



ROLE OF INTELLECTUAL PROPERTY RIGHTS IN DEVELOPMENT OF SPORTS

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Abstract: Sports are a very important part of our daily life. It plays a crucial role in the physical and mental fitness of any person. The origin of sports can be traced in 700 BCE where many peoples used to play games. Earlier sports were not used for commercial purposes. But later it has been used in businesses so the need for legal protection came once everyone started to use sports for commercial purposes.

Intellectual property rights are generally granted as patents, copyright, trademarks and designs. Presently intellectual property has played a very crucial role in providing legal protection to various people and companies who are related with the sports industry. At global level various companies are enjoying such protection.

The researchers through this paper mainly aims to analyze briefly on the role of intellectual property rights in sports and find whether any further amendments are needed to enhance the legal protection to the sports industry which actually contributes in economic benefits of various industries be it small businesses or multi-national corporations.

KEY WORDS: Patent, Copyrights, Trademarks, Trade secrets, Sports, Amateur Marketing, Personality Rights

INTRODUCTION

We all watch various matches, be it on television, online platforms or going to the stadium. We see various brands and logos of the companies sponsoring that particular tournament. When we see the jerseys of players it consists of the number of logos of the sponsor of that particular team. Every logo is an intellectual property which is registered under the International Trademark Registering system administered by the World Intellectual Property Organisation.

The broadcasting of different matches is seen in different channels as the auctions are held and the company that wins will get the Right to Broadcast. This broadcasting is related to copyright. The broadcasting is done on radio, television and other online platforms.

The 57 countries which are members of World Intellectual Property Organization Hague System give protection to registered designs of various sports industries. In India designs can be registered in the Designs Act, 2000. Patents are granted in

sports based on the utility of a particular sports kit, for instance a helmet used in cycling, any shoe, model of swim suit etc.

Here in detail we will know more about the role of intellectual property rights and also problems of amateur marketing, counterfeiting of sports kits and how infringement of various intellectual property rights is done. Further our aim is to find how certain changes can be made in existing laws so that more effectively the intellectual property rights of the people related to the sports industry can be protected.

History of the development of sports can be traced in ancient Greece where playing sports was very important in their life. Sports in every era are seen as an important symbol for uniting various sections of people.

George A. Sheehan mentioning the importance of sports says that "Sports is where an entire life can be compressed into a few hours, where emotions of a lifetime can be felt on an acre or two of ground, where a person can suffer and die and rise again on

six miles of trails through a New York city part. Sport is a theater where a sinner can turn into a saint and a common man can become an uncommon hero, where the past and future can fuse with the present. Sports are singularly able to give us peak experiences where we feel completely one with the world and transcend all conflicts as we finally become our own potential”.

The present form of sports which is known as team sports developed during the industrial revolution as people had leisure time. Most of the upper class people of England played cricket just as their hobby. It gradually professionalized in the late nineteenth and early twentieth century.

The modern statutory intellectual property rights developed from Venetian Law. First patent was granted for three years to Filippo Brunelleschi in 1421. Whereas according to Former Justice of Appeal Robin Jacob, the history of intellectual property law can be traced back to 600 BCE. During the sixth century BCE from Sybaris in Ancient Greece the Intellectual Property Right was granted for a yearlong, providing an exclusive monopoly for bakers to make their invention.

WIPO IN SPORTS

The World Intellectual Property Organization (WIPO) was formed in 1967. It is an International Organization that grants protection to various Intellectual Property. It has a major role in protection of intellectual property rights related to sports. WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty was adopted by the Diplomatic Conference at Geneva on December 20, 1996. Its main objective was to update the Rome Convention, 1961.

WIPO's International Trademarks Registration system known as Madrid System, enables Trademarks holders to file a single application for registration up to eighty- five countries and to maintain renew those marks through a single procedure. WIPO's Hague system provides protection to registered industrial design in fifty-seven member countries. Various designs of logos and mascots can be registered. WIPO's Patent Cooperation Treaty provides patent protection to any invention such as technology involved in manufacturing of sport shoes, energy drinks, swim

suits etc. in one-hundred forty-eight member countries.

COPYRIGHT IN SPORTS

Broadcasting of sports is a very important part of copyright. Today sports are broadcasted on all the media platforms using satellite, cable, broadband and mobile internet. In the United Kingdom broadcasters of sports events enjoy copyright protection in transmitted programs as broadcast works. Tokyo 2020 Olympics generated \$1.76 billion of revenue for United States broadcasting rights holder National Broadcasting Company Universal (NBCU), according to financial results that had been published by Comcast in 2020 after the completion of the Olympics in Tokyo. That's why every company wanted the broadcasting rights of sports events. Apart from this, the theme songs of teams and pictures taken during matches through cameras are also included in the subject matter of copyright.¹

According to Indian Copyrights Act, 1957 Section 2 (d) “**broadcast**” means communication to the public-

- (i) By any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or
- (ii) By wire,

And include a rebroadcast.

BROADCASTING OF SPORTS

In Canada broadcasting of sports started with descriptions of play sent via telegraph in the 1890s. The first ever pre-recorded sports broadcast occurred in 1911 in Kansas of the United States. In 1921, Pittsburgh, Pennsylvania, the first radio broadcasting event occurred in a boxing match.

The first live commentary on a field sport started in Ireland when **Paddy Mehigan** covered the All-Ireland Hurling Semi Final between Kilkenny and Galway on 29th August 1926. The first televised

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<https://www.insidethegames.biz/articles/1114788/tokyo-2020-revenue-for-us-rights-holder>

sporting event occurred in 1939, which was the summer Olympics in the United States. In 1951, the first sports color telecast was a baseball game between the Brooklyn Dodgers and Boston Braves.

Rome Convention, 1961 grants protection of performers, producers of phonograms and broadcasting organizations. Broadcasters have exclusive rights for twenty-five years to authorize rebroadcasting, “fixation” (recording), reproduction and communication to the public of their broadcast.

In India after the independence only Doordarshan had the authority to broadcast the matches but now through auctions any channel can get the broadcasting rights of a particular sports event. The radio broadcast is still carried out only by All India Radio.

Private radio stations cannot broadcast any matches. After the COVID-19, in India various OTT PLATFORMS are used to broadcast the live matches. The royalties received by broadcasters by selling their exclusive footage to other media outlets enable them to invest in the sports industry. Through live broadcasting of matches millions of fans get connected with the game and this contributes majorly in the popularity of sports among the public across the world.

- **ESPN Star Sports Vs Global Broadcast News Ltd. &Ors.²**

In this case, ESPN has exclusive rights to broadcast India v Australia Test Matches One Day International and the T20 cricket matches to be played in Australia from December 26, 2007 to March 8, 2008. It is the sole exclusive distributor and no cable operator can telecast matches without a license from the Appellant. It granted licenses to more than 5000 cable operators, mostly news channels, to telecast match clippings for 30 seconds at a time and two minutes per day. Appellant sued news channels as they violated the condition on which license has been granted and nearly 9 hours to 15 hours of telecast of matches were done by them.

The Delhi High Court held that Broadcast reproduction rights should be treated separately

²2008 (36) PTC 492 Del.

while interpreting Section 61 of the Copyright Act, 1957. Broadcasters rights can be claimed only in live telecast of matches communicated to the public as provided under Section 37 of the Copyright Act, 1957 which is separate and distinct from other copyright.

- **Star Sports India Pvt. Ltd. &Anr. VsHaneethUjwal&Ors.³**

The plaintiff requested Internet Service providers to block over hundred websites and other comparable websites that broadcast content held by Star India Private Ltd. The ban was on a particular URL which consisted of pirated content.

Delhi High Court passed an order prohibiting defendants from hosting, streaming, broadcasting and rebroadcasting as Section 65B of the Copyright Act, 1957 says that anyone who knowingly distributes, imports for distribution, broadcasts or communicates to the public without any legal authority. The copies of any work or performance knowing that electronic rights management information has been removed or altered without authority is punishable with two-years imprisonment and fine.

- **ESPN Software India Private Ltd. Vs TUDU Enterprise &Ors.⁴**

The defendants had harmed the plaintiff's rights without entering into any proper contracts, either with the distributor or with the plaintiff, by using the plaintiff's transmitting network channel's events to their subscribers, causing an infringement of broadcasting reproduction regulation.

The Delhi High Court held that plaintiff's channels are paid channels. These channels could only be watched by subscribers through approved cable operators. Defendants without signing any licensing agreement cannot live distribute it, as this action is infringement of broadcaster's copyright under Section 37 (3) of the Indian Copyright Act, 1957.

³ CS (OS) 2243/2014

⁴ CS (OS) 384/2011

PATENTS IN SPORTS

The patent for a term of twenty years can be claimed on any invention which is related to sports. The main thing which is considered is that a particular invention should be novel and should have some kind of utility. For instance, sports drinks taken by the players any invention which give some benefit to the players in improving their performances can get the patent rights.

Even a patent can be claimed for any invention in nutritional supplements which can be helpful in the muscle building of players. Some examples of famous sports patents include basketball dribbling training pool, football tackle dummy, cycling helmets, volleyball-style game apparatus, flying disc, mounting balls, exercise training bags etc. These sports patents have a vast impact on a player's performance and we can also say that patents in sports have a crucial role in the development of sports.

DESIGN IN SPORTS

The design of sports equipment such as cricket bats, helmets, balls for different games, cycles used in cycling can be registered. In India the Designs Act, 2000 lays down various provisions related to the registration of designs and infringement of registered designs.

- **Skechers USA Inc. &Ors. Vs Pure Play Sports⁵**

In this case, plaintiffs offer footwear in distinct categories one of them being the 'SKECHERS GO walk footwear' line that was introduced and launched in 2011. The plaintiff claimed that their product reflects a combination of style, comfort, quality and value that appeals to a broad range of customers. The plaintiff claimed that the defendant had introduced the same designed footwear in the market and was doing business at a large scale. The footwear was an exact replica and looked similar to the footwear designed by the plaintiff. That footwear was sold and marketed by the defendant under the 'GO walk 3 Series' which is also similar to Plaintiff's line.

⁵ 2016 (231) DLT 299

The Delhi High Court after hearing the arguments of both the sides held that the defendant's action clearly amounts to the infringement of plaintiff's design. The Court granted an interim injunction in favor of the plaintiff.

TRADEMARK IN SPORTS

Trademarks are granted for logos, captions, taglines, slogans and team names in sports. The quality of cricket bat, sports shoes, ball, tennis and badminton rackets, jerseys of players and many other sports equipment are recognised by their trademarks. That's Why trademarks play a very crucial role in sports. In India Trademark Act, 1999 provides both civil and criminal remedies to the original trademark holder.

- **BEST Sports &Freizeit GmbH Vs Registrar of Trademarks⁶**

In this case, BEST Sports and Freizeit GmbH, a Germany sports goods and equipment company sought the registration of a device mark bearing registration number 2834287 in class 28 i.e. sports equipment of various sports. The application was rejected by the Registrar of Trademark Office under Section 9(1) (b) [this section prohibits the registration of trademarks that consist exclusively of marks that designate the kind, quality, intended purpose, or other characteristics of goods] and Section 11(1)[this section allows Registrar to object to the registration of a trademark if it is similar to an earlier trademark in the same class] of the Trademarks Act, 1999.

The Madras High Court set aside the impugned order of the Registrar of Trademark Office on the ground that Registrar can set limitations but cannot consider only one element for rejecting the grant of trademark.

- **PUMA SE Vs Absogain Retail Solutions⁷**

PUMA SE Company was incorporated under the Laws of the European Community in Germany and has its business in 120 countries. Plaintiff is

⁶ 2023: MHC: 3879

⁷ CS (Comm.) No. 2075/2019

marketing and selling its product in India through its wholly owned subsidiary Puma sports India Pvt. Ltd. a company organized and existing in India under the Indian Companies Act, 1956 and has been carrying out its business. Plaintiff has instituted his suit to protect his trademark rights on Form strip logo. Defendant was selling sports shoes through his online platform using the Form strip logo. Plaintiff contended that the defendant by using his logo had made illegal profit as this will create confusion in the minds of consumers.

The Delhi High Court held that defendants are liable for infringement of trademark. The Permanent Injunction order passed against the defendant stopping him from manufacturing, selling or offering to sell through any online portals. The Plaintiff is awarded with damages of Rs. 3 Lakh along with the cost of suit.

PERSONALITY RIGHTS

Personality rights is understood as the right to control any commercial exploitation of a player's name, image, reputation, likeness or any other aspect of personal identity. Under the Trademark Act, 1999 a sports celebrity may file and acquire a trademark in respect of his name.

- **Percept D' Mark (India) Pvt. Ltd. Vs Zaheer Khan & Anr.**⁸

Defendant entered into a contract for management of his media affairs with the Plaintiff's company on the term that prior to the completion of first negotiation period and thereafter, plaintiff will have the 'right of first refusal' in regard to any offer for services of management of media affairs received by defendant cannot accept any third party offer without offering plaintiff right to match the offer on same terms and in plaintiff's failing to do so. However, the defendant entered into an agreement with a third party after the termination of the said agreement and plaintiff claimed permanent injunction.

The Delhi High Court held that a defendant being a popular player has a right to refuse the contract if he feels that he doesn't want to sponsor. Player

himself is a brand and has the right to decide over which brand he wants to promote.

- **SouravGangulyVs Tata Tea Ltd.**⁹

The well-known former cricketer and captain of Indian team SouravGanguly learned that the well-known tea company that hired him as a manager was profiting by giving the customers the chance to congratulate him on his accomplishment after he returned to India following a successful session at Lords in England. The offer suggested that he had not partnered with a company related to advertisement which he has not done. He objects to the conduct of the company.

The Calcutta High Court held that the popularity of the player is his intellectual property and he has the right to object over the conduct of the company which without his consent did such advertisement.

CHALLENGES IN SPORTS

Ambush marketing means an attack from a hidden position. Generally, we see a tournament going on in which various shops telecast the live matches. Many people shop at those and watch the matches.

Similarly, various hotels give offers to people who come to watch live matches. We have seen during recent Men Cricket World Cup finals in Ahmedabad, various hotels and restaurants of Ahmedabad and nearby areas made very huge profits as nearly 1.5 billion people watched the match at the stadium.

According to The Economic Times report published after the Men Cricket World Cup Finals match it is mentioned that the cost of rooms at Hotel rooms went up to 2 Lakh Rupees. Nearly 40,000 people booked rooms in hotels. These profits are made without paying anything in return by the companies. The creativity of these ambushers makes it necessary to adopt specific legislation in order to prevent ambush marketing, copyright and trademark.

⁸ . (2006) 4 SCC 227

⁹ MANU / WB / 0644 / 2008

▪ **ICC Development (International) Ltd. Vs Arvee Enterprises & Anr.**¹⁰

The ICC recorded a request against the non-support Arvee Enterprises and the Evergreen Service Station against the showcasing of offering tickets as prizes with the slogan of ICC alongside the mascots of World Cup 2003 cricket matches.

The Delhi High Court stated that there is a restricted law accessible for “Ambush Marketing” for the encroachment of brand name or copyright. The High Court additionally added that controlling reasonable rivalry and right to disclosure will be a prerogative one and such activity should be possible on the definition of Law by the Legislature.

▪ **ICC Development (International) Ltd. Vs Ever Green Service Station & Anr.**¹¹

The plaintiff ICC Development (International) Ltd. Filed a suit of injunction against the Ever Green Service Station and Hindustan Petroleum Corporation Limited (HPCL) for ambush marketing. As they were using the phrase “ICC World Cup South Africa 2003” logo and a Mascot “Dazzler”, which was created by the plaintiff. The plaintiff has already issued the undertaking that any third party cannot use the phrase “ICC World Cup South Africa 2003” logo and the Mascot “Dazzler”.

The Delhi High Court held that non-living entities are not entitled to publicity rights and hence any attempt to misappropriate the publishing rights of the organizers constitutes ambush marketing and results in violation of fundamental rights guaranteed under the Indian Constitution.

Various counterfeiting sports equipment are sold due to which on the one side players could not get proper kits and on the other side the business companies whose trademark is misused to sell counterfeiting goods suffer financial losses.

¹⁰ 2003 SCC Del 2

¹¹ 2003 SCC Del 1

SUGGESTIONS AND CONCLUSIONS

- **Drafting strict laws-** Government should draft strict laws against ambush marketing.
- **Personality rights-** There should be protection of personality rights. Proper monitoring of advertisements should be done. So that consumers are not misled by the companies.
- **Sponsorship of players-** The Government should see that new players who could not afford the costly sports equipment could get proper sponsors. This will not only improve the performance of players but also promote the position of the country in International tournaments.
- **Installing new technologies-** Government should install various new technologies to monitor the infringement of intellectual property granted in sports.
- **Duty of custom officers-** The custom officers should check that counterfeiting sports equipment should not be supplied from borders.
- **Awareness among people-** About ambush marketing, infringement of intellectual property and counterfeiting sports equipment awareness among people should be created. So that they don't get cheated by the companies.

From the above analysis we can conclude that intellectual property rights play a very crucial role in making sports popular among people. The intellectual property had given chance to many players to protect their personality rights. The broadcasting of matches had helped the companies to increase their profits and also the fans across the world to watch live matches. We get to know about many new games when we watch them. The broadcasting of matches helped emerging players to know the international rules and regulation of matches.

The broadcasting of matches, inauguration ceremony, valedictory ceremony of international

tournaments such as Olympics, Asian games, Commonwealth games, World Cups of cricket, football and many more help us to know about the culture of various countries which help us to know about the culture of other countries.

The granting of patents had not only encouraged innovations but also increased the investments in research and development of these new inventions. The registration of design encourages the young designers to do various new inventions in the field of sports designing.

The grant of trademarks helps consumers who are buying the sports equipment to know clearly about the quality of goods. Trademark gives the right to sue the individuals and companies who are infringing the trademarks and selling the goods. It grants various rights to companies who are trademark holders.

Overall we can say that every intellectual property plays a very important role in the development of sports and protecting both their intellectual property rights as well as constitutional rights.

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