

INTELLECTUAL PROPERTY RIGHTS AND OTHER RELATED CONCERNS IN THE SPORTS INDUSTRY

Muskan Goel*

ABSTRACT

Humans at large love sports and all the interconnected aspects too, such as their favourite sports stars, the colour of the jerseys and other merchandise, etc. However, when we talk about in general, hardly a few individuals seem to be concerned about the rights of the creators and developers, or the intellectual property rights of famous celebrity players. The sports industry, with its substantial economic and cultural impact, relies heavily on intellectual property rights. Trademarks, copyrights, patents, and trade secrets are crucial assets that ensure the integrity, branding, and revenue generation of sports organizations and athletes. The article delves into the concerns surrounding intellectual property rights in the sports industry. One of the primary concerns is the unauthorized use and infringement of trademarks, logos, and team names, which can lead to brand dilution and financial losses. It emphasizes the importance of enforcing trademark laws and establishing effective licensing agreements to protect the identities of sports brands and maintain fair competition. Copyright protection is also explored as a vital aspect of the sports industry. With the rise of digital media and online platforms, preventing the unauthorized streaming, sharing, and reproduction of copyrighted sports content has become increasingly challenging. The article highlights the need for improved technological solutions, collaborations between sports entities and digital platforms, and legislative measures to combat copyright infringement and protect the rights of content creators. The role of patents in the sports industry is discussed, particularly in relation to sports equipment and technological innovations. The article emphasizes that patent protection encourages investment in research and development, fostering innovation in areas such as sporting gear, training methods, and sports analytics tools. It recognizes the importance of intellectual property rights in driving advancements in sports performance and safety. Furthermore, the article addresses the significance of safeguarding trade secrets in the sports industry. Confidential information such as game strategies, proprietary technologies, and sponsorship agreements are identified as critical

*BA LLB, THIRD YEAR, VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES, NEW DELHI.

assets that need protection to maintain fair competition and prevent unauthorized use by competitors.

INTRODUCTION

Being a worldwide phenomenon, intellectual property rights are acknowledged not solely in India but also in other nations. By guaranteeing that the holder of the IP rights receives appropriate credit and compensation for his original work or invention through being able to support himself through it, the primary goal of IPR is to promote innovative thinking and creativity and safeguard the prestige or reputation associated with a brand. Owners of intellectual property can even forbid others from using or replicating their creations without their consent until those creations enter the public domain.

A vast range of aspects of athletic events, sports brands, etc. are covered by intellectual property law. IP rights are granted by IPR in every sphere of the sports industry. Starting with copyrights, which cost a lot of funds for broadcasters to pay in order for sports fans all over the world to watch the game. Athletic device invention will ultimately arise as the outcome of the patents that encourage invention and advancements in technology. An athletic brand's reputation or prestige is safeguarded by its trademark. Finally, Designs defend the aesthetic worth of sporting goods. For instance, a sports bag is protected by a variety of intellectual property rights, including copyright, which guards the audio-visual works that the broadcaster uses to promote the bag.

Journal of Legal Research and Juridical Sciences

The sports sector has expanded quickly over the years as a result of the commercialization of sports, with some sports, like cricket, being more popular in India than other sports. Cricket, once seen to be a gentleman's game, has evolved into a lucrative industrial sport that demands significant financial commitment. Using the IPL (Indian Premier League) as an example, this calls for a substantial financial commitment and ultimately leads to massive gambling-related scams. If we use football as an example, several clubs, including Manchester United, Liverpool, Chelsea, Real Madrid, and Barcelona, are the best examples of those that have capitalised on their brands to generate a sizable market.

WHAT ARE THE VARIOUS INTELLECTUAL PROPERTY RIGHTS INVOLVED IN THE SPORTS INDUSTRY?

Various intellectual property rights, such as trademarks, copyrights, and personality rights, safeguard, market, and profit from the business aspect of the sporting sphere. The legal framework for talking about how IP laws apply to the sports industry is shown here.

Patents support the development of new technologies that lead to improved athletic goods. Trademarks, brands, and designs help events, teams, and their gear stand out from the competition. Revenues from copyright-related rights enable broadcasters to make the costly investment in providing sporting events to viewers all over the world. IP rights form the basis of licencing and merchandising agreements, which generate income to help the sports business flourish.

Copyright and related laws

The connection between sports and television and other media is supported by copyright and related rights, notably, those pertaining to broadcasting organisations. A great deal of funds is paid by media and broadcasting companies for the exclusive right to broadcast major sporting events live.

The sale of broadcasting and media rights has become the primary source of income for the majority of sports organisations, providing the money required to support major sporting occasions, renovate stadiums, and advance the grassroots sport. The television networks are able to make investments in the pricey administrative and technological infrastructure necessary to broadcast athletic contests to countless fans across every continent thanks to the royalty payments they receive from selling their exclusive material to other media companies.

The Rome Convention of 1961 grants media outlets sole authority for a period of twenty years to permit the rebroadcasting, "fixation" (recording), development, and dissemination to the public of their broadcasts. There is a widespread consensus, nevertheless, that the way broadcasters' rights are protected needs to be updated to take into account the change in digital media. The creation of an international legal framework that effectively and appropriately guards against broadcasting signalling piracy is the goal of continuous WIPO deliberations.

Intellectual property rights and a growing level of collaboration involving media outlets, sponsors, and sports regulators have helped sports that are competitive grow into a global one-billion-dollar sector. But in addition to allowing sports enthusiasts to follow live games wherever they happen to be, more advanced communication solutions that are widely available have also created new opportunities for signal theft. Unauthorized online rebroadcast of sporting events in real-time has been a special target.

Transmission piracy not merely poses a danger to the channels' marketing and sales profits from their exclusive right to air immediate coverage of sporting events, but also poses a threat to the intrinsic worth of such rights and, consequently, the income of the sports organizations. Media organizations have pushed for more robust legal safeguards at the global scale, even though national laws already offer a variety of measures for combating signal theft, including closing down illicit websites. By providing sports coverage in a variety of formats, broadcasters and sports organisations are simultaneously embracing digital media to connect with and interact with their target demographics, particularly younger people.

INDIAN SCENARIO: The Copyrights Act of 1957¹ contains a number of clauses that permit the protection of many aspects of sporting events, including the artwork that is connected to the logo, slogan, trademark, etc. The Copyright Act offers civil remedies under Section 55² of the Act in the event that the intellectual property of the writer is violated. These include Anton pillar orders, temporary, interlocutory, and permanent injunctions, accounts of revenues or damages, and litigation expenses. Additionally, it offers criminal remedies under Section 63³ of the Act, which defines a cognizable offence as one that is penalized by imprisonment and a fine.

Trademark and Related Provisions in the Sports Industry

A registered trademark serves as a symbol of source, which is allowing consumers to identify a certain company's products. In accordance with local legislation and practise, it could be, for instance, an acronym or nickname (like Wilson), an emblem (like Nike's swoosh or Adidas' three stripes), a numerical value, a colour, an object, a shape or perhaps an audible sound or fragrance.

¹ The Indian Copyright Act 1957

² The Indian Copyright Act 1957, s. 55

³The Indian Copyright Act 1957, s. 63

The use of trademarks is essential in the sports sector. When the sporting goods industry first started branding, it contained elements like a logo, taglines, marks, captions, and slogans, among others, which led to the development of reputation value in commodities, sports clubs, athletes, and teams, among other things. The perceived worth of a team name, athletic organisations, players, and products fosters some level of relationship with the general public (particularly spectators), which ultimately aids in the ascent of any team, player, etc. in terms of attractiveness.

Trademarks that are prominently displayed during important sporting events boost revenues by pandering to the desires and sentiments of sports fans, who are drawn to symbols connected with a particular team or sport. Symbols reflecting a certain way of life or attitude can also emerge from trademarks. A firm or product might thus be associated with the grandeur, youth, and vitality of that particular occasion by sponsoring a renowned sporting event like the Olympic Games or the FIFA World Cup TM.

INDIAN SCENARIO: Both civil and criminal remedies against trademark violation or ripping off are provided by Section 135 of the Trademarks Act, 1999⁴. Similar to the Copyrights Act, the Act governing trademarks does not require brand registration, therefore anyone can pursue their legal rights regardless of whether they do not have a trademark that is registered. A trademark or trademark breach can result in criminal charges being brought against the offender.

Image Rights

Image rights, often called personality privileges, are the economic rights that an individual has to their identity, name, appearance, image, portrait, signature, autograph, initials, comments, advertising, physical characteristics, voice, and other personal characteristics.

In sports, image rights can be granted by negotiating a contract involving the athlete, although doing so without the individual's permission would be against their trademark or image rights. The comparable agreements however appear to be far more difficult since football involves so many clubs, leagues, and teams.

Image rights have taken on a greater significance in the world sports industry as a result of the dramatic rise in realistic sports video games over the past ten years.

⁴ The Trademarks Act 1999, s. 135

INDIAN SCEANRIO: Indian regulations on image rights are rather basic, particularly when it comes to sports. Although no specific legislation has yet been passed in this regard, Indian courts have occasionally upheld this constitutional right. Speaking primarily about athletes, Sourav Ganguly as well as Gautam Gambhir have grabbed headlines for their recognition of and advocacy of their Image rights.

In the case of *Sourav Ganguly vs Tata Tea Ltd*⁵, Tata Tea Ltd. touted the inclusion of an autographed card inside the 1-kilo tea packet, which could be used as a way to praise the player for his achievements on the England tour, in order to sell more of the product. He said that the business was utilizing his fame to advertise its tea. The problem was that, despite working for Tata Tea Ltd., Ganguly refused to enable them to utilise his identity and notoriety to promote their products. His claim was upheld by the court, which determined that notoriety and widespread acceptance are examples of intellectual property rights (IPR).

In the case of *Gautam Gambhir v. D.A.P. and Co. and Ors.*⁶, the cricketer's eyes were knocked out by a dining establishment that had the slogan "By Gautam Gambhir" in the year 2017. He entered the courtroom and alleged that the dining establishment was drawing patrons by utilizing his identity and notoriety. When it was discovered that the proprietor of the dining establishment has the exact same initials as well as the same name as the famous player, the case took an unexpected turn. In addition, the proprietor of the dining establishment has operated a few more eateries under the exact same name since the year 2014. He added that he has registered a trademark for one of them.

The lawsuits and appeals were dismissed by the High Court on the grounds that the suing cricketer's name was not commercialized and that there had not arisen a loss of credibility in his industry. This case shows that even though it involves an internationally recognised individual and a prominent member of the public, the action is unlikely to pass the "publicity rights" test unless it can be proven that there has been an unreasonable profit made using a celebrity's Personality Rights. Players are now beginning to understand their rights to their images. Prominent cricketers including Sachin Tendulkar and Kapil Dev are registered with their own names or web addresses for their personal websites in order to protect their image rights. Inclusion in a national trademark registration provides trademark protection. Once registered, they may be used for an endless period of time. The Madrid System, which is used

⁵ *Sourav Ganguly vs Tata Tea Ltd* [1997] [Calcutta HC] [CS no. 361 of 1997 Calcutta HC]

⁶ *Gautam Gambhir v. D.A.P. and Co. and Ors.*, [2017] [Delhi HC] [CS(COMM) 395/2017 Delhi HC]

by WIPO to register global trademarks, permits trademark proprietors to submit a single application for registration across numerous jurisdictions and to preserve and update their marks using a single process.

Value of different designs in the sports industry

In the world of sports, design has a significant impact. Design is involved everywhere image and aesthetics are, and aesthetics or design quickly follow the emergence of new materials. Sports apparel such as swimsuits, gym and tennis attire, sports bags, and athletic shoes can all be included in designs.

Designing an item in a way that appeals to customers has an essential function in enhancing its economic worth and increasing its marketability in an environment of intense competition. In order to create layouts and designs that have proven to be successful and adapt to shifting consumer preferences, businesses devote significant resources and experience. Companies can protect themselves from copycats and counterfeiting organisations by licencing or registering their designs and acquiring intellectual property right over them. In the majority of nations, a design for industry is not covered by industrial design law without first being certified or registered. But only the nation in which the artwork has been recorded receives protection. A straightforward and affordable approach to secure coverage for a design's trademark across several nations is through the Hague System, which is administered by WIPO.

Journal of Legal Research and Juridical Sciences

Patenting rights in the sports industry

From the sports shoe to the swimsuit, the tennis racket to the football, sports technologists have used their imagination, creativity and experience to create better and safer equipment in the pursuit of sporting success. The result has been improved performance, better, safer, and more efficient sports equipment, accurate performance measurement, and a variety of ways to watch sporting events anywhere and at any time. Patents incentivize companies to invest in creating and marketing innovative products. Because all patent applications are disclosed, they encourage technological advancement. And as these goods are made available for purchase by the general public, they are increasingly accessible to sports fans.

A broad variety of extremely sophisticated synthetic materials, notably alloys and polymers, have gradually replaced the natural materials (wood, twine, gut, and rubber) used to construct

early athletic gear as a consequence of this method of the invention, which is supported by patents. These advanced substances are used to create stronger, lighter sports equipment that has helped athletes around the world attain new heights of success while reducing the chance of injury and improving performance for sports aficionados everywhere. Other advancements include lighter, quicker surfboards and improved gloves with slip-resistant lining for football goalkeepers. Other patented athletic and fitness gear includes bobsleds, aquatic wheelchairs, starting block assemblies, stopwatches, gym equipment, golf clubs, sports drinks, and other related items.

Licensing and Sponsorship policy in the sports industry related to IPR

Sports organisations along with other rights holders may broaden and safeguard their ability to generate revenue by acquiring intellectual property (IP) rights and thereafter exploiting them wisely. Patent, trademark, and copyright owners are able to licence their rights to third parties for a fee. For example, licences for utilisation of technology, publication and recreational activities, merchandise sales, and trademark utilisation offer rights sans surrendering the title of the intellectual property in question.

All merchandise initiatives are supported by a trademark licence. It outlines the partnership between the manufacturer of the goods or services that will bear the mark (the licensee) and the trademark owner (the licensor). Although licensors do not participate in the production of the goods, they must make sure that licensees uphold the standard of the goods wearing their brand in order to protect their reputation. Similar to this, businesses engaged in the creation of sporting goods equipment may find it advantageous to obtain a technological licence. Organisations increasingly depend upon advanced technologies to gain an edge over their competitors. Technological licences can be employed to "licence in" innovations created by other businesses or to "licence out" locally produced innovations and technologies to generate extra earnings.

Companies frequently partner with athletic organisations or become actively involved with athletic competitions in an effort to strengthen their brand, reputation, and consumer relationships. This gives them enormous exposure because the brands in question are seen numerous times by thousands of thousands of avid sports-passionate individuals and spectators who watch matches throughout the world. Flagship competitions like the Olympics, which captivate the attention, arouse the feelings, and ignite the passions of fans

around the world, are incredibly successful international corporate marketing platforms from which a company can raise awareness, improve its reputation, and cultivate goodwill.

CONCLUSION

In conclusion, intellectual property rights and related concerns are integral to the sports industry. Continued efforts in enforcing and enhancing these rights will support the growth and sustainability of the sports industry, foster innovation, protect valuable assets, and ensure fair competition in this dynamic and influential sector. As the sports industry continues to grow and evolve, intellectual property rights have become crucial for athletes, sports organizations, and various stakeholders. These rights safeguard valuable assets, including trademarks, copyrights, patents, and trade secrets, which contribute to the economic and cultural significance of the sports industry.

The discussion surrounding intellectual property rights in sports brings forth several key concerns. One of the primary concerns is the unauthorized use and infringement of trademarks, logos, and team names, which can dilute the brand identity and revenue streams of sports organizations. Strict enforcement of trademark laws and effective licensing agreements are essential to maintain the integrity of sports brands and ensure fair competition.

Furthermore, protecting trade secrets is crucial in maintaining a competitive edge for sports organizations. Safeguarding confidential information, such as game strategies, proprietary technologies, and sponsorship agreements, is essential to prevent unauthorized use by competitors and maintain a fair playing field. While intellectual property rights are crucial, it is also important to strike a balance that allows for fair use and promotes innovation. Finding the right balance involves exploring alternative business models, such as licensing agreements, collective bargaining, and revenue-sharing arrangements, which can benefit both rights holders and consumers.