of CTPR therein.

The Defendant further asserted vulnerability of IN307 as having been anticipated by prior claiming in Claim 22 of IN978. In this regard the Court held that the Section 64(1)(a) of the Patents Act, 1970, can be invoked as a ground for revoking a patent. The relevant states as under:

“64 Revocation of patents. -

(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, 149 [be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court] on any of the following grounds that is to say-

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India”

The Court while invalidating the Defendant’s claims stated:

- that there is an obvious etymological difference between a “guarantee of validity” and a “presumption of validity”. Grant of patent cannot, obviously, guarantee its validity; else, a granted patent would become immune from challenge. Thus, the challenge, posed by the Defendant to the validity of the Plaintiff’s patent need not be such as to demonstrate, conclusively, the invalidity thereof;
- that at the interim stage, it is sufficient if the Defendant can make out a case of the patent in question is vulnerable to revocation under the Patents Act, 1970. In view of these findings, the Court restrained the Defendant from manufacturing, using, selling, distributing, advertising, exporting, offering for sale or in any other manner, directly or indirectly, dealing in any product which infringes the subject matter of IN307, including the product ‘Chlorantraniliprole’ (CTPR), claimed therein, or using, directly or indirectly, any of the process as claimed in IN332, for the manufacture of ‘Chlorantraniliprole’, or the claimed subject matter of IN307, till the disposal of the present suit.

While granting an injunction, the Court held that the Defendants failed to establish *prima-facie* invalidity of the granted claims, which was the main defence of the Defendants.

SMS Pharmaceuticals Allowed to Export Merck Sharp and Dohme Corporation’s Patented Drug “Sitagliptin”ⁱⁱ

The High Court of Delhi (Court) on 20 July 2021 ruled in favour of SMS Pharmaceuticals (Defendant) as it vacated the *ex-parte ad interim* order passed by the Court on 21 October 2020. This order was passed in favour of Merck Sharp and Dohme Corp. (Plaintiff) as a temporary injunction was imposed on the Defendant for infringing Plaintiff’s patent of Sitagliptin, an anti-diabetic drug.

In the present matter, the Plaintiff sought injunction against infringement by the Defendant, of the Plaintiff’s Patent, Sitagliptin, an anti-diabetic drug (Indian Patent No. 209816). The Plaintiff contended that the Defendant infringed the Plaintiff’s patent by advertising for sale Sitagliptin Hydrochloride in its Active Pharmaceutical Ingredients (API) and Analytical Standards.

The Court had observed that the Defendant advertised the sale of drug Sitagliptin and affirmed the availability of Sitagliptin Phosphate for a sum of Rs. 1 lakh for 1 Kg to the investigator during an inquiry. Further, the Court opined that the Plaintiff has a valid and subsisting patent for which a certificate of validity has already been submitted. The Court also granted an *ex-parte ad-interim* injunction in favour of the Plaintiff and against the Defendant.

The Defendant then filed an application under Order XXXIX Rule 4 of the Code of Civil

Procedure, 1908, and sought vacation/modification of the *ex-parte ad interim order* passed by the Court earlier in the present proceedings.

The Defendant responded to the contentions by the Plaintiff through a written statement, mentioning the fact that the Defendant is a 30-year-old Research and Development (R&D) based API manufacturing Group that has a client base in over 70 countries.

To this, the Plaintiff submitted that once the drug is permitted to be exported, it would be impossible for the Plaintiff to verify or investigate whether it is ultimately being used for the R&D purposes or is being exploited. The Plaintiff also contended that the export of Sitagliptin by the Defendant has been continuing since 2016 and almost 800 kg have been exported till date. Therefore, such a transaction cannot be treated as being aimed at R&D.

The Defendant contended that the dealing of the Defendant was the result of a joint venture between the Defendant and M/s Chemo AG Lugano (Chemo), for development and manufacturing of certain products, so that the products could be launched in the market after expiry of the patent. It was further claimed that the Defendant has already obtained the due permission from the Government and Drug Control Authorities and all the dealings of the Defendant were within the scope of patent laws.

Further, the Defendant claimed that no manufacture or production of these drugs was for commercial purposes. The sole intent of the Defendant was to launch these drugs in a generic form at an affordable price after the suit patent will expire.

The Defendant also contended that they had never sold Sitagliptin Hydrochloride in commercial quantities or to any clients who are using it for commercial purposes and the activities of the Defendant were permissible, as the Defendant was only engaged in sale and export of Sitagliptin Hydrochloride for the purposes of R&D.

Further, the Court opined that the Defendant's prayer for being extended the benefit of Section 107A of the Patents Act, 1970, deserves to be allowed. The Court allowed the Defendant to export the API Sitagliptin to Chemo and Verben, as prayed.

AstraZeneca Denied Interim Injunction against Indian Pharmaceutical Companiesⁱⁱⁱ

The High Court of Delhi (Court) in a decision has disavowed the plea of AstraZeneca AB and AstraZeneca Pharma India Ltd. ("Plaintiffs") for permanent injunction to produce Dapagliflozin (DAPA) against Intas Pharmaceuticals, Alkem Laboratories, MSN Laboratories, USV Pvt Ltd, Zydus Healthcare Ltd, Zydus Medica and Eris Lifescience (Defendants). The Plaintiffs claimed that the Defendant's products infringed their patents 205147 (IN147) and 235625 (IN625). Both the patents were granted to Bristol Myers Squibb which were then assigned to

the AstraZeneca AB in 2014 and the validity of the said patents was till 04 October 2020 for the patent IN147 and is till 15 May 2023 for the patent IN625.

Before the expiry of the 20-years term of IN147, suits for infringement in relation to both patents were filed against Micro Labs Ltd, Ajanta Pharma Ltd, Intas Pharmaceuticals Ltd, Torrent Pharmaceuticals Ltd and Alkem Laboratories Ltd. Further, after expiry of the IN147, a suit for infringement of the IN625 was filed against the Defendants.

The Plaintiffs had argued that DAPA was disclosed in the IN147, but it is claimed only in the IN625. Additionally, the Plaintiffs claimed that the IN147 was the genus patent which only covers the core structure claims whereas the IN625 was the species patent specifically claiming DAPA, which was invented only in the year 2001 and was separately protected as an invention under the IN625, distinct from the genus invention.

The Defendants challenged the infringement claim on several grounds, including the ground that the IN625 itself was invalid. The Defendants argued that since DAPA was covered under the IN147 as per the Plaintiffs' admission, the IN625 could not have been granted for the same invention. Therefore, the IN625 was not invalid and hence, no injunction could be granted related to the IN625.

The Defendants also argued that since the IN147 had expired, there could be no injunction related to the said patent.

The Court noted that the Plaintiffs themselves have pleaded that manufacture of DAPA by the Defendants amounts to infringement of the IN147 and IN625. If DAPA was not disclosed and/or known at the time of seeking the IN147 and was only invented subsequently and patented IN625, there could be no infringement of the IN147 by manufacturing and/or selling DAPA by the Defendants. Therefore, it could be followed that DAPA was a subject matter of the IN147. The Court noted that with respect to one invention, there can only be one patent.

The Court also noted that for the IN625 to be with respect to a "new product" and involving an inventive step over the IN147, the description of the IN625 should have described the technical advancement over and / or the difference in efficacy from what was disclosed in the IN147. However, the Court noted that the complete specification of the IN625 does not disclose any technical advancement and/or difference in the efficacy over the invention in IN147.

In addition to the above, the Court also noted that the tests of "obvious to a person skilled in the art", "anticipation by publication" and "use before the date of filing of patent application with complete specification", in the context of an earlier patent and its specifications must be

different, when the inventor of both is the same.

TRADEMARKS

The High Court of Delhi Grants Interim Injunction Protecting the Mark 'CrossFit'^{iv}

The High Court of Delhi (**Court**) granted an interim injunction in favour of Cross Fit LLC (**Plaintiff**) protecting their trademark and domain name, 'CrossFit' (**Trademark**) against infringing use by Mr. Ranjit Kunnumal (**Defendant**).

The Plaintiff has been using the Trademark 'CrossFit' since 1999 and has various registered domain names with the said Trademark. As a result of prior adoption and long, continuous, and extensive use, the Plaintiff's Trademark 'CrossFit' has acquired enviable goodwill and has become indelibly associated with the fitness or training services provided by the Plaintiff.

In 2013, a Uniform Domain Name Resolution Policy (**UNDRP**) complaint was also filed by the Plaintiff (CrossFit, Inc. v. Results Plus Personal Training Inc.) in which the UNDRP, vide decision dated 28 June 2013, passed orders for the transfer of 113 domain names which included the use of the word 'CrossFit', in favour of the Plaintiff, hence substantiating that the Trademark 'CrossFit' was identified with the Plaintiff solely.

The Trademark was given the reputation of a well-known trademark within the meaning of Section 2(1)(zg) of the Trade Marks Act,

1999, by the Court in its order dated 30 October, 2015, in CS(OS) 2114/2014 (Cross Fit Inc. v. Gurpreet Singh) for 'fitness or training services'.

In 2018, the Plaintiff came across the mark 'SFC CrossFit', being used by the Defendant on various social media platforms such as Facebook, Twitter, under the same name for providing similar identical gym and fitness services. The Plaintiff had sent a Cease & Desist notice via e-mail to the Defendant and had called upon the Defendant to stop using the Trademark for any commercial or personal use. The Defendant had alleged that the mark was a generic term and did not have any significance in this field whatsoever and continued to use the Trademark on their social media handles and website domain names.

The claims made by the Plaintiff remained uncontested as the Defendant neither appeared nor filed any written statement.

The Court held that the Plaintiff made out a clear case of infringement of the Trademark 'CrossFit' by the Defendant and that the Trademark 'CrossFit' is not a generic term. The Court stated that the Trademark 'CrossFit' has no known 'etymological significance' and hence is *ex facie*, an artificial and coined word which is entitled to an enhanced degree of protection under the Trade Marks Act, 1999.

The Court granted an *ex-parte* interim injunction in favour of the Plaintiff and

restrained the Defendant from using the Trademark online and offline.

The High Court of Bombay Provides Protection against the Infringement of the Mark ‘Diavit’^v

The High Court of Bombay (**Court**) granted an injunction against Kiama Life Sciences (**Defendant**) from using any mark similar to the mark of Franco Indian Pharmaceuticals Pvt. Ltd. (**Plaintiff**). The Court passed this order after analysing the matter as a *prima facie* case against the Defendant and stated that any infringing use by the Defendant would cause irreparable damage to the Plaintiff.

The Plaintiff is a prominent manufacturer of medicines and health related products in Asia and Africa. The Plaintiff has been retailing products under the trademark ‘Diavit’ for two decades. The Plaintiff also adopted an extended range of products such as ‘Diavit Plus’ and has obtained various trademark registrations of variants of their brand. The product range under the trademark ‘Diavit’ and similar marks includes multi-vitamins and multi-minerals which are essentially prescribed as supportive allopathic therapy for diabetes.

The Plaintiff discovered that the Defendant has been using the mark ‘Kiavit’ and various related marks like ‘Kiavit Plus’, ‘Kiavit-M’ and ‘Kiavit-C’ for allopathic tablets and syrups, on its website www.kiamalife.com. The said infringing products were not

available in the market for sale. The Plaintiff alleged that the trademark ‘Diavit’ when compared with the Defendant’s marks, was structurally and visually similar and that the two marks were indistinguishable, as the minute change of the letter ‘D’ to ‘K’ creates ambiguity, leading to deception and confusion in the minds of consumers.

The Court emphasized on the fact that the matter required an immediate action as the products in question were pharmaceutical products and any confusion in the minds of the consumers can cause irreparable damage to a consumer’s health. Since the Plaintiff sold medicines specifically for the diabetic patients, keeping in mind the security of public and the interest of the consumers, an injunction was granted by the Court against the Defendant and the Defendant was restrained from using the mark ‘Kiavit’ and various related marks like ‘Kiavit Plus’, ‘Kiavit-M’ and ‘Kiavit-C’ or any mark like that of the Plaintiff’s trademark ‘Diavit’.

The High Court of Delhi Grants *ex-parte* Interim Injunction for Protection of the Mark ‘Mangla’^{vi}

The High Court of Delhi (**Court**) granted an *ex-parte* injunction in favor of Mahabir Prashad Mangla & Anr. (**Plaintiff**) who filed a suit for permanent injunction against Hari Kishan Gupta (**Defendant**) claiming trademark infringement over the use of their trademarks ‘MANGLA’ and ‘JK MANGLA’. The Plaintiff instituted the suit to restrain the Defendant from infringement, passing off

and for damages, under Sections 27 and 29 of the Trade Marks Act, 1999.

The Plaintiffs are the registered proprietors of trademarks 'MANGLA' and 'JK MANGLA' in class 29 since the year 2007.

The Defendant had applied for registration of the trademark 'MANGLA' in 2008 which was opposed by the Plaintiff in 2010, and during the pendency of registration, the Plaintiff got the Defendant to formally assign the said trademark "MANGLA" in favor of the Plaintiffs. The Registrar of Trade Marks, disposed of the opposition proceedings in 2012 and allowed the assignment request in favor of the Plaintiff. After completion of all the formalities the trademark 'MANGLA' was registered under Class 29 in favor of Plaintiff.

Presently, the Plaintiff contends that the Defendant again, with a dishonest intention, sought to register the mark 'MANGLAM'. He further contended that the adoption of the mark "MANGLAM" is malafide and dishonest, as the Defendant is aware of the rights of the Plaintiff in the trademarks 'MANGLA' and 'JK MANGLA'.

The Court observed that the Plaintiff established a *prima facie* case in their favor and the balance of convenience was in favor of the Plaintiff. After observing the merits or demerits of the submissions that had been made on behalf of either side, the Court held that till the next date of hearing, the Defendant, or any other person acting on its behalf was restrained from manufacturing,

marketing, selling, offering for sale, advertising or displaying directly or indirectly, dealing, directly or indirectly, in edible oils and other allied/ cognate goods under the mark "MANGLAM" which is identical/ deceptively similar to the Plaintiff's trademarks "MANGLA" and "JK MANGLA".

Sony Corporation Fails to get an Injunction Against a Travel Service Company in Bangalore^{vii}

The District Court of Bangalore (**Court**) rejected a plea by Sony Corporation (**Plaintiff**) for grant of injunction against Sony Tours and Travels (**Defendant**) filed for infringement of the Plaintiff's trademark.

The Plaintiff is a reputed company, having business in over 193 jurisdictions. The trademark 'SONY' used by the Plaintiff is their universal trademark and has been used as a trademark, trade name, domain name or a part of trade name, since the 1950s. The Plaintiff has stores under the trademark 'Sony Centre', which are a brand identity in India. Also, the Plaintiff is the proprietor of television channels under the mark 'Sony Pictures Networks India'.

In 2002, the Plaintiff came across the Defendant's business name, 'Sony Tours and Travels' in relation to business of transport services and car rental services. The Plaintiff issued a Cease & Desist notice against the Defendant thereafter but there was no response by the Defendant neither did they stop using the mark 'SONY' for their

business. The Plaintiff approached the Court in 2018 and the Court granted an *ad interim* injunction against the Defendant until they appear before the Court.

The case was transferred to the Commercial Court in 2021 and after calling upon the Defendant, the Defendant submitted the written statement claiming that the Defendant was a small business owner engaged in the business of transport services and car rental services under the name and style of 'Sony Tours and Travels' at Ulsoor, Bengaluru. The Defendant claimed to be involved in the said business in the same area for the past 27 years, with restricted operations at Ulsoor with limited clients. The Defendant further claimed that its business is not likely to cause any confusion on the part of the Plaintiff's customers or clients as his business was entirely different from that of the Plaintiff.

The Court held that as per the trademark registrations the Plaintiff is not involved in tours and travel business and admittedly is only involved in manufacture of electronic goods with a business in print and media having various TV channels in the name 'SONY'. The Court emphasized that the Plaintiff's trademark is used for different goods when compared with the Defendant's as the nature of business of Defendant is entirely different from that of the goods manufactured by the Plaintiff. The Court relied upon the Supreme Court judgment *Nandini Deluxe V. Karnataka Co-operative Milk Producers Federation Limited*, reported

in 2018 (9) SCC 183 and reiterated that "the proprietor of a trade mark could not enjoy monopoly over the entire class of goods and particularly when he was not using the said trade mark in respect of certain goods falling on the same class. An injunction for infringement of trade marks can be granted only if the plaintiff establishes that an average person of ordinary intelligence would be deceived or confused on usage of the similar name by the defendant". The Court stated that in the present case marks of the Plaintiff and the Defendant are altogether different and are used for different goods.

The Court also highlighted that the Plaintiff admittedly filed this suit after lapse of 16 years from the date of issuance of notice in the year 2002, without explaining the said delay and the Court held that the prayer sought by the Plaintiff is vague and baseless and stated that no average man of ordinary prudence is likely to connect the Defendant's mark with the Plaintiff's manufacturing business.

Rights in Trademark once Relinquished cannot be claimed unless the Relinquishment Term is revoked: High Court of Delhi^{viii}

Ampa Cycles Private Limited (Defendant/Appellant) moved the High Court of Delhi (Court) with an appeal impugning the Order dated 17 March 2021 of the learned Single Judge of this Court, confirming the interim injunction granted in favour of Jagmohan Ratra

(Plaintiff/Respondent) who had filed a suit against the Defendant/Appellant company for permanent injunction to restrain passing off of trade mark and for ancillary reliefs.

In 1983, the Plaintiff along with Hari Dutt Sharma established a partnership firm M/s Four Diamonds engaged in manufacturing and selling of bicycles, tricycles, prams, baby rider bicycles and related products. The trademark 'AMPA' and logo were coined, which was later on adopted by M/s Four Diamonds in 1991 in respect of bicycles and tricycles. Further, in 1992, the Plaintiff and M/s Four Diamonds established M/s Ampa Bikes Pvt. Ltd. ('ABPL'), as shareholders.

However, in 2003, M/s Four Diamonds was dissolved with Hari Dutt Sharma exiting/retiring from the partnership and the Plaintiff/Respondent continued the business under the trading name and style M/s Four Diamonds as his sole proprietorship firm.

The Plaintiff/Respondent was to continue using the trade mark 'AMPA' and all the assets and goodwill were transferred to the Plaintiff/Respondent.

In the suit filed by the Plaintiff/Respondent, he claimed trademark infringement over the use of his trademark 'AMPA'. The Plaintiff/Respondent claimed that he was entitled to continue using the trade mark 'AMPA' and all the assets and goodwill were transferred to him and would use the 'AMPA' trade mark in respect of cycles up to 14 inches in tire radius and Defendant/Appellant Company were to use the 'AMPA'

trademark in respect of all cycle models of tire radius more than 14 inches. The Plaintiff/ Respondent claimed that in 2020 he was made aware of the usage of trademark 'AMPA' and logo by the Defendant/Appellant Company for identical goods and stated that the Defendant/Appellant Company adopted the use of the impugned trade mark 'AMPA' and the logo to benefit from the goodwill of the Plaintiff/Respondent. He also claimed that the Defendant/Appellant Company was fully aware of the prior use of trade mark 'AMPA' by the Plaintiff/Respondent.

The Defendant/Appellant Company filed a written statement stating that the trade mark 'AMPA' was coined by Hari Dutt Sharma and according to the Dissolution Deed, Plaintiff/Respondent could use the trade mark 'AMPA' only in respect of cycle models up to 14 inches in tire radius, whereas Hari Dutt Sharma was also the owner of the trade mark 'AMPA' and could not use the said mark for manufacturing cycles with the model size up to 14 inches for three years, after which it was open for the Defendant/Appellant Company to manufacture cycles of all sizes; signatories of Defendant/Appellant Company entered into the Assignment Deed for assignment of the trade mark 'AMPA' to Ajay Kumar Bawa, against a consideration of Rs. 1,00,000/-.

The submissions made by the Defendant/Appellant Company did not find favour with the learned Single Judge, who granted interim injunction in favour of the

Plaintiff/Respondent with the following observations/findings:

- It is the admitted case that, the partnership firm of the Plaintiff/Respondent and Hari Dutt Sharma was using the trademark ‘AMPA’;
- The Defendant/Appellant Company claiming that the trademark applications were filed on a “proposed to be used basis” only due to imprecise instructions of the erstwhile consultant, appears to be an afterthought;
- No clarity has been provided as to who was using the trademark ‘AMPA’ from the date on which the Assignment Deed came into effect, to the date of incorporation of the Defendant/Appellant Company.

Post the said interim injunction the Defendant/Appellant Company filed an intra-court appeal in this Court, where application was filed by the Defendant/Appellant Company, seeking direction to place on record new facts and documents to show actual usage of the trademark ‘AMPA’. Based on the evidence and arguments made in front of the Court, in respect of this appeal, the Court decided that the documents filed by the Defendant/Appellant Company evidences that the Defendant/Appellant Company started using the trade mark ‘AMPA’ in 2018 and established that the Defendant/Appellant Company had substantial sales, customer base and goodwill in respect of the said trademark. In

light of this, the appeal was allowed, and the impugned Order dated 17 March 2021 was set aside.

COPYRIGHT

The High Court of Bombay Accepts Acknowledgement of Defendant^{ix}

The High Court of Bombay (**Court**) noted the acknowledgment of Shri Mahaveer Jain Industries (**Defendant**) in the proprietary rights of Hindustan Unilever Ltd. (**Plaintiff**) in their distinctive original and artistic work. The Plaintiff is the owner of a cosmetic brand ‘Elle 18 Face’ which is engaged in the production of nail polishes and other beauty products.

The Plaintiff had contended that the Defendants had tried to create a ‘deceptively similar packaging’ in terms of style, colour and shape of nail polish bottles and other products. The Plaintiff filed a suit of infringement and passing off for their trademarks and copyright.

The Defendant confirmed to the Court that it had not filed any trademark or copyright application, neither do they have any trademark or copyright registration and further shall not make any application seeking registration of the artwork with the Registrar of Trade Marks or the Registrar of Copyrights.

The Court after considering the acceptance by the Defendant of the contentions did not press for remaining reliefs in costs and damages.

Trivandrum District Court Orders Facebook India to Remove Videos of Shri Ravi Shankar^x

A copyright infringement suit was filed by Ms. Sweety Priyanka Vempati Ravi Shankar (Plaintiff) wife of late Shri Vempati Ravi Shankar, in the District Court of Trivandrum (Court) against Facebook India (Defendant). The case was filed due to the posting of Shri Ravi Shankar's sound recordings on Facebook.com without authorization.

Shri Vempati Ravi Shankar was a 'Kala Ratna' awardee and a Kuchipudi 'maestro' artist who represented India in various international dance festivals. The Plaintiff had the exclusive authority to communicate his sound recordings to the public. In this matter the Plaintiff urged relief based on moral rights of Shri Ravi Shankar.

The Court after looking into the applicability of the prevalent laws identified a *prima facie* case of copyright infringement. A temporary injunction was granted, and the Defendant was asked to remove the infringing content from the social media platform.

GEOGRAPHICAL INDICATIONS

Application filed by Goa State Council for GI Tag for Three Mango Varieties

The Goa State Council for Science and Technology has filed an application for Geographical Indication recognition of the "Goa Makur Mango", "Mangelar" and "Mussarat" mango varieties, to enhance the

sales of the said varieties. The Goa State Government is also taking necessary steps to form an association of mango growers and local sellers, to further strengthen the trade of Goa's local mango varieties.

GENERAL

Intellectual Property Division in Delhi High Court

Post the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, the various Boards/Appellate Tribunals, which existed under the statutes related to Trademarks, Patents, Copyrights, Geographical Indications, Customs, Plant Variety Protection were abolished and the power to deal with all the pending matters before the said Boards/Tribunals, have been vested with the High Courts.

In order to have a streamlined and a comprehensive review of the manner in which a large quantum of Intellectual Property Rights cases ought to be dealt with, as per the order dated July 07, 2021, the Hon'ble Chief Justice of the High Court of Delhi (Court), constituted a committee, which directed creation of Intellectual Property Division (IPD) in the Court, to deal with all matters related to Intellectual Property Rights. This step was taken to avoid multiplicity of the proceedings and to avoid any possibility of conflicting decisions with respect to matters relating to the same trademarks, patents, design etc.

Key Highlights of the Order:

- The Court will frame comprehensive Rules for the IPD which shall govern the procedures. A specific committee has already been constituted for framing of the 'Delhi High Court Patent Rules' which shall govern the procedures for adjudication of patent disputes before the Court.
- The IPD, created in the Court, shall be governed by the Intellectual Property Division Delhi High Court Rules ("Rules"), in addition to Delhi High Court (Original Side) Rules, 2018 and the provisions of the Code of Civil Procedure, 1908.
- The nomenclature of the cases to be filed in the IPD and the court fee payable shall be as per the Office Order dated 07 July 2021 issued by High Court of Delhi.
- Any appeal under Section 5C of the Cinematograph Act, 1952, until the framing of the Rules in this regard, shall be registered as Regular First Appeal or RFA.
- Cases under other statutes such as the Customs Act, 1962, The Airports Authority of India Act, 1994, and the National Highways (Land and Traffic) Act, 2002, shall be registered as Writ Petitions (Civil) and shall be listed before the Single Judge or a Division Bench, as per the amendments pursuant to said Ordinance.

Extension of TRIPS transition period for LDCs until 1 July 2034

The World Trade Organization (WTO) has agreed to extend the deadline of the

transition period of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) for the next 13-years, i.e., till 1 July 2034, in respect of the Least Developed Countries (LDCs). The WTO originally set the transition period up to 1 July 2021. It is also significant to note that earlier in 2005 and then in 2013, the WTO had extended the transition period.

The TRIPS Agreement allows members to provide extensive protection of the intellectual property. The transition period given under Article 66.1 of the TRIPS Agreement is a period during which the LDCs do not have to provide the intellectual property rights protection according to the minimum requirements of the TRIPS Agreement. Under the agreed decision of WTO members, it would not require the LDCs to apply for any other provisions except for Articles 3, 4, and 5 of the TRIPS Agreement. The extension of the transition period has benefited the LDCs to overcome the financial and technological challenges.

Amazon Launches IP Accelerator programme in India

Amazon.com, Inc. the American multinational E-Commerce company has launched its Intellectual Property Accelerator (IP Accelerator) programme in India. With over 8.5 lakh sellers registered in India, their goal is to provide services from Intellectual Property (IP) expert law firms for brand protection. The sellers include various medium and small sized enterprises

who can simply engage with IP law firms for securing their trademarks and protection against infringement on Amazon.in and other Amazon websites all over the globe.

The IP accelerator program is set to benefit lakhs of sellers and will have a huge impact on brand protection of medium and small sized enterprises, especially on the brands that have recently started their business. Majority of these brand owners have had problems while going through the complex procedure of IP registration. The program will help them navigate through the process with the help of trusted law firms that are professionals in matters of trademark and other IP registration applications.

The IP Accelerator programme can be readily accessed by sellers on Amazon.in, Service Provider Network (SPN) and no additional cost will be incurred for the firm listings on SPN. The sellers will have the option to engage with firms of their choice independently as per the mutually decided terms of agreement.

The IP Accelerator program was first launched in the U.S in 2019 and then expanded to Europe, Japan, Canada, Mexico and now India has become a part of the same. Currently six Indian IP law firms have signed up as service providers to become a part of the IP Accelerator programme.

© Singhanian & Partners LLP 2021. All rights reserved.

Disclaimer: IPTimes.Law has been shared with the intent to provide a general overview of the IP developments in India. This should not be taken as a substitute for any legal advice in a specific situation (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts).

However, should you have any queries, require any assistance, or clarifications, with regard to anything contained in this newsletter please feel free to contact us at iptm@singhanian.in or ipp@singhanian.in or connect with our team:



Dipak Rao
Senior Partner
dipak@singhanian.in



Bhawna Sharma
Head-Patents & Designs
bhawna@singhanian.in



Sana Singh
Senior Associate
sana@singhanian.in

-
- i FMC Corporation & ANR vs Best Corp Science LLP and Natco Pharma Limited
 - ii Merck Sharp and Dohme Corp & Anr vs SMS Pharmaceuticals Limited
 - iii Astrazeneca AB vs Intas Pharmaceuticals
 - iv Cross Fit LLC vs. Mr Renjith Kunnumal
 - v Franco Indian Pharmaceuticals Pvt. Ltd. v. Kiama Life Sciences
 - vi Mahabir Prasad Mangla and Ors. vs. Hari Krishan Gupta
 - vii Sony Corporation vs. Sony Tours and Travels
 - viii Ampa Cycles Private Limited v. Jagmohan Ratra
 - ix Hindustan Unilever Ltd vs. Shri Mahaveer Jain Industries
 - x Sweety Priyanka Vempati Ravi Shankar vs. Facebook India Online Services and Ors