

IPR Issues in Sports

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Abstract

The theory of sport has gone beyond the context of ordinary leisure and entertainment to become a substantial revenue stream and a key provider to economies all over the world. Sports specialists all over the world have been able to make huge incomes from the utilization of features of intellectual property rights by means of promoting, branding, licensing etc. which include use of the various intellectual property rights of sports clubs. A huge amount of intellectual property right is created in order to form a new sports team or a sports club so that to organize any type of sports events. Hence, it will lead to arise a juncture between intellectual property rights and the business of sports. In this paper, an attempt has been made to describe the essential part that is played by Intellectual Property Rights (IPRs) in Sports and tried to highlight the different types of intellectual property related with sports, their protection, numerous ways of their utilization and try to analyze numerous legal issues that arise frequently or are predicted with respect to intellectual property and sports.

Key Words- Sports and intellectual property, sports law, merchandising, broadcasting rights.

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Introduction

It cannot be denied that Sport has turned out to be one of the major sources of entertainment and business. Even though in the last fifty years the particular ways of playing the sports have not changed much, but certainly things associated with it have transformed. Now, the sporting events are no more what they used to be rather the commercialization of sports has become massive. Sports has developed as one of the paramount etymology of divertissement and concurrently a megalithic emporium of business too. Sports activities have grappled the consciousness of people since antediluvian and from paroxysm, it has unfolded into an intercontinental industry with inexhaustible merchandising opportunities. The sports industry has a lengthening influence on the economy of the planet, initiating jobs, venturing into public infrastructure and assembling resources. The gamut of Intellectual Property Rights has prodigious significance in the arena of sports. Innovation and Creation are essential operators in the globe of the sport. Inventors and creators are functioning beyond the stage to propel the circumference, erecting new possibilities for merriment and for athletes to convalescent their performance.

Sports are considered as the essential part of our social being and it became an essential part of our lives. Not only in the twenty-first century but also in the barbaric era and the glorious days of Caesar, every single individual loves sports. It has constantly been a popular sector across the globe that bring together all the games, competition, entertainment, culture and absolutely to an extended economic trade. Today these Sporting activities which was started as a pastime or as a physical activity, are no longer limited to the boundaries of entertainment but also it has gained profitable importance of huge amounts. Advertising and campaigns done by the franchising, advertising, and brand building of sports as well as sportsmen have increased massive significance, beating all other customary complexities of sports. There are many popular games which have advanced into and international events and followed by the huge followers which create a huge marketing potential for the organizers and by organizing different events they are able to extract maximum value from other.³Therefore, it is an understandable fact that sports franchises are tapping and capitalizing on various intellectual property rights (IPR) created by them.

³Kandiah P, *Sports and intellectual property*, EZINEARTICLES, <http://EzineArticles.com/5202279>.

Sports and Intellectual Property

The room of Intellectual Property Rights is of massive importance in the sporting field. Intellectual Property Rights devolves more or less in every section of the sports industry. Sports are presenting Intellectual Property in action and the Intellectual Property in turn influences the business of sports. WIPO proselytizes innovation and creativity for the economic, social and cultural enlargement of all countries through a balanced and efficacious Intellectual Property System. Apart from ameliorating the operandi for protection of Intellectual property such as patents, copyrights, trademarks, designs around the world, WIPO acts to certify that the convenience of the sports industry is unfurled extensive and cavernous. The intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, and designs.⁴ Patents, Designs, Copyrights and Trademarks rights may be contemplated to be the subject matter in the arena of Sporting gears. The technology used in a swimwear is inventive in nature and therefore can be registered as a patent, the logo printed on the swimwear can be a registered trademark, the designer can get copyright and the physical design can be registered as an industrial design.⁵ These registrations help to protect the value of the unique design and marketing capabilities associated with the sporting gear.

Intellectual Property Rights are predominantly used as marketing paraphernalia concerning about branding of sporting games and connected events, sports, clubs, teams, etc. Various football clubs around the world such as Manchester United, Real Madrid, Barcelona, and Liverpool are a perfect example of intellectual property brand capitalization.⁶ Intellectual property espouses the furtherance of the sports industry, an accrediting sporting organization to invest in sporting events and expedite the progress of the sports.

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⁴*Intellectual Property*, SPORTSANDRECREATION,
<https://sportandrecreation.nsw.gov.au/clubs/ryc/legal/intellectualproperty>.

⁵SPORTS AND INTELLECTUAL PROPERTY RIGHTS – AN OVERVIEW ON THE INDIAN STANDARDS, Written by Aswathy Sujith.

⁶Christine Chiramel, *Intellectual Property Rights in Sports – Indian Perspective*, MONDAQ,
<http://www.mondaq.com/india/x/164974/Trademark/Intellectual+Property+Rights+In+SportsIndian+Perspective>.

on the economy of planet, initiating jobs, venturing in public infrastructure and assembling resources. The gamut of Intellectual Property Rights has prodigious significance in the arena of sports. Innovation and Creation are essential operators in the globe of sport. Inventors and creators are functioning beyond the stage to propel the circumference, erecting new possibilities for merriment and for athletes to convalescent their performance.

Confluence of sports and Intellectual Property Rights

The key objective of Intellectual Property right is to authorize an individual or a body to guard their intelligence for a limited period. In sports, the sportsmen, the team, the organization and the club put a lot of hard work and efforts in the sports activity to which they are associated with in order to organize a sports events. Each one of these bodies may use the IP rights from monitory profits.

- Copyright in sports is safeguarded in India under the provisions of the Copyright Act, endow in diverse integrant of sporting events which encompasses the art, skill, design concatenated to the trademarks, logos, promotions, slogans, images of a player, event etc. Improvement in communication technologies such as satellites, cable, broadband, and mobile internet have modernized broadcast and sports coverage and in turn, assisted people around the globe to take part in the enjoyment of most important sports events. Copyrights along with neighboring rights provide security against unlicensed broadcasts and strengthen the bond between sports and television media. For the limited right to broadcast sporting events live, the media organizations pay a huge sum of money.
- Trademarks in sports is protected in India under the provisions of Trademarks Act with the existence of constituents like a logo, captions, taglines, slogans and team names etc. that which are concomitantly mentioned as trademarks and that clenches commercial value as it engenders an altitude of amalgamation with public and that which is consequential for brand value creation in sports teams, clubs, sponsors, athletes. Symbols and Team names like Mumbai Indians, Chennai Super Kings make a level of connotation with the public and fan followers which helps in the popularity rankings of any given team, club, and players. As sports have advanced into a universal

business, so too has the importance of athletes' image rights.⁷

Not only the celebrity status but also the name of the players (Sachin Tendulkar, Dhoni) has developed the status of trademarks. Different businesses owners link their products and images with the name of these players and funds sporting events. These celebrities' and sportspersons have personality rights which are also known as the right of advertising, which stop the unapproved use of their name and other personal features. These trademark image and fame convert into pecuniary profits through ads, brand ambassadors, goodwill and reputation of sponsors.

- Domain names in sports in the conservation of Intellectual Property Rights incorporated with Sports, domain names which are also analogous to trademarks gambols a consequential role. Domain names construct brand image, portability and search engine optimization. WIPO, among others, runs a quick clash resolution method for website domain names which are established on internationally-accepted rules.⁸ There is nothing denied the fact that the internet is a cost-effective method to stretch out to the public and it produces alertness about sports events, players etc.
- Ambush Marketing means "an attack from hidden position". Protection against ambush marketing is one of the most important aspects of Intellectual Property Rights in sports. Ambush marketing has acquired a huge space in sporting events and it refers to companies promoting their brands or products by associating them with a team, league or event without paying for the privilege.
- Licenses and sponsorship in sports play a very significant role in sports industry. By obtaining intellectual property rights and then using them cleverly, sports organizations and other rights owners can defend and rise their income-generating possibility. Uniqueness is the fundamental feature in sales generation and brand building. In light of forgery product markets, it is essential to certify that all intellectual property rights involved are sufficiently secured under appropriate agreements.
- Trade secrets circumscribe manufacturing or business secrets and industrial formula, practice, instrument, and florilegium of the document which is not

⁷ Molly Torsen, Intellectual Property and Sporting Events: Effective Protection of Event Symbols through Law and Practice, IPI, http://iipi.org/wp-content/uploads/2010/07/Sporting_Events_and_Intellectual_Property.pdf.

⁸<http://www.wipo.int/ip-sport/en/branding.html>.

predominantly familiar or reasonably discernible by other.⁹In India, there is no disparate statute for the protection of trade secrets and in sports industry, there is inevitably probability of some information which requires confidentiality to be retained. The principles of equity, common law action of breach of confidence which constitutes to a transgression of the contractual obligation are the basis upon which trade secrets are inoculated by Indian Courts.

Designs in the province of Sports is overarching. Industrial Designs must be registered in order to attract the blanket of protection under Industrial Designs Law. A design must be new and original in order to qualify the test of registration and upon a successful registration, it vests in the hands of the owner a conclusive proof of right coupled with obligations.

Conclusion

Sports generally being advertisement active now has become a consequential business with prodigious profits. Commercialization of sports is so pervasive that the competition amongst the sports association is no more confined to the field only. This escapade of sports associations of clinching profits by enslaving their IP Rights makes it preeminent for them to adequately protect their IP. Good management of IP in return maximize economic returns. It indeed needs of the hour that India necessitates sports law experts so as to proselytize ethical practices in Sports Industry. India should consider in coming up with sports business model so as to strengthen an effective IP rights schedule that could undertake the use of patents, trademarks, designs in sports as well as the use of domain names and thereby addressing media and broadcasting rights. In order to maintain balance Intellectual Property rights with the public interest, free access to televised sports events is an attractive approach. The IP repertoire of a sports organization is bound to grow with the proliferation of its business operations and the desirability of such repertoire grows with the popularity and success of the players. Legal contractual agreements must be in place protecting all forms of intellectual property engendered in sporting events, teams, individual players etc. so as to protect all the stakeholders and their financial interests. Adoption of Alternative Dispute Resolution mechanisms is commended for peaceful settlement of rights in relation to sports issues. India, as a Developing Country, must feel the necessity and the urgency to protect the confidential information conspicuously in sports industry so as to act as an adequate impediment for

⁹VinayVaish, *Intellectual Property Rights (IPR) for Startup*, MONDAQ, <http://www.mondaq.com/india/x/456442/Trademark/Intellectual+Property+Rights+IPR+For+Startups>.

presumptive offenders. However, in order to fortify the conceivable existence of the sports industry, protection and enforcement of Intellectual Property Rights is an indispensable requirement.