

COMMERCIALIZATION OF SPORTS INDUSTRY THROUGH IPR

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INTRODUCTION:

The history of sports extends as far back as the existence of people as purposive, sportive and active beings. The documented history of sports traces back to at least 3000 years when sports were majorly associated with preparation of war, hunting and recreational purposes. History of sports in India dates back to the Vedic period. Chess, judo, polo etc. are some games believed to have originated in ancient India. Sports, which earlier equated to as means of recreation and leisure is now no longer constricted to its purpose of entertainment. Sports or rather the sports industry has now become the hub of commercial activity and gains worth billions of dollars. Organization of sports on a larger turf for e.g. FIFA (football), ICC (cricket), NBA (basketball), PGA (golf) etc. has made it open for the multinational corporations and business ventures to exploit the marketing potential being offered by the management of such events and also extract the maximum possible value from it. This has resulted in the creation of a stout relationship between sports and Intellectual Property (IP).

Through this article, we would make an attempt to elucidate the commercialization or commodification of the sports industry that is associated with the exploitation of Intellectual Property Rights (IPR).

Linking Intellectual Property and Sports:

The formation of a sports club or team is marked by the creation of its team name, logo, fancy taglines, emblems etc. for its identification. These creations are subjected to IPR and fall under various types of Intellectual Property (IP). Trademarks are the most commonly created Intellectual Property (IP) associated with sports and consist of the team name, logo, emblem, team jerseys etc. These trademarks can be protected by registering them under the Trade Marks Act, 1999 or internationally under the Madrid system for registration under multiple jurisdictions. *Application of trademark to commercialize sports can be done in the form of personality rights and domain name.* Personality rights refer to the right to control the commercial usage of one's name. Famous sports personalities must get their name, logo, image trademarked to protect their personality right and to prevent third parties from using them for trade benefits.¹ Domain name plays an integral role in the creation and identification of brand image. Almost all big clubs and sportsperson have their websites. Increasing online activities on websites in the form of broadcasting, ticket sale, online games and shopping portals etc. calls for the domain name to be trademarked and prevent cyber squatters from using them unethically to gain undue advantage. Infringement of a registered trademark in India attracts

¹ K.V. Vibhu Prasad, Pranav.R., IPR and Sports, Manupatra, <https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=&years=2020&search=IPR+and+Sports>

both civil and criminal liabilities.² Copyrights in sports exist in the form of art work in logos of teams, literature in slogans, merchandise, advancements, mottos etc. and are protected under the provision of Copyright Act, 1957 in India.³ Advancement of communication has now brought live and rebroadcasting of sports events under the protection of copyrights. Infringement of copyright in India results in remedies being granted to the aggrieved party in the form of injunction, damages, seizure and destruction of infringed material etc.⁴ Several sports like the method of putting a golf ball, method of training baseball pitchers, method of training swings and method of fitness training etc. have been granted patents outside India.⁵ Patents in India are protected under the Patent Act, 1970. Infringement of patents in India provides the owner with both civil and criminal remedies.⁶ Confidential information related to the sports teams and players are protected under Trade Secrets. *Trade secrets in India are maintained via confidentiality clause in sports agreements due to the absence of a separate legislation.*

Merchandising & Licensing

Merchandising means promotion and marketing of some event or organization i.e. sports clubs by means of specially made goods and services and making them available in retail stores. *Manchester United has earned a total revenue of 275 million euros by merchandising and licensing.*⁷ David Beckham runs a successful perfume merchandising with a brand trademarked in his name.⁸ Commercialization has now given rise to activities like IP and personality merchandising which go beyond traditional merchandising. This has increased the importance of a valid merchandising agreement containing the clauses of royalty, rights and duties, dispute resolution and redressal etc. for legal protection.

IP merchandising is the process of granting trademark license to the licensee, the use of which helps increase the licensee's sales and profit. Merchandising agreements lead to unilateral gains as the licensor too earns substantial amounts in the form of revenue besides promotion and publicity. Hence a typical merchandising agreement is beneficial for both Licensor and the Licensee although the quantitative value may vary from contract to contract. An example could be Allen Solly using the logo of Wimbledon Open to increase the sale of its clothing.

Personality merchandising in sports is the process of associating the trademarked name of a famous sports personality with a product or service to increase its appeal and sale. For e.g.

² The Trade Mark Act, 1999 § 92

³ Shrishti Sharma, Sports and IPR, Sports and Legislature, SCC ONLINE, <https://www.sconline.com/Members/SearchResult.aspx>

⁴ The Copyright Act, 1957 § 55, 64

⁵ Sharada Kalamadi, Intellectual Property and Business of Sports Management, Journal of Intellectual Property Rights, (2012), <http://nopr.niscair.res.in/bitstream/123456789/14768/1/JIPR%2017%285%29%20437-442.pdf>

⁶ The Patents Act, 1970 § 104-114

⁷ Business Model, Investor relations, Official Manchester United Website, (2019), <https://ir.manutd.com/company-information/business-model.aspx>

⁸ Biswajit Sarkar, The Brand Beckham, May 31, 2017, <https://www.biswajitsarkar.com/blog/intellectual-property/trade-mark-service-mark/the-brand-beckham.html>

association of Michael Jordan's trademark 'Jordan' with Nike earns him royalty which constitutes 90% of his annual income.⁹

Sponsorship

Sponsorship agreement in sports is another form of commercial activity to maximize the income-generating potentials. Companies tend to build their brand name, increase their reputation and build customer ties by associating their trademark with big sports organization, clubs and popular sports events.¹⁰ For e.g. legendary football club Real Madrid F.C. agreed to promote Madrid and Spain as tourist destinations following a sponsorship agreement.

In consideration of sponsorship amount, the trademark of the companies gets exposed to millions of spectators in various flagship events like Olympics. Sports clubs and events obtain an enormous sum of money through sponsorship activities. For e.g. according to the New York Times, FIFA's sponsorship deals generated \$200 million in the 2018 World Cup.¹¹

Ambush Marketing

Ambush Marketing is a type of marketing where one brand pays to become an official sponsor of an event and another brand, which is usually a competing brand, tries to associate itself with the same event, without paying the colossal sponsorship fees.¹² This occurs when an enterprise, with no direct involvement or interest in a sports event, presents its trademark, trade names, goods and services in such a manner which shows that a relationship exists in between the sports event and enterprise, but in reality, no such relationship exists.¹³ The aim here is to use the goodwill of the event (e.g. Olympics) for the exposure of a particular good or service without making any financial contribution i.e. sponsorship amount.

An exemplar of ambush marketing in the sports industry is the 1996 Summer Olympics. Nike then was not an official sponsor to the Olympics but tried to indirectly capitalize the popularity of the Olympic track events by sponsoring a \$30,000 racing spike to Michael Johnson. This event was successfully ambushed by Nike when Michael Johnson won gold in the track event and when it was viewed by millions of spectators in the stadium and on television.¹⁴ A classic example of ambush marketing in India is the 1996 cricket world cup, where although Coca-Cola was the official sponsor but the advertisement of Pepsi Co. titled "Nothing official about

⁹ Kurt Bandenhausen, The NBA's Richest Shoe Deals: LeBron, Kobe and Durant are Still No Match For Michael Jordan, Forbes, (2019), <https://www.forbes.com/sites/kurtbadenhausen/2019/08/28/the-nbas-richest-shoe-deals-lebron-kobe-and-durant-are-still-no-match-for-michael-jordan/#384d2f383d02>

¹⁰ Licenses and Sponsorships in Sports, World Intellectual Property Organization, <https://www.wipo.int/ip-sport/en/licenses.html>

¹¹ Tariq Panja, FIFA to make \$6.1 billion from World Cup, New York Times, June 12, 2018, <https://www.nytimes.com/2018/06/12/sports/fifa-revenue.html>

¹² Sharbani Routh, India: Ambush Marketing, Need For Legislation in India, Mondaq, (2018), <https://www.mondaq.com/india/trademark/690204/ambush-marketing-need-for-legislation-in-india>

¹³ Steve Cornelius, Ambush Marketing in Sports, Academia, (2011), https://www.academia.edu/11380406/Ambush_Marketing_in_Sport

¹⁴ Ana María Rodés Portelles, Ambush Marketing in Sports, Lex Sportiva, (2019) <https://lexsportiva.blog/2019/04/15/ambush-marketing-in-sports/>

it” gained more attention in public.¹⁵ At present India has no anti-ambushing legislation and relies on the present IP legislations like Copy Right Act, 1957 and Information Technology Act, 2002 etc.

Conclusion

The modern age of sports is also referred to as the era of the corporatization of sports by many. ***The business associated around sports generates a turnover of \$250 billion dollars per year and makes the role of IPR in the commercialization of sports industry inevitable.*** Good management of intellectual property and required legal attention maximizes economic returns. India recently hosted the FIFA U-17 world cup and the potential of economic returns that the commercialization of such events possess must not be undermined. It is recommended that India should come up with sports business model which could build an effective IP rights strategy that could address the use of patents, trademarks, designs in sports as well as the use of domain names; which could address media and broadcasting rights.¹⁶ It is equally significant to ensure that commercial exploitation does not plague the real essence of sports.¹⁷ Commodification of sports must be protected from unethical activities like ambush marketing and must have statutory provision preventing the same.

¹⁵ Anushree Bhattacharyya, [Pepsi does it with a ‘swap’ this ICC Cricket World Cup as Cola War returns](https://brandequity.economictimes.indiatimes.com/news/marketing/pepsi-does-it-with-a-swap-this-icc-cricket-world-cup-as-cola-war-returns/70081442), Economic Times, July 05, 2019, <https://brandequity.economictimes.indiatimes.com/news/marketing/pepsi-does-it-with-a-swap-this-icc-cricket-world-cup-as-cola-war-returns/70081442>

¹⁶ Aswathy Sujith, [SPORTS AND INTELLECTUAL PROPERTY RIGHTS – AN OVERVIEW ON THE INDIAN STANDARDS](http://thelawbrigade.com/wp-content/uploads/2019/05/Aswathy.pdf), JOURNAL OF LEGAL STUDIES AND RESEARCH [VOL. 2 ISSUE 5], <http://thelawbrigade.com/wp-content/uploads/2019/05/Aswathy.pdf>

¹⁷ Urvashi Agarwal, Gauri A. Saharan, [Issues Plaguuing the Sports Arena](https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=&subject=Miscellaneous&years=2018&search=Issues+Plaguuing+the+Sports+Arena), Jamia Law Journal, Manupatra, (2018), <https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=&subject=Miscellaneous&years=2018&search=Issues+Plaguuing+the+Sports+Arena>