



INTELLECTUAL PROPERTY AND SPORTS: AN INSEPARABLE SYMBIOSIS

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Abstract - This paper will talk about how sports has transformed from just being considered as a recreational activity to an industry that is being exploited for a large number of monetary gains. Anything that involves money is bound to involve the law in its functioning and hence even sports come under the governance of the legal framework. With so much money involved in the sports business, Intellectual Property works as a blessing for not only the people playing the sport but also people outside the sports field. like people who own the teams, own the broadcasting rights, etc. To show how IP is important and cannot be separated from the sports industry along with the benefits of IP and Sports on the economy of India is the main aim of the paper.

Long gone are the days when sports were just considered to be a recreational activity. Now, it is one of the leading revenue-generating industries in the world. Recently, the commercial viability of sports in India has begun to be explored and exploited. The sports industry is not only a major source for entertainment but also a big market for a profitable business. The corporatization of the sports industry resulted in a need to streamline the field with a structured law framework. This lead to the growth and development of sports law as a separate regulation in its own right. The laws,

regulations, and judicial decisions that govern sports and athletes is called 'Sports Law'.

Like in many other industries, the industries dealing in different aspects related to sports relies on intellectual property (IP) rights as an essential tool. A major portion of revenue flows from various activities like branding, merchandising, licensing, etc. In such a scenario, Intellectual Property Protection is needed as a safeguard as, without it, the sports industry would not be able to capture the value of its investment in innovation and brand development.

Mega sums are generated through the commercialization of the sports image rights of well-known teams and sportspersons. We can take examples of teams and even individuals who have capitalized IP for profit. Football clubs like Manchester United, Chelsea, Real Madrid, and Individuals like Roger Federer and Michael Jordan are a global brand.¹ Teams and players from all the sports have started making their own brands and taglines which are trademarked and used commercially to create profit.

Intellectual Property (IP) is generated during the formation of a sports team, club and even during the organization of a major sporting event. The enormous change in the sporting culture of this country with introduction of leagues like Indian Premier League, Indian Soccer League has widened the scope of sporting brands and hence that of IPR as

¹ Chiramel, C. Intellectual Property Rights In Sports-Indian Perspective. Mondaq. Retrieved from

<https://www.mondaq.com/india/trademark/164974/intellectual-property-rights-in-sports-indian-perspective>



well.² Every form of IP has acquired a great value for the commercialization and exploitation of the commercial aspects of not only the sporting events but also of that particular sports and the sportsmen associated with it. Since sports clubs and the people associated with them spend an exorbitant amount of money on such sporting events, IP has become an integral part of the commercial sports industry, and thus offer protection in the form of tools like trademarks, copyrights, patents or trade secrets, industrial designs, licensing and franchising opportunities etc in order to avoid any complications that may arise due to the growing competition in the sporting world or market.

Utilization of different IP tools in the sporting world:

Trademarks:

Trademark is one of the most commonly created IP associated with sports as it contributes in the building of brands in the sports business. The rights provided through trademarks have provided opportunity to organizers of large sporting events to strengthen their brand value at not only the regional level but also at national and international levels by creating revenue streams from various kinds of sponsorship deals. Such agreements with commercial partners and attracts the fans and media attention to their event.

Trademarks protected in India under the Trademarks Act, 1999³ hold commercial value as they create a level of association with the public and the fans which is essential for the creation of brand value in sports

teams, clubs, sponsors, and athletes. The names of the franchise, tag lines, etc. capable of being registered as trademarks further assist brand building which in turn generates the income for companies to make investments in new talent or better infrastructure.

In all areas of business in sports, Trademark protected material represents special qualities that attract fans who have a deep emotional connection with the teams, leagues, and competitions they follow. Team names and their symbols (Royal Challengers Bangalore, Kolkata Knight Riders) helps the team, club, and player with their popularity ratings as they lead to the creation of a level of association with the public and fan followers. The lucrative sports sponsorship deals are protected by trademark rights. These trademark protected branded sports goods help not only the professional athletes but also the recreational players in identifying the best sports equipment/gear for themselves. Any person or entity using a name or logo associated with any team or its player could be offered unprecedented mileage just by this mere association.

Having a clear line of demarcation between a sportsperson's individual personality rights and his image, as a part of the team is very important as different entities for their own unwarranted gain, may associate such name or logo without taking any permission from the authorized source or paying any license fee or royalty to them. This is a loss to the team, it's owner and the player. Using someone else's trademark without authorization would amount to unfair competition, unfair trade practice and also

² Associates, S., &. Role Of IPR In Sports. Mondaq. Retrieved from mondaq.com/Article/808132.

³ The Trademarks Act, 1999, no. 47, Acts of Parliament, 1999 (India).



dilution of goodwill and reputation of the respective proprietor. It is interesting to note that registering a trademark under the Trademarks Act is not compulsory. Therefore, even those people who have not obtained any registration under the Act can enforce their rights in the court of law in case of any infringement.

Violation of a trademark is an offence under the (Indian) Trademarks Act, 1999. This offence is a cognizable one and criminal proceedings can be initiated against the accused. To reduce the infringement and contravention of trademarks enforcement of such mechanisms is necessary as they will boost the protection of marks in India.

Personality Rights:

The right to control the commercial exploitation of one's name, image, likeness, or any other aspect of personal identity is the idea of personality rights. Personality rights of a sportsperson play an important role in the brand creation of individual sports players and teams. Celebrity status leads to various forms of image creation, brand endorsement, and revenue generation exploiting the fame factor. An individual athlete who becomes a dominant player drives the growth and popularity of the athlete's team as well as the entire professional league in which he or she plays. This is called the "domino effect" in Trademark value creation.⁴ The domino effect can be better understood by taking examples of players like Cristiano Ronaldo,

MS Dhoni who lead to the rise of not only their respective teams but also of the sports leagues they were playing in, to national and global prominence. Overall strengthening the brand and goodwill associated with both. We can see the effect that Cristiano Ronaldo's transfer to

Juventus had on the team as they till now they have earned a whopping £51m through shirt sales and gained 40m extra fans due to the Portuguese star's worldwide popularity.⁵ Today, it is highly possible for the celebrities to register their names and likeness as trademarks under the Indian Trademark Act, 1999. Sachin Tendulkar has registered a trademark under his name. The brand image and popularity convert into monetary profits through advertisements, brand ambassadors, goodwill, and reputation of sponsors.

Personality rights are not explicitly recognized under Indian laws.⁶ They are generally invoked as the property of a persona through right to publicity inferred from Article 19⁷ of the Indian Constitution or through the right to privacy guaranteed under Article 21.⁸

Patent:

The patent system is used widely in sports and the sports industry gets its own benefits from the system. There are tens of thousands of utility patents relating to sports. IP rights are relevant to all athletes and for various reasons. Patents encourage technological

⁴ Singh, V. The Untapped Emergence of IP Rights and Sports: Faster, Stronger and Higher. Retrieved from <https://www.sconline.com/blog/post/2019/07/22/the-untapped-emergence-of-ip-rights-and-sports-faster-stronger-and-higher/>.

⁵ The Cristiano Ronaldo effect: Juventus have earned a whopping. Retrieved April 18, 2020, from [https://www.dailymail.co.uk/sport/football/article-](https://www.dailymail.co.uk/sport/football/article-7579821/The-Cristiano-Ronaldo-effect-Juventus-earned-whopping-51m-joined.html)

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⁶ Nafis, Z. Personality Rights - Need For A Clear Legislaton. Mondaq. Retrieved from <https://www.mondaq.com/india/x/345080/Personality+Rights+Need+For+A+Clear+Legislaton>.

⁷ INDIA CONST. art. 19.

⁸ INDIA CONST. art. 21.



advances that not only benefits the athletes at the elite level, but the Patent-protected innovative technologies also benefit the amateur level athletes as they get access to new and better equipment that allows them to run faster, or to hit the ball harder and with more control, while playing football, tennis, basketball, rugby or any other ball game. more control, while playing football, tennis, basketball, rugby or any other ball game.

In case of patents, the use of patented technology without authorization from the owner of the patent leads to infringement under the Indian Patent Act, 1970.⁹ The principal purpose of exploring the commercial aspect of the sports industry is defeated as these issues can lead to the damage of goodwill, unfair trade practices, unfair competition and commercial disputes which ultimately leads to huge commercial losses.

Copyrights:

Copyright has a key role in maintaining the vitality of sports, keeping fans interested and inspired, and enhancing value. Copyright in sports may vest in various components of sporting events including in the artwork connected to the logos and trademarks, promotions, slogans, images of a player or event, etc. Copyright also exists, with respect to sports, in recorded visual images or commentaries of sports events, and photographs of events.

Major sporting events can now be streamed anywhere in the world, giving millions of fans the opportunity to participate in the excitement of an event, and in this process leading to the creation of Copyright.

⁹ The Indian Patent Act, 1970, No. 39, Acts of Parliament (India).

Revenues from broadcasting sporting events and its promotions are the main sources of funds for sports organizations to upgrade the already existing stadiums or even build new ones, host more sporting events, and carry out community outreach to maintain high levels of interest.

A lot of copyright infringement takes place in the sports industry with regard to the copyrighted merchandise, sports equipment's, broadcasting without license, piracy in audio-visual recordings, use of copyrighted software without a license or royalty etc. Hence, even though it is not mandatory to register your copyright in India, it is always advised that one registers their Copyright. International Copyrights are protectable in India as India is a part of the Berne Convention.

Not only civil remedies in the form of permanent injunction, damages or accounts of profits, etc. but also imprisonment for not less than 6 months, extending up to 3 years with fine, not less than 50,000 INR but which may extend up to INR 2,00,000 is provided under the (Indian) Copyright Act, 1957.¹⁰ The Copyright Law in India gives power to the police authorities to register the Complaint (First Information Report, i.e., FIR) and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention from the court.

Broadcasting Rights:

Broadcasting rights is another set of IP that is created during the screening of sporting events. Broadcasting rights are a separate set of rights recognized by the Indian Copyright

¹⁰ The Copyright Act, 1957, No. 14, Acts of Parliament (India).



Act, 1957. These rights are available apart from rights that are present in the content of a live match. 25 years is the time period for which a Broadcasting rights lasts. Generally, these rights lie with the broadcasting companies. This right allows the owner to rebroadcast the same. According to the Indian Copyright Act, 1957, any person who without the license from the owner re-broadcasts the broadcast and asks for payment from the public to view, it is liable for infringement of Broadcasting rights. In addition to this, regarding cases of unauthorized downloading, Section 43 of the Information Technology Act, 2000,¹¹ provides for a penalty up to 1 crore. A person is said to have committed Broadcasting rights infringement if he does a visual or audio recording of the broadcast or, makes any reproduction of such sound recording or visual recording, or puts any such sound recording or visual recording hire to the public or offers for such sale or hire, is said to have infringed broadcasting rights.

Advanced communication technologies have enabled billions of people around the world to take part in the spectacle. Through the revolutionized broadcast sports coverage, there is excitement for major sporting events through satellite, cable, broadband and mobile internet. Unauthorized retransmission of broadcasts is protected by copyright and other related rights. A huge amount of money is being paid by various television and media organizations for the exclusive right to broadcast sporting events live. This is highlighted by the fact that the brand value of

the Indian Premier League alone in 2019 was ₹475 billion (US\$6.7 billion).¹²

Trade Secrets:

There is no separate statute for the protection of trade secrets under Indian laws and they are protected on the basis of principles of equity, common law action of breach of confidence which amounts to a breach of contractual obligation. In the sports industry, there is always a possibility of some confidential information getting leaked which is very useful to a team. Trade secrets encompass manufacturing or industrial secrets and commercial secrets, practice regimes, different kind of processes, design, commercial method, or compilation of information which is not generally known or reasonably ascertainable by others. This can be protected by having agreements with proper confidentiality clauses between the sports-person and associations.

Designs:

Where there are technological developments using new materials, an equally important IP right in the sports sector is aesthetics protected by design-specific IP rights. Industrial designs are key to making a product attractive and desirable. The influence of design in the world of sports is far-reaching. Design contributes to the distinct identity of sports competitions, teams and their sports gear in the highly competitive marketplace of sports.

Design makes a product, and a sports event, more attractive and appealing to consumers and plays a critical role in adding commercial

¹¹ The Information Technology Act, 2000, No. 21, Acts of Parliament (India).

¹² Laghate, G. IPL brand valuation soars 13.5% to Rs 47,500 crore: Duff & Phelps. Retrieved March 22,

2020, from <https://economictimes.indiatimes.com/news/sports/ipl-brand-valuation-soars-13-5-to-rs-47500-crore-duff-phelps/articleshow/71197984.cms?from=mdr>.



value and making the product or the event more attractive and marketable. We are all prepared to pay a little extra for a design that makes a statement about our lifestyle and approach to life. Businesses can protect the investment they make by obtaining industrial design rights or design patents on the new, attractive designs they come up with.

Protection for merchandise, equipment, footwear, and apparel is provided under the Designs Act, 2000.¹³ Under the laws in India the infringement of design happens with the use of someone else's design without a license or use of that design for the promotion of other goods.

Licensing and Franchising:

The exclusive right to sell merchandise associated with clubs and teams like Real Madrid, Mumbai FC and with sponsors, companies, etc. plays a very crucial role in generating revenue in the sporting industry. It is also important for the purpose of brand generation and goodwill creation in which exclusivity is the key factor. All intellectual property rights involved in the sporting industry need to be adequately protected under relevant agreements to ensure that there aren't any product markets for counterfeited items. This is crucial taking into consideration the huge investments and efforts that are at stake, the various contracts that are involved at every stage of such marketing strategies and every aspect must be covered in detail. To avoid future disputes, informal and personal arrangements shouldn't be the approach of any party involved in this industry/business. There

should be elaborate contracts that address all possible areas of concern and conflict, and resolution mechanisms for the same must be always preferred.

How IP with sports can benefit the India economy:

IP and sports together can make a significant contribution to the global economy.¹⁴ When a destination, such as India recognizes the potential of a high-profile sports event like the Indian Premier League(cricket), Indian Super League(football), promotion and effective marketing of that event boosts their tourism. Sports fans travel from all around the world to absorb the atmosphere of a sporting fixture, to support their favourite team and witness their favourite player in action and take back souvenirs in the form of T-shirts or other sports accessories associated with the event like key rings.

For the event to run smoothly and for sports fans to have a great experience, the organizers of these events need huge amounts of funds. These funds are procured by the organizers of sports events through the sale of broadcasting rights, various sponsorships and different kinds of merchandising deals. These funds also help in covering the cost incurred on creating or upgrading sports stadiums and other form of infrastructure. IP rights are thus an important source of income for sports event organizers.

With every passing decade, the incentives embedded within the IP system (i.e. to recognize and reward inventors and creators for their efforts while also ensuring broad

¹³ The Designs Act, 2000, No. 16, Acts of Parliament (India).

¹⁴ Beckford, C. Intellectual property, sports and tourism: a perfect match. WIPO MAGAZINE.

Retrieved from https://www.wipo.int/wipo_magazine/en/2019/02/article_0005.html



public access to their outputs) have fostered technological developments in sports equipment, track, and field measuring equipment, broadcasting and information technologies. These innovations have helped enhance the performance of athletes and have fuelled the global popularity of sports by bringing fans ever closer to sports action.

If India incorporates such events into its economic planning process and also has a well-defined IP strategy then sports events can create significant opportunities for wealth creation, employment, and development of urban infrastructure.

Conclusion:

To sum up, IP rights all around the world encourage innovation and creativity in different kinds of industries and sectors, including sports. Innovation and creativity in sports leads to a continuous flow of new ways to enhance athletic performance and access to different aspects of sports like better equipment, more business opportunities, more jobs, and fabulous fan experience. Trademarks and designs contribute to the distinct identity of not just the events but the team's and player's appearances. Therefore, the sports franchisees are tapping and capitalizing on various Intellectual Property Rights created by them. This is then used in the form of merchandising, advertising, licenses, etc. mainly for creating brand equity and reputation, leading to huge profits.

Many countries are now integrating IP and sports-related objectives into their national development strategies as they realize the huge potential of IP and sports to drive social and economic development. By supporting the development of the sports sector, these countries have become an attractive location

for major sports events to take place, and these countries still seek to create additional opportunities for social and economic development and wealth creation.

The strategic use of IP rights in global sports has significant potential to support economic development of India in a variety of ways by:

- Supporting innovation and business growth, entrepreneurship and job creation.
- Enhancing a country's reputation and boosting foreign exchange earnings.
- Boosting international trade.
- Improving health, social well-being, and social cohesion and encouraging discipline, teamwork and a competitive spirit.

The business of sports requires a solid legal framework to support the exploitation of IP rights, as well as a well-trained workforce, to create a favourable policy and regulatory environment and to manage the operational and logistical issues associated with organizing sports events. After analysing the whole interplay between Intellectual property and Sports it would be safe enough to say that IP together with sports is the future money market in India that will lead to large revenue generation and boost economic development.
