



Recent Developments in Intellectual Property

The Central Government notifies the Tribunals Reforms/Bill, 2021

The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021, was introduced in Lok Sabha in February 2021. As the Bill was pending at the end of the session, the Central Government notified the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, (“**the Ordinance**”) on April 4, 2021. By the said Ordinance, Appellate Authorities under eight Acts have been replaced and the power to hear appeals has been conferred upon the High Courts. The Tribunals Reforms Bill, 2021 (“**the Bill**”) was introduced in the Lok Sabha by the Finance Minister, Ms. Nirmala Sitharaman, on August 2, 2021.

The Bill contains provisions replacing certain Appellate authorities. This includes the Intellectual Property Appellate Board (“**IPAB**”), which was established in 2003 to hear appeals against the decisions of the Registrar under various IP legislations and original cancellation/rectification proceedings. The highlights of the transfer of appellate powers under various IP legislations have been detailed below -

The Copyright Act, 1957

Under the Copyright Act, 1957 (“**the Copyright Act**”) the Appellate Board previously held the power to hear appeals against the decision of the Registrar of Copyrights.

With the abolition of the IPAB, the power to hear appeals will be transferred to the Commercial Court/Commercial Division of the concerned High Court. The decision of the Registrar can now be appealed before the Commercial Court/Commercial Division of the concerned High Court within three months from the date of the order. An appeal from the Order of the Single Judge will lie to a Division Bench of the High Court within three months from the date of decision.

The Patents Act, 1970

Under the Patents Act, 1970 (“**the Patents Act**”) the IPAB was empowered to hear appeals against decisions, orders or directions of the Controller General of Patents, Designs and Trade Marks or the Central government as well as original cancellation/revocation proceedings.

This power to hear appeals and original cancellation/revocation proceedings has been transferred to the High Court. Pending appeals and cancellation/revocation petitions filed with IPAB will be transferred to the Commercial Court/Commercial Division of the High Court. Fresh cancellation/revocation petitions will now have to be filed with the Commercial Court/Commercial Division of the High Court.

The Trade Marks Act, 1999

Under the Trade Marks Act, 1999 (“**the Trade Marks Act**”) the IPAB held the power to hear

In this Issue

The Central Government notifies the Tribunals Reforms/Bill, 2021

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers’ Rights Act, 2001
- The Cinematograph Act, 1952

Harpic v. Domex: Toilet cleaner manufacturers spar over disparagement allegations

Court stays investigation of FIR against Sony Pictures India

Report 161 – Review of the IPR Regime in India by the Department Related Parliamentary Standing Committee on Commerce

- Role and Encouragement of IPR
- COVID-19
- Investment in Research and Development
- National IPR Policy, 2016
- IP Financing
- Counterfeiting and piracy
- IP Appellate Board
- Regulation
- Sector-specific recommendations

appeals from the decision of the Registrar of Trade Marks as well as original cancellation/rectification petitions filed against the registered trade marks.

The power will be transferred to the concerned High Court. Apart from this, pending appeals and cancellation/rectification petitions filed with IPAB will be transferred to the Commercial Court/Commercial Division of the High Court. Fresh cancellation/rectification petitions against registered trade marks will also be filed with the Commercial Court/Commercial Division of the High Court.

The Geographical Indications of Goods (Registration and Protection) Act, 1999

Under The Geographical Indications of Goods (Registration and Protection) Act, 1999, (“**The Geographical Indications Act**”) the IPAB held the power to hear appeals from the decision of the Registrar of Geographical Indications, as well as applications for rectifying, expunging the entry from the Register. Appeals arising from such decisions will be heard by the concerned High Court.

The Protection of Plant Varieties and Farmers’ Rights Act, 2001

The Bill proposes to abolish the Plant Varieties Protection Appellate Tribunal established under Section 54 of the Protection of Plant Varieties and Farmers’ Rights Act, 2001 (“**the Plant Varieties Act**”).

Under the erstwhile Section 56 of the Plant Varieties Act, the Appellate Tribunal was empowered to hear appeals against decisions of the Protection of Plant Varieties and Farmers’ Rights Authority and the Registrar of Plant Varieties Registry. This power is now vested with the concerned High Court.

The Cinematograph Act, 1952

Section 2(h) of the Cinematograph Act, 1952 (“**the Cinematograph Act**”), which defines Appellate Tribunal, has been deleted. Further, under Section 7C of the Cinematograph Act, which conferred appellate powers on the IPAB, the word ‘Appellate Tribunal’ has been substituted with “High Court”.

Harpic v. Domex: Toilet cleaner manufacturers spar over disparagement allegations

Advertising is an important and effective tool of attracting new customers and is vital in deciding the success of the product in the market. Due to the large number of products available to consumers, advertisers frequently compare their products to those of competitors. In common parlance, comparative advertisement means an advertisement of a particular product, or service by comparing it against a competitor’s product for the purpose of showing why one’s product is superior. Disparagement in comparative advertising occurs when a comparison is made that is misleading and/or derogatory of the competitor’s product.

A Single Judge of the Delhi High Court (“**the Court**”) recently granted an *ex-parte ad interim* injunction in a suit¹ filed by Reckitt Benckiser India Private Limited (“**RBIPL**”) against Hindustan Unilever Limited (“**HUL**”) for telecasting/broadcasting/publishing or communicating to the public advertisements disparaging RBIPL’s products sold under the trade mark HARPIC and using the depiction of RBIPL’s products in any other manner infringing RBIPL’s registered trade marks.

RBIPL and HUL both provide disinfectant toilet cleaning products under the marks HARPIC and DOMEX, respectively. RBIPL had filed a suit against HUL claiming that HUL has compared its products under the brand DOMEX with its products under the brand HARPIC in its recent campaign of five advertisements, launched on July 23, 2021.

RBIPL alleged HUL has not only denigrated its HARPIC products but has also made false statements in the advertisements. RBIPL argued that the shape of bottle being depicted in the advertisements was an exact copy of the bottle of HARPIC.

While granting relief to RBIPL, the Court discussed various precedents on comparative advertisement. The Court considered that

In this Issue

The Central Government notifies the Tribunals Reforms/Bill, 2021

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers’ Rights Act, 2001
- The Cinematograph Act, 1952

Harpic v. Domex: Toilet cleaner manufacturers spar over disparagement allegations

Court stays investigation of FIR against Sony Pictures India

Report 161 – Review of the IPR Regime in India by the Department Related Parliamentary Standing Committee on Commerce

- Role and Encouragement of IPR
- COVID-19
- Investment in Research and Development
- National IPR Policy, 2016
- IP Financing
- Counterfeiting and piracy
- IP Appellate Board
- Regulation
- Sector-specific recommendations



– ‘It is one thing to say that the defendant’s product is better than that of the plaintiff and it is another thing to say that the plaintiff’s product is inferior to that of the defendant’². The Court held that while hyped-up advertising may be permissible, it cannot transgress the areas of permissible assertion, and if it does so, the advertiser must have some reasonable factual basis for the assertion made.

The Court further observed that in one of the print advertisements, a checkbox was ticked on DOMEX as opposed to HARPIC as to which of them fights bad smell for longer. The Court held that the said advertisement certifies the product of HUL as superior to that of RBIPL and further denigrates the product of HUL. The Court added that *prima facie*, the balance of convenience is in favour of RBIPL and, accordingly, restrained HUL from publishing the advertisement in any form till it removes all references to the product under the brand HARPIC.

With regard to other four advertisements in question, the Court has sought reply from HUL, post examination of which, the Court will decide the issue.

Court stays investigation of FIR against Sony Pictures India

The Bombay High Court (“the Court”) stayed an investigation being conducted by the Pune City Police into a First Information Report (“FIR”) filed at the behest of Karad Urban Co-Operative Bank (“KUCB”) against Sony Pictures Network India Pvt. Ltd. (“Sony India”) i.e. the provider of the reputed Over-The-Top (‘OTT’) platform called ‘SonyLIV’.

KUCB alleged that in the third episode of the web-series titled ‘Scam 1992: The Harshad Mehta Story’ being aired on SonyLIV, a calendar shown on the wall of a bank which contained a logo similar to that of KUCB. It was alleged that this constitutes offences under Sections 102 and 107 of the Trade Marks Act, 1999 i.e. falsification and false application of trade marks. KUCB alleged that the display of the logo has caused serious damage to KUCB’s financial, commercial and social reputation. Allegations of the offences of defamation,

under the Indian Penal Code, 1860, damage to computer and computer system and identity theft under the Information Technology Act, 2000, were also raised against Sony India.

A notice under Section 41A of the Code of Criminal Procedure, 1973, for appearance before a Police Officer, was issued to Sony India’s officials.

Aggrieved by this, Sony India and Sameer Chandran Nair, the Chief Executive Officer (“CEO”) of Applause Entertainment (the producer of the web-series) filed a petition before the Court, seeking quashing of the FIR. Sony India and Applause Entertainment (“the Petitioners”) submitted that KUCB’s complaint had been filed to arm twist the Petitioners into settling the dispute.

With respect to the allegations concerning the calendar logo, the Petitioners stated that they were not in the business of making calendars and that the particular web-series is for entertainment and has nothing to do with the relevant trade. Citing a previous judgement rendered by the Court in *Prateek Chandragupt Goyal v. The State of Maharashtra & Anr.*³ the Petitioners argued that the dispute pertaining to the calendar does not come within the purview of the Trade Marks Act, 1999. The Petitioners also submitted that the display of the logo, apart from being fleeting, referred to a fictional bank named Bank of Karaj. The Petitioners stated that the name was a pseudonym for Bank of Karad and their alleged involvement in the 1992 financial scam was in public domain and confirmed by the Reserve Bank of India (“RBI”).

It was further contended the investigation had been conducted by a police inspector, whereas, the offences alleged by KUCB in the FIR could not be investigated by a person below the rank of a Deputy Superintendent of the Police, as per Section 115 of the Trade Marks Act, 1999. With respect to the offence of defamation under the Indian Penal Code, 1860, the Petitioners argued that the allegations pertained to a non-cognizable offence and could not be investigated without the permission of the Court. Hence, the

In this Issue

The Central Government notifies the Tribunals Reforms/Bill, 2021

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers’ Rights Act, 2001
- The Cinematograph Act, 1952

Harpic v. Domex: Toilet cleaner manufacturers spar over disparagement allegations

Court stays investigation of FIR against Sony Pictures India

Report 161 – Review of the IPR Regime in India by the Department Related Parliamentary Standing Committee on Commerce

- Role and Encouragement of IPR
- COVID-19
- Investment in Research and Development
- National IPR Policy, 2016
- IP Financing
- Counterfeiting and piracy
- IP Appellate Board
- Regulation
- Sector-specific recommendations

Petitioners submitted that KUCB's complaint and its investigation was an abuse of the legal process.

The Court found *prima facie* merit in the Petitioner's arguments and submissions and stayed the investigation of the offences under the FIR, till the next date of hearing. The Court's verdict on the quashing of the FIR remains to be seen.

Report 161 – Review of the IPR Regime in India by the Department Related Parliamentary Standing Committee on Commerce

The Department Related Parliamentary Standing Committee on Commerce ("the Committee") presented the 161st Report on the Review of Intellectual Property Rights Regime in India ("Report 161") before the Rajya Sabha on July 23, 2021⁴. The Report 161 analysed the overall scenario of the Intellectual Property Rights ("IPR") Regime in India and its contribution in promoting innovation and entrepreneurship, and listed out recommendations therein. The key observations and recommendations analysed in the Report 161 include –

Role and Encouragement of IPR

The Committee noted an improvement in protection of IPR increases Foreign Direct Investment (FDI) and inflow of foreign exchange. For instance, an improvement of 1% in protection of copyrights increased FDI by 6.8%.

The Committee noted that only 36% of patents filed in India had been filed by domestic entities. It attributed this to lack of awareness of IPR, and recommended that the Department for Promotion of Industry and Internal Trade ("DPIIT") increase awareness among small businesses, artisans, and establishments in remote areas with participation of non-governmental organisation.

COVID-19

The Committee recommended waiving off patent rights for COVID-19 related drugs and vaccines temporarily, to address inadequate availability. It recommended avoiding any

delays in invoking compulsory licenses on crucial drugs and vaccines in emergency like situations in the future.

Investment in Research and Development

The Committee noted that India grants a low number of patents (as compared to China and the USA), which can be attributed to low spending on research and development (0.7% of the GDP). Based on the same, the Committee recommended: (i) allocating funds to each government Departments for research, (ii) providing incentives to private companies for undertaking research, and (iii) directing large industries to give Corporate Social Responsibility funds for research.

National IPR Policy, 2016

The National IPR Policy, 2016 had been adopted to provide legal and administrative framework to manage IPR. The Committee recommended re-assessment in light of new trends in innovation and to identify challenges in implementation of the policy. It also suggested involving state governments in framing IPR policies.

IP Financing

The Committee noted that the use of IP backed financing (use of IP to gain financial benefits, credit or revenue) could enhance financial innovation, availability of credit, and increase capital base. It recommended: (i) amending the Insurance Act, 1938 to minimise monetary risks from infringement of IPR, (ii) devising a uniform system of valuation of IP, (iii) enacting legislation to protect and determine standards for financing, and (iv) adopting risk-sharing policies with companies.

Counterfeiting and piracy

To curb piracy and counterfeiting, the Committee recommended: (i) implementation of stringent legislation through strong inter-Departmental coordination, (ii) increasing the capacity of enforcement agencies (such as IPR cells in the state police), and (iii) establishing a method to estimate revenue loss from it. It recommended labelling products as 'patent pending' (patent applied, but not yet granted) to deter misuse and yield marketing benefits.

In this Issue

The Central Government notifies the Tribunals Reforms/Bill, 2021

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers' Rights Act, 2001
- The Cinematograph Act, 1952

Harpic v. Domex: Toilet cleaner manufacturers spar over disparagement allegations

Court stays investigation of FIR against Sony Pictures India

Report 161 – Review of the IPR Regime in India by the Department Related Parliamentary Standing Committee on Commerce

- Role and Encouragement of IPR
- COVID-19
- Investment in Research and Development
- National IPR Policy, 2016
- IP Financing
- Counterfeiting and piracy
- IP Appellate Board
- Regulation
- Sector-specific recommendations



IP Appellate Board

The Committee recommended reconsidering the abolition under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, as this would further increase judicial pendency. The Committee further recommended undertaking a Judicial Impact Assessment and consultations before abolishing it. It also recommended reforms including greater structural autonomy, infrastructural and administrative reforms, and timely appointment of officials and manpower within the Intellectual Property Appellate Board (“IPAB”).

Regulation

The Committee examined and recommended changes to: (i) the Patent Act, 1970, (ii) the Trademarks Act, 1999, and (iii) the Copyright Act, 1957. It suggested changes to: (i) encourage registration of patents (by checking on the power to decline patents, and decreasing penalty for furnishing false information),

(ii) fast-tracking patent applications (by shortening timelines for filing documents), (iii) prioritising trademarks for export-oriented products by creating a separate category, and (iv) increase compliance (by deploying trained police officers, and streamlining process for search and seizure).

It recommended incorporating work from the internet and digital broadcasters under licenses for copyright. A separate framework for protecting trade secrets could be established.

Sector-specific recommendations

The Committee recommended creating a separate category of rights for Artificial Intelligence and related innovations, owing to the significant benefits and applications. The Committee also suggested focusing pharmaceutical research towards niche segments and discovery of new drugs.

In this Issue

The Central Government notifies the Tribunals Reforms/Bill, 2021

- The Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers’ Rights Act, 2001
- The Cinematograph Act, 1952

Harpic v. Domex: Toilet cleaner manufacturers spar over disparagement allegations

Court stays investigation of FIR against Sony Pictures India

Report 161 – Review of the IPR Regime in India by the Department Related Parliamentary Standing Committee on Commerce

- Role and Encouragement of IPR
- COVID-19
- Investment in Research and Development
- National IPR Policy, 2016
- IP Financing
- Counterfeiting and piracy
- IP Appellate Board
- Regulation
- Sector-specific recommendations

Endnotes

- 1 Reckitt Benckiser India Private Limited v. Hindustan Unilever Limited; IA Nos. 8999-9005 of 2021 in CS (COMM) No. 340 of 2021, order dated July 30, 2021.
- 2 Dabur India Ltd. v. Wipro Limited, Bangalore, 2006 (32) PTC 677 (Del).
- 3 2021 SCC OnLine Bom 619
- 4 Accessible at the weblink - https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf

Please feel free to address any further questions or request for advice to:

Dev Robinson

National Practice Head - IPR
+91 98100 10435
dev.robinson@AMSShardul.com

Muzammil Husain

Partner
+91 99104 98654
muzammil.husain@AMSShardul.com

Mukul Baveja

Partner
+91 91671 48334
mukul.baveja@amsshardul.com

J. V. Abhay

Partner
+91 85276 96030
j.abhay@amsshardul.com

Disclaimer

This is intended for **internal circulation** and general information only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.