



**RELEVANCE OF INTELLECTUAL
PROPERTY RIGHTS IN SPORTS
INDUSTRY**

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ABSTRACT

The industry of sports has always been a prodigious sector across the world bringing together entertainment, games, culture and pecuniary business, right from the barbaric era through the glorious days of Caesar to the twenty first century money making sports industry. Sporting games have always been encouraged by chieftain, governments, private individuals and entities interested not only in the games themselves but more in the financial business quotient that sports entail. Sports which, for a very prolonged time, was considered an activity which was recreational, has nowadays become a thorough materialistic activity effectuating elephantine profits.

Earlier the sporting events were based on the competition between different talents, but now money has procured a gigantic role in all these events. Corporatization of sports has become gargantuan. Enormous importance has been gained by different marketing aptitudes like franchising or brand building of a sport or a player, overtaking other important components of a game.

These distinct aptitudes like merchandising, franchising and branding are the major contributors of revenues etc. which includes exploitation of different intellectual property rights of sports clubs. With gradual

proliferation in the business angle of sports, dormant Intellectual Property Rights (IPRs) vesting in almost every facet of the sports industry are being tapped into and capitalized.

Branding of sporting games and connected events, teams, sports clubs, celebrity status etc. can all be made feasible through the constructive assets i.e. IPRs which act as a marketing tool to make all of it possible.

Marketing dexterities are applied in fabrication, perpetuation, popularization and sustenance of distinctive marks, logos and personalities, while copyrights vesting in brand and image inception etc. are protected to reap benefits on an exclusive basis considering the very nature of competition in sports.

This article will highlight various components of Intellectual Property that are devised in the undertaking of a club or a sports team.

INTRODUCTION:

Sports being part of everyone's life has been playing an influential part in every aspect of our society. Sports earlier was limited only to the leisure activity or to the physical activities carried on by the individuals to pass their time and keep themselves fit. But in today's time sports is not limited only for entertainment and health purposes but has been extended for commercial activities, thereby being considered as a big source of earning income by grabbing business opportunities in the area of sports. Various sports teams are organized and on their formation some special recognition is required. Thus, they are recognized or



differentiated from other teams by giving specific names to them. Further for giving identification different and catchy taglines along with logos are created. Apart from entertainment purpose on the other end of being a big business opportunity many sportsmen such as cricketers enter into advertisements and their associations enter into sponsoring, branding, merchandising etc. On commercialization of such elements, their protection is must.

PATENTS:

Granting of legal documents by the government for the purpose of giving an inventor the right to make use and sell an invention for a specified period of time is known as patent. For making any kind of improvements in previous inventions patent can be granted¹. Meeting of three necessary tests by an invention is must to qualify a patent which include-

1. Invention shall be new and should not exist previously
2. It should be improvement to the existing technology
3. Invention should be of some use and shall not be used for any immoral and illegal purposes.

Inventions which are new, useful and innovative are protected by the way of patents. Along with products, the processes used for achieving a result are

also granted patents. In today's era a lot investors have begun to obtain patent protection for the various sports method inventions. Such sports method inventions are in trend in recent times and include strength training, aerobics, flexibility methods etc.². Licensing their methods provides ample of advantages to such training conductors, as they can continue to conduct such training sessions at their own level by providing specialization and earning a large amount of money. Hence, they are protected from any kind of infringements by the third parties³. Registration of patents is not an easy or simple process and thus, requirement of a legally and technically sound patent agent is must⁴.

TRADEMARKS:

Trademarks in sports are usually in the embodiment of captions, logos or tag lines etc. They are a distinctive indicator or a sigil representing a business or trade. The most commonly created IP in sports is trademark. It acts as a catalyst for brand building in the sports business. Popularity of a certain sport is measured by the public rating. This measurement is further based on the trademark. It has become an ideogram of identification. Sponsorships and merchandises are some the forms in which it helps in augmenting the brand value⁵. A franchise's brand equity is ascertained by

¹ <http://www.legalserviceindia.com/articles/ptwy.htm>
² https://saylordotorg.github.io/text_law-for-entrepreneurs/s21-intellectual-property.html
³ <http://www.legalserviceindia.com/articles/ppch.htm>

⁴ <http://ship.mrc.ac.za/sectioncpatents.htm>
⁵ https://en.wikipedia.org/wiki/Trademark_distinctiveness



sponsorship revenues and advertisement revenues which are in consociation with trademarks.

Thus, protection of trademarks is of utmost priority as to indemnify commercial interests. Trademarks Act, 1999 protects the trademarks of sports clubs and further provides protection to its proprietors. The act states that any proprietor can apply for registration under miscellaneous classes of services and goods in relation to which the trademarks are being maneuvered. Civil and criminal remedies are made available in the cases of trademark infringement⁶. Another remedy available for the proprietor is under the anti-dilution law (for well-known or famous marks).

COPYRIGHT:

All the artistic work includes expression of ideas and such expression of ideas are protected by the way of copyright laws. They are different from patents as they do not protect the processes through which the end result is achieved⁷. Right to copy or publish a work and right to be listed as its author are considered as the economic and moral rights and thus are included in copyrights⁸. Copyright protection is available to ideas that are creative in nature. Many sport events are conducted like car racing events, events related to football sport, cricket and other various tournaments and

thus such artistic works which are a part of sports events are protected by the crucial role played by copyright laws. Subject matter of copyright include artwork in promotions, logos, also the online games etc.⁹. No mandatory rule of registering the copyright exists. But in recent times the scenario has changed, now the registration is must and in many cases it has been laid down by the courts that statutory remedies can be availed only when the owner registers his copyright under the act¹⁰.

DOMAIN NAMES:

Domain names has become a principal component in the sports industry as business identifier, as the use of internet for the commercial activity has increased momentarily. It helps in finding the appropriate site on the internet and helps in meliorating communication of players and teams with the common masses¹¹. Events are broadcasted on these sites which implements the dissemination of enormous information related to sports. This has helped in acquiring huge market value in branding. One can note that apart from sports clubs having sites of their own, there are some international sportsmen who have their own sites like

⁶ <https://www.lawteacher.net/free-law-essays/business-law/dilution-under-trademark-law-business-law-essay.php>

⁷ <https://www.copyright.gov/help/faq/faq-protect.html>

⁸ <https://copyright.laws.com/copyright-law>

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https://en.wikipedia.org/wiki/Copyright_law_of_the_United_States

¹⁰ <http://www.patent-trademark-law.com/copyrights/copyright-faq/>

¹¹ <http://www.myonlineca.in/startup-blog/how-to-claim-domain-name-with-trademark-in-india>



www.brettle.com, www.sachintendulkar.in etc.¹²

Cyber squatters have been given an opportunity to take benefit of the confusion which may be attributable solely to domain names. Because of the lack of separate domain name registration in India, one can register the domain name as trademark.¹³

PERSONALITY RIGHTS:

Protecting one’s name, image and other aspects of personality from exploitation and controlling such exploitation is known as personality rights.¹⁴ They are also known as publicity rights. Personality rights of a sportsman plays a crucial role in brand creation of such individuals. The rights of publicity basically include the right to protect one’s name, image and other related personality rights from commercialization¹⁵. This gives right to privacy to sportspersons in case of their name being represented in public without their permission¹⁶

BROADCASTING RIGHTS:

These rights are apprehended by the Indian Copyright Act, 1957. The term for exercising broadcasting rights is twenty-five years¹⁷. These rights are usually exercised by the

broadcasting companies which also allows them to rebroadcast the same event.

According to this Act, any person not withholding the license to broadcast from the owner: -

- 1) Rebroadcasts the broadcast.
- 2) On payment of fees cause the broadcast to be heard or seen by the public.
- 3) Makes a video or sound recording of the broadcast.
- 4) Sells these recording to the public or made any offer to sell or hire these recordings.

Is liable for the punishment of infringement of the broadcasting rights¹⁸. Unauthorized downloading also comes under this whose punishment is mentioned in the Section 43 of the Information Technology Act, 2000, which provides for a punishment of Rs. One crore.¹⁹

MERCHANDISING and LICENSING:

Merchandising is an activity which includes the promoting of sales and is another source of generating revenue and carrying on

¹² <https://www.nolo.com/legal-encyclopedia/can-you-register-domain-name-as-trademark.html>

¹³ <http://www.wipo.int/amc/en/domains/search/overview2.0/>

¹⁴ <https://www.lawteacher.net/free-law-essays/criminology/personality-rights.php>

¹⁵ <http://www.statemaster.com/encyclopedia/Personality-rights>

¹⁶ <https://academic.oup.com/jiplp/article/9/2/137/926135>

¹⁷ <http://www.advocatekhaj.com/library/bareacts/copyright/37.php?Title=Copyright%20Act,%201957&Title=Broadcast%20reproduction%20right>

¹⁸ <http://lawmantra.co.in/infringement-of-copyright/>

¹⁹ http://www.legalserviceindia.com/articles/In_Copy.htm



businesses for various sports teams. Through the way of gratitude many sportspersons consider their fan following to be part of their success and win. All the human achievements are originated from some kind of ideas. For conducting any kind of business, creation of work or using any sports technique, ideas are involved. Thus, protecting such ideas is must.

Sale factor is the most essential element for a business to flourish and for the sale, its products must be visible in an appealing manner and this is referred to as the process of merchandising²⁰. This process includes all the techniques to promote the goods and thereby the advertisement techniques as well. Effective merchandising plays an important and significant role in uplifting the amount of sales²¹. Every player in the particular sports team has a fan base and to increase that various methods and innovative ideas can be used such as making T-shirts with the name of the particular player, any fan would take initiative to buy and wear such T-shirts and attend such matches to motivate their favorite player, also increasing the sales and contributing towards the economic aspect.

On the other hand, giving the license to a company by a sports team to use its name, logo and trademark on its company's products through a contractual agreement is known as sports licensing. The process of licensing is the source of immense importance for generating revenue and

helps to build up relationship with the supporters. Protecting the quality of the brand is equally important for both the parties.

AMBUSH MARKETING:

Lack of a definite legal framework in India has led to the rise of Ambush Marketing. It refers to a company's attempt to capitalize over the popularity of a well-known or established event or property without the appropriate authorization or consent of the necessary parties. It involves a third party to create an association with the sportsmen or any event in which they are participating without their approval. This leads to the defying of official partners and sponsors in acquiring their share of the commercial value due to their official designation²². Ambush marketing has become a very cheap way of attracting customers to one's brand.

Ambush Marketing may include; -

- 1) Unofficial corporate sponsorship.
- 2) Unauthorized use of event logo or seal on the merchandise.
- 3) False claims of being the official sponsors of a particular team.
- 4) Creating unofficial films, videos or websites.

²⁰ <https://www.cleverism.com/revenue-streams-in-business-model-canvas/>

²¹ <https://www.asdonline.com/education-events/retail-merchandising/>

²² <http://www.thehindubusinessline.com/todays-paper/should-we-legislate-on-ambush-marketing/article1111858.ece>



Specific legislation for combating ambush marketing is absent in India. Most of these cases are considered under various IP laws like copyright or trademark law²³.

CONCLUSION:

In today's era one can clearly notice that the competition amongst the associations and the sports clubs is not only witnessed on the sports or event field but also in the business for making huge profits. Sports clubs are now exploring their intellectual property and are entering the business in the form of computer games, merchandising, and so on. This adventure of sports clubs of earning profits by exploiting their IP makes it essential for them to adequately protect their IP. Protection of these IPs could take various forms such as agreements binding by certain terms and proper conditions, registrations etc.) The IP repertoire of a sports organization is bound to grow with expansion of its business operations and with the popularity of the team or the players the value of such repertoire grows significantly. Regular IP audits and valuation must be conducted in order to nurture the intellectual properties as most business models related to the commercialization of sports and games are based on the IP wealth of the sports clubs. Adequate protection and maintenance of IP portfolio is also crucial.

