



INTELLECTUAL PROPERTY RIGHTS AND SPORTS

By Agrim Sharma

From Amity Law School, Noida

With the commercialization of sports, the option of taking up sports as a career seems to be a much more realistic one than what it was a few decades back. Earlier, playing sport was considered to be a mere hobby and nothing more. Nowadays women's are being treated at same level as men in sports. However, this is not a case anymore. With the amount of money involved in this field, the amount of name and fame attached to it, one may consider unconventional to take up sports as a career. Due to governmental support & initiatives parents are also encouraging towards their children, pursuing sports as a means of livelihood.

The various rights available in sports besides contractual rights to sportspersons and clubs can be classified as Copyrights, Patents, and Trade Mark and Design rights.

A sportsperson can also sign a contract to endorse a product, using his goodwill or publicity through image rights. Thus, it can be said that in the arena of sports, the most significant IPR'S are the trademarks and copyrights, which are recognizable through various types of branding of sports events or teams by various logos and identification markings, which in turn attract consumer attention. IPR's are acquired by various means. The use of Trade Marks in a particular class is acquired through registering the mark, logo, mascot etc. with the trademark registry. Copyright in a work is acquired as soon an original work is created within the terms of the Copyright Act. The use of these

Trademarks and Copyrights can be assigned to another party for use in relation to certain articles and certain territories. While the assignment of the use of a Trademark takes place under Section 37, the assignment of a Copyright is governed by Section 19 of the Copyright Act. Trademarks have become a huge source of revenue in sports. Another form of Intellectual property right, emerging from sports events is a database rights.

The Delhi High Court in the case of Star India Private Limited v. Piyush Aggarwal recognized the importance of rights in live ball by ball commentary and held, while the right to disseminate news is available to all, the right of ball by ball is not. Commentary contemporaneously is not. Money is also made by selling of broadcasting rights to companies. In the Indian Premier League the right to broadcast was given to Sony Entertainment Television Network. The official broadcaster also acquires a license to use the trademark logo of various teams and sponsors participating in the event without any infringement. Besides, the Official broadcaster also acquires a copyright in his recordings for commercial use, subject to certain limitations.

Any confidential business information, that provides an enterprise, a competitive edge may be considered as a trade secret. In sports, where technology plays a significant role, like in the case of car racing or where design is of great importance and in cases of boat races, design or performance is of great relevance and can give a significant advantage to a team. It can be protected under trade secrets. Therefore be said with certainty that majority of the commercial rights that in sports fall within the ambit of Intellectual property right laws.



Sponsorship can be viewed as a part of the profit maximizing behavior of a firm. It is a very significant revenue generating practice for professional sports organization. For sports events there are two kinds of sponsors, the title sponsors and the main sponsors. A sporting per se is not protected under the Indian Copyright Act since it involves live events, where there is no fixed script and the result is not determined. Sponsorship & Endorsements contracts are protected in India under the principle of unfair trade practices. Any person falsely representing himself as a sponsor or misleading the public by endorsing a product, which he is not contractually authorized to, can be held liable. Besides the protection accorded under the Competition Act, protection could also be accorded in the form of trademark infringement, passing off and copyright infringements.

CASE STUDY

Mahendra Singh Dhoni is the first and only Indian athlete to make it to the Forbes list of 100 world's highest paid athletes. With earnings of USD 30 million and endorsements worth USD 26 million, only 4 million came as salary & prize money. This figure includes earnings from other sources like appearance fees, and licensing and endorsement fees. He owns a racing team, Football team and Hockey team. According to a report Dhoni endorses over 20 brands, charging approximately Rs. 13 Crore per brand. He has signed bat sponsorship deals with Spartan bats and Amity University. Dhoni is the most marketable player and he was also the most expensive player in the first IPL season .

Sports Merchandising

It is different from sports endorsements. Sports endorsements, by endorsing a product, lend his name to the product. This product may then have an insignia of the sportsperson. It is a global phenomenon that fans want to be associated with the teams and individuals they support. Replicas of T-shirts, caps and jerseys are sold to fans as official merchandise of the club. The insignia of the club can be registered as a trademark under the trademarks act.

Sponsorship

Sponsorship can be viewed as a part of profit maximizing behavior of a firm. The primary motive is increased sales. A large portion of sponsorship industry is sports oriented. Globally, the sports sponsorship industry accounts for two-thirds of all the sponsorship activities. Sponsorship is a very significant revenue gathering practice for professional sports organizations. For a sports event there are two kinds of sponsors, the title sponsor and the main sponsor, whose name is associated with the particular sports or sporting event like 'Pepsi' IPL; and the others are secondary sponsors. They may be the official suppliers of team jerseys like Nike in the case of Indian Cricket team.

Brand Protection

Sports clubs, players and major sports event organizers spend a considerable amount of time and effort to make a brand name. In India, one of the legislations that protect sports branding is the Trademark Act, 1999. The act provides registration and a better protection of trade mark for goods and services and for prevention of the use of fraudulent marks. It prohibits the use of identical or deceptively similar trade marks to a registered trade mark on the same or



closely related goods of a particular trade mark class, set out in Schedule IV of the trademarks Act, 1999. Thus, if a person tries to use a registered mark of any of the IPL franchise, or the mark of the 2010 Commonwealth games in Delhi, he could be preceded under Chapter 12 of the Act.

Ambush marketing

The term was coined by marketing guru Jerry C Welsh. It is when an unauthorized entity, having not acquired any license or a right from the event organizers, markets itself in such a way that it gives the general perception to the public at large, that the entity is associated with the event. This permits the unauthorized entity to suggest its involvement in a sporting event at the cost of official sponsor. Therefore, ambush marketing is also referred to as 'parasite marketing'. This is because like a parasite the host does not receive any advantage from such kind of advertising, while the entity practicing ambush marketing, gains from the wrongful association with event.

Brand Protection

The Copyright Act, 1957 forms an essential part of protection of sports brands. It protects the exclusive right of creator. Besides a copyright existing in logos and mascots of the teams, clubs and events, there exists a copyright in sport photographs, magazines, books, recorded programs and computer games. Leagues and clubs try to exploit the copyrighted material in order to enhance their brand image and earn revenue. Section 52 of the Copyright Act, has laid down what use of a copyright work is allowed, without creators permission.

The other legislations that could potentially provides protection to a sports brand would be the Monopolies and Restrictive Trade Practice, 1969 under Section 36A, which deals with unfair trade practices, protection of sporting designs under the Designs Act, 2000 & Consumer Protection Act, 1986 under 'spurious goods and services'

In the case of majority sporting events, it is generally seen around the world that a special act is legislated in order to protect the sporting event. This becomes more important since sporting events like the Olympics, Commonwealth Games, Asian Games, World Championships take place for a short period of time and considerable resources are invested in developing such brand. The legislations such as the Trademarks Act, Copyright Act, Patents Act and Design Act had been enacted in keeping in mind an industrial & commercial prospective. This is particularly true for trademark and design act where registration is required in different classes in order to protect goods, services and designs in that class. There are times when logos, mascots and catch phrases are routinely modified or new ones are developed in order to further enhance the brand value of the game. In such cases, it becomes difficult to get registration in time under the ordinary process of the Acts. The second impediment that arises during these sporting events, which the legislature is unable to protect, is the protection afforded generic names, the protection of which cannot be sought under any Intellectual property rights laws. These phrases are gold, silver, Delhi, 2010.

CONCLUSION

Sports are essentially a social activity. It, is popular and people watch it because they feel



that they are associated with various sports due to their regional or national allegiance or other interests. It is only due to support of people that sports having become commercially exploitable and generates revenue. Hence, one can conclude that sports can be perceived as a viable and lucrative career option for many in India today.

There are several incentives attached towards taking up sports as a career. First of all, if the athlete represents the nation in some international event, and wins a medal for the nation, he/she is entitled to get several benefits from the government of India like cash money & job reservations. Women, now days are being treated at the same level as men in sports. The BCCI, which at one point, did not fund the women cricketers, has now taken women's cricket under its umbrella, even though women cricketers are paid much lower than their male counterparts.

If we look at the incentives awarded by the advent of the new leagues, sky is the limit. With the advent of Indian Premier League, the Indian Super league, The Pro kabaddi, The Indian Badminton league etc.

The amount of salaries being given to the players in various franchises is humongous. Not only are these athletes are earning well by way of salaries, but also through endorsements and advisements, those players, who are adjudged to be the best batsman or best goalkeeper or best player of the series, are entitled to other cash rewards or rewards in kind for example cars and bikes.

The Sports Ministry has also announced that all those who have been participants in the Olympic Games, will be directly recruited as coaches after their retirement. Talking of the

post retirement plans, sportspersons could either take up the jobs offered by the government, become coaches or become sports analysts or commentators on various sports channels.

They could also be involved in sports management and marketing after they have retired from active sports. The contributions of NGO's like Mittal Champions trust & Olympic Gold Quest are also very motivating for players to perform to the best of their abilities. It is not restricted to the players here; there is also a lot of money involved in the profession of sports consultancy firms. These firms carry out the management and representation of the sportspersons, including management of their endorsements.

Hence, one can conclude that sports can be perceived as a viable and a lucrative career option for many in India today.
