



Recent Developments in Intellectual Property

Court modifies an interim injunction on receiving proof of concealment of material fact by the Plaintiff

The High Court of Delhi recently modified an interim injunction upon being apprised of concealment of material facts. The Single Judge directed that the interim injunction in favour of Mittal Electronics (“ME”) and against Sujata Home Appliances (“SHA”) be modified on a positive finding of active concealment of the fact that ME did not manufacture any of the goods in question and that an interim injunction against SHA *qua* those goods is unjustified and unreasonable.

The cause of action in the suit arose on account of sale of geysers by SHA under the trade mark ‘SUJATA’ which is owned by ME. An interim injunction was sought and granted against SHA by the Single Judge.

SHA contested the lawsuit by stating that it only manufactures water filters, reverse osmosis (‘RO’) water systems and water purifiers under the trade mark ‘STAR SUJATA’. Evidence was also adduced to show that SHA had a registration for its trade mark for the above goods, which fact was unopposed by ME. Further, it argued that ME had applied for registration of its trade mark ‘SUJATA’ subsequent to SHA and on a ‘proposed to be used’ basis. It was established that the mark ‘STAR SUJATA’ was adopted by SHA prior to ME *qua* the above goods and it was this fact that had been actively concealed from the Single Judge at the time the interim injunction was granted.

Based on the new facts brought to light by SHA, the Single Judge modified the *ex parte* ad interim injunction¹ and allowed SHA to continue to manufacture and sell water filters, water purifiers and RO systems under the mark ‘SUJATA’.

Ideas ‘Old as hills’ copyrightable?

The movie ‘Lootcase’ was recently released on the Disney+Hotstar streaming platform and attracted positive reviews from the audience. However, Mr. Vinay Vats (“Mr. Vats”) sought to restrain Fox Star Studios India Pvt. Ltd. (“FSSIPL”)² from releasing the film on the basis of a copyright infringement claim, just one day prior to its release.

Mr. Vats claimed to be the author and the copyright owner of a script for a film titled ‘Tukkaa Fitt’, which was written in the year 2010-2011 and registered with the Film Writer’s Association, Mumbai on March 14, 2011. The trailer of Mr. Vats’ movie was released in the same year on

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YouTube, however, the film itself was never released. Mr. Vats became aware of the movie 'Lootcase' through the trailer released on July 16, 2020, and argued that there were "substantial similarities between the plot of 'Lootcase' and his script". Mr. Vats sought an interim injunction before the High Court of Delhi restraining the release of the film the next day.

In response, FSSIPL stated that Mr. Vats has no sustainable cause of action. It was pointed out that the claims raised by Mr. Vats held no significance since there is no proof to indicate that the script of the film 'Tukka Fitt' was ever in the public domain and that Mr. Vats was seeking to base his claims on the trailer of the film which never metamorphosed into a full-blown film. Additionally, FSSIPL pressed that the last-minute actions of Mr. Vats were an arm-twisting tactic in order to secure gains. FSSIPL highlighted that the promos of 'Lootcase' were in public domain since June 2019, however, Mr. Vats did not raise any objections and waited until a day before the release of the film.

The Single Judge of the High Court of Delhi took note of the fact that the script of Mr. Vats' movie Tukka Fitt was never available in the public domain and that public knowledge of the same "is being sought to be attributed on the basis of a trailer, for a film which never saw the light of day". Fittingly, the suit could only be adjudged basis the trailer of Mr. Vats' movie, which was never released. When the similarities were discussed, it was found that both the movies involve the plot with respect to 'a bag of money lost by a gangster and found by a common man'. The Single Judge noted that there were also considerable differences between Mr. Vats' script and the film 'Lootcase', and that the "plot idea is as old as the hills" and that it was not the exclusive province of the Plaintiff (Mr. Vats).

In addition to the issue pertaining to infringement of rights, the Single Judge did not grant the *interim* injunction on the basis of the 'last minute approach' of Mr. Vats. The Single Judge also held that there was "no justification for the plaintiff (Mr. Vats) having approached this Court on the eve of the release of the film" and considered it an example of "misuse of the judicial process". The Single Judge refused to grant the injunction against the film twenty-four hours before it is due for release.

Oyo Rooms' trade mark rights protected against 'Joyo Rooms'

The District Court of Saket, New Delhi heard and adjudicated a suit instituted by Oravel Stays Private Limited ("OSPL") for their trade mark 'OYO Rooms' against a hotel service provider, Khalifa Industries Private Limited ("KIPL"), who were using the mark 'JOYO/Joyorooms'³. The cause of action in the suit pertained to the significant, and at the first blush similarity between the two marks in addition to KIPL's website www.joyorooms.com being deceptively similar to, and designed in an identical fashion to OSPL's website www.oyorooms.com, along with a claim for infringement of OSPL's copyright in the logo for their mark 'OYO'.

OSPL relied upon its prior and long-standing use of the mark "OYO" dating back to March 2012, in respect of hotels and temporary accommodation services and the mark's immense popularity. Having incurred significant expenditure in the promotion of "OYO" Rooms, OSPL submitted that they had acquired a significant recall value with its clients and in turn had carved a *niche* for themselves in the hospitality industry. OSPL was also able to prove likelihood of confusion and deception arising on account of similarity between the rival marks and tarnishment of OSPL's goodwill and reputation in the trade mark "OYO".

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³ Oravel Stays Private Limited v. Khalifa Industries Private Limited & Kumar Vibhav Gautam Khalifa [Judgement dated July 16, 2020 in CS (COMM) 263/19]



The Saket District Court ruled in favour of OSPL and restrained KIPL from using the mark 'JOYO/ Joyorooms' and from adopting any other mark which would be an obvious imitation of OSPL's mark 'OYO'. The Court also granted a permanent injunction against KIPL restraining it from using any logo/representation which would amount to infringement of the copyright of OSPL in various artworks/logos and representations and logos forming part of the "OYO" trademark.

Budweiser vs www.thefauxy.com – Satire or Disparagement?

The High Court of Delhi recently granted Anheuser Busch LLC ("AB") an interim injunction restraining the communication to the public and/or broadcasting of a video, which perpetuated fake news that employees of AB have been urinating in the 'Budweiser' products sold to its customers.

AB had filed a suit for infringement and commercial disparagement of their 'Budweiser' products against the proprietors of a satirical website www.thefauxy.com⁴, including its various social media handles on Twitter, Instagram and YouTube. The issue of concern in this dispute was a video posted by www.thefauxy.com, which was dramatized in the form of a news report, testing the veracity of the claim that AB's 'Budweiser' bottles contain urine.

By the date of filing of the suit, the impugned video had garnered several views and resulted in the publication of several defamatory posts and videos across social media. The 'fake' defamatory news had even caused 'BUDWEISER' to trend as the 'No. 1 hashtag' on Twitter in India on July 2, 2020. It was alleged that in the absence of any disclaimer clearly stating the video contains a 'fake news/fictitious report' on the YouTube page of www.thefauxy.com, even legitimate news publications like 'The Hans India' and 'NDTV' reported the fake news as a legitimate fact.

YouTube and Twitter, which had been arrayed in the dispute as well, sought to absolve itself of any liability submitting that it is a mere intermediary and is thus, entitled to the 'safe harbour' provision under Section 79 of the Information Technology Act, 2000 read with the intermediary guidelines. Additionally, it was stated that the impugned video is only a satire and cannot be said to be defamatory or disparaging.

The Single Judge was of the view that a *prima facie* case had been made out, and that the balance of convenience was in favour of AB. An order was passed granting an injunction and restraining www.thefauxy.com "from reproducing, broadcasting, communicating to the public, screening, publishing and distributing the impugned video or any other video on any media or platform and promoting the impugned video on various social media", which would amount to infringement and commercial disparagement of the Budweiser trade mark.

Interestingly, the Single Judge has only restrained the prospective promotion, publication, or distribution of the uploaded impugned video/social media posts and has ignored AB's plea of removal of the uploaded content from the internet.

Geographical Indication Certificate for 'Kashmir Saffron' issued

On July 25, 2020, the long awaited Certificate of Geographical Indication for the 'Saffron' grown in the Kashmir Valley was issued by the Registrar of Geographical Indications in India. Kashmir Saffron is grown at an altitude of 1,600 metres above sea level at Pampore in the Pulwama district of Jammu and Kashmir; the strands are dried stigma and styles of the flower of the '*crocus sativus*' plant and it is considered as one of the costliest spices by weight.

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⁴ *Anheuser Busch LLC v. Rishav Sharma & Ors.*, [Order dated July 30, 2020 in CS(Comm) 288 of 2020]



A Geographical Indication (“GI”) is an indication used to identify goods and products having special characteristics that originate from a definite geographical territory. The special characteristics of the goods and products are attributable to its place of origin. The Geographical Indication tag prevents unauthorised use by third parties, provides legal protection to Indian Geographical Indications, which in turn, increases value, boosts exports and promotes the economic prosperity of the producers of the Kashmir Saffron spice.

With the GI tag, Kashmir Saffron joins the ranks of Registered Indian Geographical Indications such as Darjeeling Tea, Aranmula Kannadi, Pochampalli Ikat, Salem Fabric, Chanderi Sarees, Mysore Silk, Araku Valley Arabica Coffee, Himachali Kala Zeera, Kathputli’s of Rajasthan etc⁵.

⁵ List of Registered Geographical Indications, Intellectual Property Office Geographical Indications Registry available at the web link <http://www.ipindia.nic.in/registered-gis.htm>

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