



AFFINITIES OF INTELLECTUAL PROPERTY RIGHTS IN SPORTS

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Abstract

Intellectual Property rights are rights given to persons over the creations of their minds and the same include trademark, copyright, patents, design etc. are intangible assets. It never protects the idea but protects the expression of idea and these rights give protection and incentive to creator so that its creation can be protected and not copied by someone else. Intellectual rights also play an important role in sports. However, sports law is an emerging field and till now India has no codified legislation for sports. There is need of IP in sports because of its commercialization. This article explains how Intellectual property helps the innovator and safeguards the interests of creator in the field of sports. Further, this article central emphasis would be on IP in different field of sports such as broadcasting rights, their mark and design. This article will also discuss the significance of IPR in Sports.

Key Words: Intellectual Property rights, intangible, design, sports etc.

[I] INTRODUCTION

Intellectual property rights protect the ownership and safeguard the interest of innovator or creator who has put their efforts & hard work for creation of new work. These rights play an essential role in sports industry as well which is now a contemporary live topic. There are always two views on any issue or topic, similarly

in case of IP in Sports one side protects the business and sports person but on the other side, it has been misused in the market. Commercialization of sports help individual as well as growth of the country's economy and because of this people and nation are getting benefitted but there were many incidents of betting in Indian Premier league & other leagues also where the basic motive of sports declining day by day. Sports are for entertainment but now a days, sports like cricket, football played for business rather than entertainment.

There are many cases arose for infringement of trademark, design & especially copyright in sports and government has to formulate strict law for the enforcement of Intellectual property rights in sports. Moreover, these issues can damage the goodwill, trade secrets and commercial losses, so there is need for a proper mechanism to deal with such kind of dispute or infringement of IP rights.

Intellectual property rights encourage the growth of the sports business and it has associated in every aspect of sports such as broadcasting, promotion, merchandising and sponsorship. These rights are very helpful in growth as well as protection to the new creation in the business. For example sports shoes, then it can be protected in every element of Intellectual property rights such as in trademark; it can be protected as a mark, sign & any other logo which is unique. So, basically it protects the brand value and goodwill of the company who made any such creativity. In the case of patent, it protects the technology by which they have come up with some new product. If in the case of design, then



it protects the looking and if it is the case of copyright then it safe guard the audio visual attached at the time of promotion event. This article will also discuss about some aspects of international law and treaty adopted by India to provide more protection in sports industries.

[II] INTELLECTUAL PROPERTY RIGHTS AND SPORTS IN INDIA

The sports law in India is new and emerging field in law. There is no particular legislation regarding sports who can govern sports activities. Entry 33 of State list under schedule 7 of Indian Constitution says that enacting of sports law is the subject matter of State but no State has enacted a sports law. Today sports law in India is governed and regulated by National Sports Policy, Sports Law and Welfare Association of India, the Sports Broadcasting Law in India and Sports Authority of India.

Moreover, in the case of Indian Olympic Association vs. Union of India, the validity of National sports development code was upheld and the intention behind to enact this code is to governed the National Sports federations. If we will trace the history of sports from Vedic period to till now, it is very important element of human development but now a days it is not only limited to entertainment or physical activities for development but is has become a business and its also helps in countries growth. Therefore, with the aim of protecting ownership or interest of the innovator, the Intellectual property rights play an important role in sports. In the foregoing headings, the paper deals with every aspect of Intellectual property rights which protects the sports field such as shoes design, sports moves (called as

signature moves) , broadcasting, sponsorship & promotion events etc.

IP laws still lacks in protection of sports activities and one of the best example is sports moves i.e. it has not specifically mentioned under performers rights under Copyrights Act, 1957. For example Dhoni has a signature moves which is known as Helicopter Shots and that gives a competitive edge, on the basis of this technique of players sometimes match fate depends. This is the lacuna in copyright laws which has not included.

Overall the positions of these aspects in sports is very helpful and it provides a safeguard to those who have registered and take licenses under these Acts and also protect from those who can misuse the creation of others.

[III] ROLE OF INTELLECTUAL PROPERTY RIGHTS IN SPORTS

As we have observed that in the recent years, sports are not only limited to entertainment but it is seen as a high business opportunity and the idea behind IPR is to give power to creator or innovator who put their labour and hard work to protect their creation. These rights plays an important role from the formation of team and for the identification of the team, the logo, any design has been created. Moreover, it not only protects their logo but also protects their brand value and reputation which was earned from hard work and labour. These rights not only limited to the teams names but also at the commercial level when players get into endorsement & advertisements and sports association get into merchandising, promotion event, sponsorship & broadcasting. Therefore, there is no doubt that IP laws play pivot role



in sports and it is necessary when commercialization of sports took place then protection becomes an essential element.

This can be understood from an example of swim wear where it can be patentable because it is creative and innovative in nature and the logo over swim wear can be protected under trademark which can distinguish in nature. There are so many Acts in IPR which protects the work of sports person and sports association.

1. COPYRIGHT IN SPORTS

Copyright is not the one right but it is a bundle of rights which is given to creator for their creation and it is a property rights in certain types of work which is described under Section 13 of the copyright Act, 1957. The subject's matter of copyright includes original literary, Dramatic & Musical work, Artistic work, cinematograph film, Sound recording etc. The Copyright gives the exclusive rights to owner over the creation to control use of a substantial part but does not give a monopoly over the idea because the copyright is given to expression of idea not on the idea.

Moreover, the role of copyrights in sports is very vital and various components of sports events can be protected from infringement under copyrights Act, 1957 which includes copyrighted merchandise, artwork in logo, audiovisual recordings, broadcasting and sports equipment's.

There are laws related with broadcasting which is governed and regulated by specific legislation and these differs from country to

¹ Section 37, which protects the rights of broadcasting organizations

² section 38, which protects the rights of performers

country for example in the U.S., it is governed by Sports broadcasting Act, 1961. There are many conventions signed by India and Berne convention of 1906 is one of the conventions which protect the literary and artistic works. The said Act does not specifically mention live broadcasting of sports events but it can be fall in the category of cinematograph films under section 13(b) and it can be protected under Section 37¹ & 38² of the copyright Act, 1957.

2. PATENT IN SPORTS

Patent also plays a crucial role in sports like other Intellectual rights such as trademarks and copyright. Patent can be granted only on the new invention or innovation under patent Act, 1999 and according to Article 27(1) of TRIPS³ (Patent Law), Patents shall be available for any inventions, whether products or processes in all fields of technology, provided that they are new (novel), involve a non-obvious inventive step and are capable of industrial application.

In sports, patent can be granted for sports shoes, training equipment, sports drinks, golfs clubs, swim wear, stop watches, muscle enhancers and sporting goods etc. but many times there was a debate on the sports moves where it has protected under Patent law. This has been answered in negative way and stated that if it will get patentable then it will restrict the athletes to play sports.

3. TRADEMARK IN SPORTS

Trademark plays an important role in sports and it is governed by Trademark Act, 1999. This Act protects the mark which distinguishes the product and easily

³World Trade Organizations. (n.d.) https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm



identifiable by the public. Trademark not only protects the mark but it also protects the reputation and goodwill attached with that mark. These types of marks attached with sports associations, sports personality which helps in endorsement and advertising and sports events. Trademarks gives a wide set of benefits for sports industry to protect their sports merchandising. Trademark includes in sports such as their tagline, mark, symbol, logos, flags and name of league or franchise. For example- Kolkata Knight Riders, Indian primer league and their colour of shirts like Chennai super kings yellow colour.

If sports merchandising is considered then it can be classified as merchandising related with sports personalities, teams & clubs and league & tournaments. Merchandising means promotion and marketing of some event or organization by means of specially made goods and services and making them available in retail stores. In the market, we can find the T- shirt of marvell's etc. Moreover, sports personalities associated with apparel making brands such as Dhoni associated with "SEVEN" and Virat Kohli associated with "WROGEN" and it helps the company to advertise their products and makes good profits in the business.

These rights protect the person who have registered in their name such as if Chennai super kings has a logo of roar lion and yellow colour with tagline then it cannot be used by someone else. So, it protects from unauthorized use and they can claim damages from that person who has used without license.

These days, there is a huge demand for online games and this leads to a need for trademark I this sector. There are so much famous online games such as PUBG, Real Cricket

etc. So, the need of IPs arises to protect the interest of innovator who puts their hard work and labour and this indeed encourages others to come up with innovative creations.

4. TRADE SECRETS & INDUSTRIAL DESIGN IN SPORTS

In a competitive market like sports, trade secrets plays an significance role and it means an information which is not available or known in public and any companies, Organisation can take advantages of this trade secret for reaping profits if they aren't protected. In sports, information, such as game plays, analysis of the competitors, statistics and method of coaching etc. provide a competitive edge over the others. Further, in respect of strategies to maintain this edge, the secrecy has to be maintained. Sometimes keeping trade secrets helps in winning the games also.

Industrial design should be registered under Industrial design Act, 2000 and the design makes a product more attractive and looking of that makes more valuable such as sports shoes, swim wear etc.

[IV] CONCLUSION & SUGGESTION

In India, sports plays a significance role from the Vedic period to till now but in the ancient time it was played for human development and entertainment but after math of commercialization of sports has changed the mindset of the people and it is not limited to field but has more emphasis on earning huge profits. Therefore, there is need for protection of rights of relevant stakeholders who have invented or made commendable changes in the sports industry. Intellectual property rights play a crucial role in protecting the innovation or creation of the people. There is no specific IPs in sports that safeguards the



interests but there should be a dawn of new era in the field of sports by encouraging IPs in this field. It is accepted that IPs would bring a huge change in sports field, and the same should not be made to misuse in the garb of the same. The legislature must come up with some strict laws to prevent the misuse so that the sports can be played fair and at the same time the IPs would reap benefits to the stakeholders.

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