
IN THE HON’BLE SUPREME COURT OF INTIA

[TO BE HEARD THROUGH THE SUPREME COURT’S VIRTUAL PLATFORM]

1ST ONLINE MEMORIAL MAKING COMPETITION 2020

SUBJECT MATTER OF THE CASE

WRIT PETITION (CIVIL) No. ____ OF 2020

M S DHENIER PLAINTIFF

VIRET KELLY PLAINTIFF

BOARD OF CONTROL FOR CRICKET IN INTIA..... PLAINTIFF

v.

AVENGERS MEDIA & ENTERTAINMENT PVT. LTD..... RESPONDENT

along-with

WRIT PETITION (CIVIL) No. ____ OF 2020

M S DHENIER PLAINTIFF

VIRET KELLY PLAINTIFF

v.

UNION OF INTIA RESPONDENT

PETITIONS *under* ARTICLE 32 read with ARTICLE 139-A of THE CONSTITUTION OF INTIA

-MEMORIAL ON BEHALF OF THE PLAINTIFF-

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S.No.	ABBREVIATION	EXPANSION
1.	¶	Paragraph
2.	Act	Public Gambling Act, 1867
3.	v.	Versus
4.	§	Section
5.	SC	Supreme Court
6.	HC	High Court
7.	AIR	All India Reporter
8.	Const	Constitution
9.	ed	edition
10.	SCC	Supreme Court Cases
11.	i.e.	That is
12.	Pvt. Ltd.	Private Limited
13.	Vol	Volume
14.	₹	Indian Rupee
15.	BCCI	Board of Control for Cricket in Intia
16.	Ors	Others

STATEMENT OF JURISDICTION

The Plaintiff humbly submits this memorandum for the petition filed before the Hon'ble Supreme Court of Intia. The petition invokes its jurisdiction under **Article 32¹** read with **Article 139-A²** of the Constitution of Intia.

THE PLAINTIFF HUMBLY SUBMITS TO THE JURISDICTION OF THIS HON'BLE COURT.

THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS

AND ARGUMENTS IN THE PRESENT CASE.

¹ **Art.32.** 1. *The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guarantee.*

2. *The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*

3. *Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).*

4. *The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.*

² **Art.139-A.** *Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney- General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself.*

STATEMENT OF FACTS

BACKGROUND

Avengers Media and Entertainment Pvt Ltd (hereinafter “APL”) is one of the leading companies in its market within the country with Mr. Tony Stark being the CEO. With the advent of Internet and growing market of fantasy league sports games, APL developed a game called Vision 11 which is an online multiplayer fantasy game cricket game.

VISION 11

The game allows the users to select, build and act as managers of their own virtual cricket teams. The results of the rounds are based on statistics, scores, achievements and the performance of real-life cricketers and the winner is the one who manages to accumulate the greatest number of points across the rounds of the game. The game follows three fundamentals in managing the team i.e. Drafting, Attribution of points and Payment of fee and distribution of prize money. One can find many intricacies to be found out in these three fundamentals.

PERMISSION DENIED

In order to make the game as true as possible, APL wanted to use pictures/ figures/ names of real-life cricketers in order to woo the audience. For that, it approached the BCCI and various other cricket boards as well as domestic and international league players. But unfortunately, APL could not gather permission of any kind to proceed with such a venture.

THE DISPUTE

APL to keep up with the idea, allegedly tried to recreate the cricketer’s identity using digital illustrations and player codes such MS7 & VK18. This caught the attention of BCCI and it sent a legal notice to APL, raising concerns about the unauthorized use of real-life cricketer identity in conjunction with initials and jersey number which is essentially gambling. APL was framed

for illegal operation of their company, which was against public policy and tarnishing the image of Intian Cricket fraternity. Both M.S Dhenier and Viret Kelly filed cases on account of infringement of personality rights and passing off and in addition to injunctive relief sought Rs.2 crore as damages from APL. They also filed a PIL challenging the legality of Vision 11 on the ground that no skill was required and the game was based merely on chance and amounted to gambling. As, both the cases dealt with connected issues, the court clubbed the cases and listed them for a joint hearing on 25.07.2020.

S.No.	EVENT
1.	Avengers Media & Entertainment Pvt Ltd developed a game called Vision 11 [Online- Multiplayer fantasy game]. The game includes the following essential processes: - Drafting, Attribution of Points and Distribution of Prize Money.
2.	Permission of usage of pictures/ figures/ names of real-life cricketers and logos of tournaments/ leagues and team for Vision 11 was rejected BCCI and other bodies.
3.	Digital Illustration and player codes were using initials of player name and jersey number were used to cover up for the game.
4.	After three months, there were 1 lakh registered users and to promote the game APL used the one-liner catch phrase “Come and play with MS7 & VK18 on our app”.
5.	BCCI sent a legal notice on account unauthorized use of cricketer’s identity, gambling, illegal operations, against public policy and ruining the image of Intian cricket.
6.	MSD and VK filed cases on account of infringement of personality rights and passing off. They sought Rs.2 crores in the form of damages from APL.
7.	As, both the cases dealt with connected issues, the court clubbed the cases and listed them for a joint hearing on 25.07.2020.

STATEMENT OF ISSUES

ISSUE I

WHETHER APL'S USE OF THE PLAYER ILLUSTRATIONS IN CONJUNCTION WITH THE PLAYER CODES AMOUNTS TO INFRINGEMENT OF M.S DHENIER AND VIRET KELLY'S PERSONALITY RIGHTS AND PASSING OFF?

ISSUE II

WHETHER, VISION 11 AMOUNTS TO GAMBLING UNDER THE PUBLIC GAMBLING ACT, 1867?

SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER APL'S USE OF THE PLAYER ILLUSTRATION IN CONJUNCTION WITH THE PLAYER CODE AMOUNTS TO INFRINGEMENT OF M.S DHENIER AND VIRET KELLY'S PERSONALITY RIGHTS AND PASSING OFF?

APL HAS VIOLATED PERSONALITY RIGHTS OF THE CRICKETERS AND AMOUNTS TO PASSING OFF:

Firstly, there is usage of such person's identity for commercial advantage. *Secondly*, the celebrity can be identified from the defendant's unauthorized use and the usage of digital illustrations is violative of privacy rights. *Thirdly*, there is unethical portrayal of the celebrities as the permission to use pictures/ figures/ names of real-life cricketers was denied. *Lastly*, unauthorized usage of illustrations amounts to passing off as APL thrived on the goodwill and reputation of the celebrities when the permission to do so was denied.

ISSUE 2: WHETHER, VISION 11 AMOUNTS TO GAMBLING UNDER THE PUBLIC GAMBLING ACT, 1867?

VISION 11 AMOUNTS TO GAMBLING AS IT IS A 'GAME OF CHANCE':

Firstly, Vision 11 fulfils the criteria for gambling as an exchange of money or valuable goods take place, an unknown future event determines the exchange, non- participation makes users to bleed losses and winners gain at the sole expense of losers. *Secondly*, Vision 11 is a 'game of chance'. *Lastly*, the game Vision 11 differs from that of 'Dream 11' as there is difference in the age factors, there is no mention of requirement of KYC in Vision 11 and permission of celebrities and contracts have been signed in Dream11 and is silent for Vision 11.

ARGUMENTS ADVANCED

ISSUE 1: APL'S USE OF THE PLAYER ILLUSTRATION IN CONJUNCTION WITH THE PLAYER CODE AMOUNTS TO INFRINGEMENT OF M.S DHENIER AND VIRET KELLY'S PERSONALITY RIGHTS AND PASSING OFF

[¶1.] It is humbly submitted that the use of player illustration and player codes of various cricketers including those of M.S Dhenier and Viret Kelly violate their personality rights and amount to passing off as *firstly*, there is violation of M.S Dhenier's and Viret Kelly's personality rights [1.1.] and *secondly*, the unauthorized usage of illustrations amounts to passing off [1.2.].

[¶2.] Personality rights refer to the right of the person related to his or her personality. They can be protected under right to privacy or as a property of a person. They play a pivotal role to celebrities because people use a celebrity name or a photograph to advertise their trade and this usage influences their sales.³

[¶3.] It can be seen that Intellectual Property Rights are at a nascent stage in the state of India. There is no statute or law that protects personality rights in India per se. Herein, the closest statute to protect personality rights is **Article 21**⁴ of the Constitution of India under right to privacy and right to publicity.

[¶4.] **Article 21**⁵ states that:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

The right to privacy is protected as an intrinsic part of the right to life and personal liberty.⁶

[¶5.] Passing off is a common law tort, which is used to enforce unregistered trademark rights. The law of passing off prevents one person from misrepresenting his goods or services as that of another.⁷ It is also understood as an act or an instance of falsely representing one's

³ Tabrez Ahmad, *Celebrity Rights: Protection under IP Laws*, JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 7, 16 (2010).

⁴ INDIA CONST. art. 21.

⁵ *Id.*

⁶ Justice K.S Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

⁷ RATANLAL & DHIRAJLAL, THE LAW OF TORTS 858 (26th ed., LexisNexis 2016).

own product as that of another in an attempt to deceive potential buyers.⁸ In the present case, it is seen that APL has made unjust enrichment of the illustrations and player codes of cricketers without permission for commercial use.⁹

[1.1.] THERE IS VIOLATION OF M.S DHENIER’S AND VIRET KELLY’S PERSONALITY RIGHTS.

[¶6.] It is humbly submitted that violation of personality rights occurs when the right of an individual to control the commercial use of one’s identity, such as name, image, likeness or other unequivocal identifiers. It can be deduced that there is a clear violation of the cricketer’s personality rights as *firstly*, the people in question amount to “celebrity” by virtue of their popularity **[1.1.1.]** *secondly*, there is usage of such person’s identity for commercial advantage **[1.1.2.]** and *lastly* there is unethical portrayal of the celebrity **[1.1.3.]**.

[¶7.] The Hon’ble Delhi High Court in the case of *ICC Development (International) Ltd. v. Arvee Enterprises*¹⁰ held that “The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice. etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc.”.

[¶8.] It was held in the case of *TITAN Industries v. M/s Ramkumar Jewellers*¹¹ that “When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity”.

[¶9.] It was observed in the case of *Mr. Gautam Gambhir v. D.A.P & Co. & Anr*¹² wherein the defendant was using Gautam Gambhir’s name in running their lounge and restaurant, which was mistaken by people to be associated with the said famous personality. Similar instances can be seen in the case of *Shivaji Rao Gaikwad (aka Rajinikanth) v. M/s. Varsha Productions*¹³ as discussed above.

⁸ BRYAN A. GARNER, BLACK’S LAW DICTIONARY 3551 (8th ed. 2004).

⁹ Compromis, ¶3.

¹⁰ ICC Development (International) Ltd. v. Arvee Enterprises, (2003) 26 PTC 245 (India).

¹¹ TITAN Industries v. M/s Ramkumar Jewellers, (2012) 50 PTC 486 (India).

¹² Gautam Gambhir v. D.A.P and Co. and Ors., MANU/DE/5440/2017 (India).

¹³ Shivaji Rao Gaikwad (aka Rajinikanth) v. M/s. Varsha Productions, (2015) 62 PTC 351 (India).

1.1.1. The people in question amount to “celebrity” by virtue of their popularity.

[¶10.] It is most humbly submitted that the people in question namely M.S Dhenier and Viret Kelly fall under the ambit of “celebrity”.

[¶11.] It is observed that public perception is the main criteria for determining whether an individual is a celebrity or not. Today, actors, authors, artists, politicians, models, athletes, musicians and anyone who seeks to capture the public attention are all celebrities.¹⁴ It is also important to remember that celebrities have the sole right to exploit the value of being a celebrity.¹⁵

[¶12.] In the case of *Martin Luther King Jr Center for Social Change v. American Heritage Products Inc*¹⁶, it was enunciated that the term ‘celebrity’ should be interpreted in a broader sense to encompass more than the traditional categories of movie actors, rock stars and bally players.

[¶13.] The Indian Copyright Act, 1957 does not define the word ‘celebrity’. Under §2(qq)¹⁷ of the Copyright Act, a performer includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

[¶14.] In *Tolley v. Fry*¹⁸, there was controversy relating to the use of a picture of a popular amateur golf player to advertise Cadbury chocolates. In *Cohen v. Herbal Concepts Inc*¹⁹, a picture of the plaintiff and her daughter was used on the label of a cosmetic product without their consent.

[¶15.] In the case of *Barber v. Times Inc*²⁰, a photographer took pictures Dorothy Barber during her delivery. Ms Barber filed a suit of ‘invasion of privacy’ against Times Inc for unauthorized and forceful entry into her hospital room for photographing her despite her protests. In *Midler v. Ford Motor Co & Ors*²¹, the court held that defendant by using a sound

¹⁴ Tabrez Ahmad, *Celebrity Rights: Protection under IP Laws*, JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 7, 16 (2010).

¹⁵ White v. Samsung Electronics America, Inc., 989 F.2d 1512 (9th Cir. 1993).

¹⁶ Martin Luther King Jr Center for Social Change v. American Heritage Products Inc, 250 Ga. 135, 296 S.E.2d 697 (Ga. 1982).

¹⁷ The Copyright Act, 1957, No.14, Acts of Parliament, 1957 §2(qq) (India).

¹⁸ Tolley v. Fry [1931] AC 333, [1931] 100 LJKB 328 (HL) (UK).

¹⁹ Cohen v. Herbal Concepts, 472 N.E.2d 307 (N.Y. 1984).

²⁰ Barber v. Time, Inc., 348 Mo. 1199, 159 S.W.2d 291 (Mo. 1942).

²¹ Midler v. Ford Motor Co & Ors, 849 F.2d 460 (9th Cir. 1988).

alike in these circumstances had clearly sought commercial association with ‘an attribute of Middler’s identity’.

[¶16.] In light of this, it is hereby most respectfully submitted that M.S Dhenier and Viret Kelly fall under the ambit of ‘celebrity’ and APL has violated upon their privacy rights as a celebrity.

1.1.2. There is usage of such person’s identity for commercial advantage.

[¶17.] It is submitted that APL’s unauthorized use of player illustration and player codes regarding M.S Dhenier and Viret Kelly is solely for the basis of making a real-life scenario and gain commercial advantage.

[¶18.] It is well established by law that if there is unauthorized usage of a person’s identity for commercial advantage it amounts to infringement of personality rights of the individual. It is seen that there is commercial usage of M.S Dhenier and Viret Kelly as *firstly*, the celebrity can be identified from the defendant’s unauthorized use [1.1.2.1.], *secondly* the usage of digital illustration is violative of privacy rights [1.2.1.2.] and lastly, the general public solely associates the caricatures of defendants with celebrity.

1.1.2.1. The celebrity can be identified from the defendant’s unauthorized use.

[¶19.] It is submitted that the celebrities namely M.S Dhenier and Viret Kelly can be identified from the defendant’s unauthorized use. It is seen that APL used the player illustration and player codes to deceive the general public into believing the association of the cricketer with that of Vision 11.

[¶20.] It is seen that APL wanted to make an association with the cricketers and thus used the one liner catch phrase- “Come and Play with MS7 and VK18 on our app”.²² APL in order to gain the popularity of more than 1 lakh people promoted the cricketer’s illustrations on various social media platforms such as Pacebook, Intagram and Switter, several national and regional newspapers, hoardings in several cities etc making them believe the association of M.S Dhenier and Viret Kelly with that of Vision 11.

[¶21.] The Hon’ble Delhi High Court in the case of *Titan Industries Limited v. Ramkumar Jewellers*²³, held that the celebrity must be identifiable from the defendant’s unauthorized use.

²² Compromis, ¶4.

²³ TITAN Industries v. M/s Ramkumar Jewellers, (2012) 50 PTC 486 (India).

The reluctance of the courts in UK to apply trade mark law to afford protection against unauthorised merchandising was confirmed in the Spice Girls²⁴ case.

[¶22.] In an earlier case, however, *Mirage Studio v. Counter-Feat Clothing Co. Ltd*²⁵, an interlocutory injunction was granted to restrain the use of lookalike products. It was held that character merchandising by third parties constituted a misrepresentation to the effect that the characters had been licensed by the owner.

[¶23.] In a decision of the Federal Court of Australia, *Koala Dundee case*²⁶, the plaintiff was a scriptwriter and actor who became famous after the film “Crocodile Dundee.” The defendants were shopkeepers selling clothing and other items bearing the name “Dundee.” The plaintiff sued in passing off alleging that such use was calculated to induce the public into believing that the goods were associated with the film or the character played by the plaintiff in it.

[¶24.] It was observed in the case of *Sonu Nigam v. Amrik Singh*²⁷, wherein the defendant had put up hoardings containing plaintiff’s photographs for the endorsing the music awards. A claim for injunction was passed as permission was not sought by the defendant.

[¶25.] Hence, it is most respectfully submitted that the celebrities are portrayed in a such a manner by APL that the general public are deceived to believing their association with Vision 11.

1.1.2.2. *Usage of digital illustrations is violative of privacy rights.*

[¶26.] It is humbly submitted that the APL’s usage of digital illustration is violative of the privacy rights of M.S Dhenier and Viret Kelly. It can be observed that APL’s quest to make use of real-life cricketer’s pictures/figures/names remained unfulfilled as it was denied by BCCI and various other cricketers.²⁸

[¶27.] It is seen that APL used digital illustration of the cricketers in order to gain popularity amongst people.²⁹ It can be deduced that if the general public can identify the real-life cricketers with reference to the digital illustrations, it is said to have violated the personality rights of those individuals.

²⁴ Spice Girls Ltd. v. Aprilla World Service BV [2002] EWCA Civ 15, [2002] EMLR 510 (CA) (Eng.).

²⁵ *Mirage Studio v. Counter-Feat Clothing Co. Ltd.* [1991] FSR 145 (UK).

²⁶ *Hogan v Koala Dundee Pty Ltd* (1988) 20 FCR 314 (Austl.).

²⁷ *Sonu Nigam v. Amrik Singh and Ors.*, MANU/MH/0517/2014 (India).

²⁸ *Compromis*, ¶3.

²⁹ *Id.*

[¶28.] Hence, it most respectfully submitted that usage of digital illustrations is violative of privacy rights of M.S Dhenier and Viret Kelly amongst other players.

1.1.2.3. *The General public solely associates the caricatures of defendants with the celebrities.*

[¶29.] It is humbly submitted that the general public solely associates the caricatures of defendants with the celebrities namely M.S Dhenier and Viret Kelly.

[¶30.] It is seen that the belief of association of M.S Dhenier and Viret Kelly with Vision 11 had amassed a mammoth figure of 1 lakh registered users. Moreover, APL had also designed posters with the illustrations of two of its most popular Vision 11 players MS7 and VK18 and one- liner catch phrase- “Come and Play with MS7 & VK18 on our app.”³⁰

[¶31.] In the case of *DM Entertainment v. Baby Gift House & Ors*³¹, it was observed that the defendants sold dolls that were imitations of and identical to, the likeness of Daler Mehndi. The court ordered the defendant to pay damages to the plaintiff for infringement.

[¶32.] It was observed in the case of *Sourav Ganguly v. Tata Tea Ltd*³², that the defendant had launched a scheme whereby it was offering to congratulate Mr. Ganguly. A case was filed and ruled in favour of plaintiff claiming that such an advertisement misrepresented to consumers that he has endorsed this scheme.

[¶33.] Hence, it most respectfully submitted that the general public solely associates the caricatures of defendants with the celebrities and there is usage of the cricketer’s illustration for commercial advantage.

1.1.3. There is unethical portrayal of the celebrity.

[¶34.] It is humbly submitted that APL’s use of digital illustrations of the cricketers is an unethical portrayal of the celebrities.

[¶35.] It is well established by law to use pictures/ figures/ names of any celebrity or trademark or copyright, one needs to take certain permissions in order to endorse the product. It can be observed that APL being denied these permissions went ahead and doctored digital illustration of the cricketers to make believe the fans of those cricketers their association with Vision 11.

³⁰ Compromis, ¶4.

³¹ DM Entertainment v. Baby Gift House & Ors, MANU/DE/2043/2010 (India).

³² Sourav Ganguly v. Tata Tea Ltd., MANU/WB/0644/2008 (India).

[¶36.] In the case of *Kajal Aggarwal v. The Managing Director*³³, it was seen that the defendant used the plaintiff's photograph after the permission to do so ended. The court ruled in favour of the plaintiff under the pretext of infringement of her right of publicity.

[¶37.] It was seen in the case of *Arun Jaitley v. Network Solutions Private Limited & Ors*³⁴ that the plaintiff had filed for permanent injunction against wrongful use of domain name 'arunjaitley.com'. The court stated that names of celebrities have been put on a higher footing than well-known marks as they have been recognised as distinctive and famous under Indian trademark law.

[¶38.] In the case of *Irvine v. Talksport*³⁵, Edmund Irvine's image was used without his consent in an advertisement for a radio station. The court held that he had a property right in the goodwill attached to his image, and he was entitled to compensation on the basis of a reasonable endorsement fee.

[¶39.] Hence, it is most respectfully submitted that there is unethical portrayal of the celebrity and there is a clear violation of M.S Dhenier and Viret Kelly's personality rights.

[1.2.] UNAUTHORIZED USAGE OF ILLUSTRATIONS AMOUNTS TO PASSING OFF.

[¶40.] It is most humbly submitted that APL's unauthorized usage of illustrations amounted to passing off as *firstly*, permission to use pictures/ figures/ names was denied [1.2.1.] *secondly*, there has been loss to the reputation of cricketers [1.2.2.] and *lastly* APL has committed the tort of misrepresentation [1.2.3.].

[¶41.] In *England Warnink (Erven) BV v. J. Townend and Sons (Hull) Ltd.*,³⁶ also known as *Advocaat case* it was held that five ingredients were required to satisfy a case for passing off: (i) a misrepresentation; (ii) the mis-representation should have been made by a trader in the course of his trade; (iii) the misrepresentation must be made to prospective customers or ultimate consumers of goods or services supplied; (iv) the misrepresentation must be calculated to injure the business or goodwill of another trader in the sense that this must be a reasonable foreseeable consequence; and (v) the misrepresentation must cause actual damage to the business or goodwill of the trader by whom the action is brought.

³³ *Kajal Aggarwal v. The Managing Director, M/s VVD & Sons P Ltd*, (2012) 1 CTC 812 (India).

³⁴ *Arun Jaitley v. Network Solutions Private Limited & Ors*, (2011) 181 DLT 716 (India).

³⁵ *Irvine v. Talksport Ltd.* [2003] 2 All ER 881 (CA) (UK).

³⁶ *Warnink (Erven) BV v. J. Townend and Sons (Hull) Ltd.* [1979] AC 731 (HL) (UK).

1.2.1. Permission to use pictures/ figures/ names was denied.

[¶42.] It is humbly submitted that APL in order to give a real-life experience in Vision 11 had approached BCCI and various other cricket boards to gain permission. But they were denied both by the boards and the cricketers themselves at first hand.

[¶43.] It is seen that APL violated the privacy rights of the cricketers as it went against the denied permission. It asked its employees to create digital illustrations of the cricketers which are similar to them and can be easily identified by the crowd.

1.2.2. There has been loss to the reputation of cricketers.

[¶44.] It is humbly submitted that the use of illustrations made by APL has caused great loss to reputation of the cricketers.

[¶45.] Firstly, the cricketers are wrongfully portrayed to have been associated with Vision 11 which is a fantasy league game based on chance which is essentially gambling. APL has made use of the cricketer's goodwill and reputation to market its product Vision 11 without consent.

[¶46.] In *Dora v. Frontline Video Inc*³⁷, in which Mickey Dora, a singing legend appeared in a video documentary entitled "The Legends of Malibu" it was held that the use of Dora's picture was newsworthy. However, copying the performer's entire performance transgressed the reporting of a newsworthy event and constituted a violation of the performer's right of publicity.

[¶47.] The Hon'ble Supreme Court explicitly recognized the publicity rights in the form of right to privacy in the case of *R.Rajagopal v. State of T.N*³⁸ where it held that first aspect of violation shall be using a person's name or likeness for advertising without his consent.

[¶48.] In an American case, the plaintiff, Motschenbacher, a racing driver, was known to drive a very distinctive racing car. The defendant used a picture of his car in advertisement without his consent. Motschenbacher was successful in his claim even though he himself was not featured in the advertisement.³⁹

[¶49.] In the matter of *Julia Fiona Roberts v. Russell Boyd*⁴⁰, the respondent had a website with the domain name 'www.juliaroberts.com', on which he used to run an online auction. The second level domain name in <juliaroberts.com> was identical to the complainant's name. The

³⁷ Dora v. Frontline Video, Inc., 15 Cal.App.4th 536 (Ct.App. 1993).

³⁸ R.Rajagopal v. State of T.N, AIR 1995 SC 264 (India).

³⁹ Motschenbacher v. R. J. Reynolds Tobacco Co., 498 F.2d 821 (9th Cir. 1974).

⁴⁰ Julia Fiona Roberts v. Russell Boyd, WIPO Case No. D2000-0210.

complainant claimed that the respondent used her name and fame to promote his auction since the public would be inquisitive to know greater personal details of the celebrity and would visit the website from across the globe for that purpose.

[¶50.] Hence, it most respectfully submitted that illegitimate use of someone’s identity causes severe harm to their reputation and goodwill.

1.2.3. APL has committed the tort of misrepresentation.

[¶51.] It is humbly submitted that APL has committed the tort of misrepresentation by using illustrations of cricketers that has not consented to endorsing Vision 11 explicitly. Misrepresentation is referred as to the act of making false or misleading assertion about something, with the intent to deceive.⁴¹

[¶52.] §17⁴² of the Indian Contract Act, 1872, refers to “Fraud” and includes any of the following acts committed by a party to a contract or by his agent, with intent to deceive another party thereto or his agent or to induce him to enter into the contract.

[¶53.] It was held in the case of *Ningawwa v. Byrappa Shiddappa Hireknrabar*⁴³, that the legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document.

[¶54.] Thus, we can deduce that APL has committed misrepresentation as it was of the notion to deceive the general public in a fraudulent manner in order to gain commercial wins. Hence, it is most respectfully submitted that APL’s use of player illustration and player code is violative of the personality rights of the cricketers and amounts to passing off.

ISSUE 2: VISION 11 AMOUNTS TO GAMBLING UNDER THE PUBLIC GAMBLING ACT, 1867.

[¶55.] The Public Gambling Act, 1867 [hereinafter “**Gambling Act**”] is the legislation encapsulating the policy framework to make a provision *vis-à-vis* punishment of public gambling and the keeping of common house in the State of India.

⁴¹ GARNER, *supra* note 6, at 3169.

⁴² The Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 §17 (India).

⁴³ *Ningawwa v. Byrappa Shiddappa Hireknrabar*, AIR 1968 SC 956 (India).

[¶56.] It is most humbly submitted that the multi-player fantasy league cricket game created by APL, Vision 11 amounts to gambling under the Public Gambling Act, 1867 as *firstly*, Vision 11 fulfils the criteria for gambling [2.1.] *secondly*, Vision is a “game of chance” [2.2.] and lastly, the game Vision 11 differs from “Dream11”.

[2.1.] VISION 11 FULFILS THE CRITERIA FOR GAMBLING.

[¶57.] It is humbly submitted that Vision 11 amounts to gambling as it fulfils the criteria required to qualify as gambling. It is seen that the results of the rounds are based on statistics, scores, achievements and the performance of real-life cricketers.⁴⁴ It can be deduced that the user of Vision 11 does not apply any ‘skill’ by selecting what are the potentials created by real life cricketers, it can be termed as mere wagering on the basis of general information.

[¶58.] §3⁴⁵ of the Gambling Act states that :

“Whoever, being the owner or occupier, whoever advances or furnishes money for the purpose of gaining with persons frequenting such house, walled enclosure, room or place shall be liable to fine not exceeding two hundreds rupees, or to imprisonment of either description as defined in the Indian Penal Code (45 of 1860).”

[¶59.] It is contested that Vision 11 being a virtual game to be treated as a gaming house where gambling take place as money is taken in exchange of wagering bets on various parameters and controlled by lakhs of people but only the person who hold most points wins.⁴⁶

[¶60.] The Gambling Act is valid on the game that are based on chance. §12⁴⁷ of the Gambling Act states that:

“Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.”

[¶61.] As Vision 11 is game based on mere chance rather than skill, the Gambling Act is valid upon it. Hence, Vision 11 will be subject to the law of the Gambling Act.

⁴⁴ Compromis ¶2.

⁴⁵ The Public Gambling Act, 1867, No. 03, Acts of Parliament, 1867 §3 (India).

⁴⁶ Compromis ¶2(c).

⁴⁷ The Public Gambling Act, 1867, No. 03, Acts of Parliament, 1867 §12 (India).

2.1.1. An exchange of money or valuable goods take place.

[¶62.] It is humbly submitted that one of the essentials of gambling is that an exchange of money or valuable goods should take place. It can be seen that an administrative fee is taken to participate in each round in exchange of wagering the bets on the winning them.⁴⁸

[¶63.] §4⁴⁹ of the Prize Competition Act states that there would be prohibition of prize competitions where the prize offered exceeds one thousand rupees a month. §9⁵⁰ of the Prize Competitions Act states that penalty for promoting or conducting any prize competitions in contravention of the provisions of §4 and §5.

[¶64.] It can be seen that the revenue generated by APL via Vision 11 is certainly more than prescribed in §4⁵¹ and is violative of §9⁵². On this note, it is submitted that there has been exchange taken place in the form of money in Vision 11 for wagering bets.

2.1.2. An unknown future event determines the exchange.

[¶65.] It is humbly submitted that another fundamental to prove gambling is to ascertain that an unknown future event determines the change. It can be seen that the player in Vision 11 pays money as administrative fee in exchange of an uncertain event i.e. 'winning'.⁵³

[¶66.] In the case of *State of Andhra Pradesh v. K. Satyanarayana & Ors*⁵⁴, the Hon'ble Supreme Court held that game of rummy (i.e. flush, brag etc.) are game of entire chance. There lies an unknown future while making the exchange which makes it based its entirely based on chance. In the case of *Ramachandran K v. The Circle Inspector of Police*⁵⁵, the Hon'ble Kerala High Court has held that playing rummy for stakes would amount to the offence of gambling under the Kerala Gaming Act, 1960 ("Kerala Act").

[¶67.] Hence, it is most respectfully submitted that the future in Vision 11 is also uncertain as winning depends upon the number of players and their selection of players.

⁴⁸ Compromis ¶2(c).

⁴⁹ The Prize Competition Act, 1955, No. 42, Acts of Parliament, 1955 §4 (India).

⁵⁰ *Id.* § 9.

⁵¹ *Id.* § 4.

⁵² *Id.* § 9.

⁵³ Compromis ¶2(c).

⁵⁴ *State of Andhra Pradesh v. K. Satyanarayana & Ors*, AIR 1968 SC 825 (India).

⁵⁵ *Ramachandran K v. The Circle Inspector of Police*, (2019) 2 KLJ 26 (India).

2.1.3. Non participation makes users bleed losses.

[¶68.] It is humbly submitted that fantasy league games are made in a such a manner wherein non participation makes users bleed losses. As the games makes a user enroll for a tournament. If he/ she is not able to contribute time to it other team players by sequencing can change the winning stakes of the user.

2.1.4. Winners gaining at the sole expense of losers.

[¶69.] It is humbly submitted that Vision 11 works like any other gambling process where the win of one is facilitated by loss of many users. The winner in Vision 11 are to be gaining at the sole expense of losers.

[¶70.] On this note, it is most respectfully submitted that operations of Vision 11 amounts to gambling as it fulfills the criteria for gambling.

[2.2.] VISION 11 IS A GAME OF CHANCE.

[¶71.] It is submitted that Vision 11 is game of chance and not of skill as the user does not require any predefined skill to select the team based on general information provided.

[¶72.] While applying the “**dominant factor test**” or “**predominance test**” the courts decides using the protocol whether chance or skill is the dominating factor in determining the result of the game.

[¶73.] The legality of online fantasy sports games in the U.S. is persuasively supported by *Humphrey v. Viacom*⁵⁶. In the Humphrey case, the plaintiff had claimed that the registration fees paid by fantasy sports league participants constitute “wager” or “bets” and that the winners are determined predominantly by chance

[¶74.] In the case of *Manoranjan Manamyil Mandram v. State of Tamil Nadu*⁵⁷, it was held that the question whether a particular game is game of skill or chance is to be decided on the facts and circumstances of each case.

[¶75.] The Hon’ble Supreme Court in the case of *Dr. R. K. Lakshmanan v. State of Tamil Nadu*⁵⁸ defined ‘game of skill’ as "one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player". The Court pointed out

⁵⁶ *Humphrey v. Viacom Inc.*, No. 06-2768, 2007 U.S. Dist. LEXIS 44679, at *3 (D.N.J. June 19, 2007).

⁵⁷ *Manoranjan Manamyil Mandram v. State of Tamil Nadu*, AIR 2005 Mad 261 (India).

⁵⁸ *Dr. R. K. Lakshmanan v. State of Tamil Nadu*, AIR 1996 SC 1153 (India).

that a game of chance is one in which the element of chance predominates over the element of skill.

[¶76.] The Hon'ble Supreme court in the case of *Geeta Rani v. Union of India & Ors*⁵⁹, the question of whether sports betting is game of chance is pending. On this note, it is respectfully submitted that Vision 11 is game of chance given all considerations and precedence taken.

[¶77.] In a recent case, *D Siluvai Venance v. State*⁶⁰, the Madurai court observed that neither the public gambling Act, 1867 nor the Tamil Nadu Gambling Act, 1930 specifically speaks about such virtual area. A comprehensive regulatory framework by a regulatory body is necessary to regulate the online sports and to curb any illegal activities as well.

[¶78.] Hence, it is most respectfully submitted that the Vision 11 is a game of chance and not a game of skill.

[2.3.] THE GAME OF VISION 11 DIFFERS FROM THAT OF "DREAM 11".

[¶79.] It is most humbly submitted that the working of Vision 11 is different from that of a predominant game in the fantasy league game "Dream 11". There lies an underlying difference which make the two of them entirely different as *firstly*, there is difference in the age factor [2.3.1.], *secondly* there is no mention of KYC requirement in Vision 11 [2.3.2.] and *lastly*, permission of celebrities and contracts signed [2.3.3.].

[¶80.] The Hon'ble High Court of Punjab and Haryana held Dream 11's format of fantasy sport to be a game of skill in the case of *Shri Varun Gumber v. UT of Chandigarh & Ors*⁶¹. Thereafter, the Hon'ble High Court of Bombay also recognized that the same format of fantasy sport was a game of skill in *Gurdeep Singh Sachar v. Union of India*⁶².

2.3.1. There is difference in the Age Factors.

[¶81.] It is humbly submitted that there lies a difference in the age factor. It is seen that Dream 11 requires a minimum age of 18 years to register yourself as a user whereas Vision 11 remains silent on this aspect.

⁵⁹ Geeta Rani v. Union of India & Ors, W.P. (Civil) No.34053 of 2018 (India).

⁶⁰ D. Siluvai Venance v. State of Madras, CrI.OP.(MD) No. 6568 of 2020 (India).

⁶¹ Shri Varun Gumber v. UT of Chandigarh & Ors, (2017) Crim LJ (P&H) 3827 (18.04.2017) (India).

⁶² Gurdeep Singh Sachar v. Union of India and Ors., MANU/MH/1451/2019 (India).

2.3.2. No mention of KYC in Vision 11.

[¶82.] It is humbly submitted that there is no requirement of KYC in Vision 11 as there is in Dream 11. KYC is understood as “Know Your Consumer” and refers to process of verification of the identity of the customers and clients either before or during the start of doing business with them.⁶³

[¶83.] Hence, it is most respectfully submitted that game of Vision 11 is different from Dream 11 and so the judgment on the game of skill is not valid on Vision 11. Vision 11 amounts to gambling under the Gambling Act as it is a game based on chance.

⁶³ Staff, *What is KYC? What are the Documents Required for KYC?*, GOOD RETURNS (July 24, 2020, 10:08 AM), <https://www.goodreturns.in/classroom/2016/01/what-is-kyc-what-are-the-documents-required-kyc-422032.html>.

PRAYER

Wherefore in light of the issues raised, argument advanced, reasons given and authorities cited, this court may be pleased to:

- [I.] **HOLD THAT** APL'S USE OF THE PLAYER ILLUSTRATIONS IN CONJUNCTION WITH THE PLAYER CODES AMOUNTS TO INFRINGEMENT OF M.S DHENIER AND VIRET KELLY'S PERSONALITY RIGHTS AND PASSING OFF.
- [II.] **HOLD THAT** VISION 11 AMOUNTS TO GAMBLING UNDER THE PUBLIC GAMBLING ACT, 1867.

The Hon'ble Court may also be pleased to pass any order which the Hon'ble Court may deem fit in the light of justice, equity and good conscience.

All of which is most humbly prayed.

DATE: 25.07.2020

SD./-

VENUE: NEW TELLY, INTIA.

COUNSEL for PLAINTIFF