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## THE SALIENT FEATURES OF COPYRIGHT LAW IN SRI LANKA – PART IV



### Sanuji Munasinghe

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### Why is it important for any artistic work to be protected?

Humans are an evolved animal species that has mastered the art of communication, they use their brains to create things that can further society as a whole. Such creative work could be a piece of music, writing, drawing, painting or an invention that can change the way the world functions and further its understanding of society and bring about positive changes in society. Many such works are originals and require great amount of effort in creating such work. Naturally, the creator of the work needs to be rewarded for his contribution to society. Thus, copyright laws across the world confer on the creator's economic rights and moral rights. This article attempts to demystify these important aspects of copyright protection and explain the time frame for which these rights rest with the creator or his/her legal heirs.

We have gone into various aspects pertaining to copyright law in Sri Lanka in the previous articles. The focus of this month's article shall be on duration of a copyright, ownership of a copyright and presumption of authorship.

### Duration of Copyright

It goes without saying that just as any other mode of IP, copyright protection granted is not dateless. The

duration of a copyright is timebound and after the lapse of this period, the copyright enters into what is referred to as the “public domain”. Which in simpler terms means that it becomes private property.

The National Intellectual Property Act (hereinafter referred to as the “Act”) under section 13, makes provision for the duration of copyright. According to the provisions of the Act the general principle is that, the Economic Rights and the Moral Rights of the author shall last for the duration of their lifetime and for 70 years thereafter.

The general principle stated above operates subject to the following conditions:

1. In the event of a work of joint authorship, where two or more authors have contributed (but does not constitute to be a collective work), then the duration of protection shall be during the lifetime of the last surviving author and 70 years after his death.
2. Where the work (which is other than a work of applied art and where it is an audio visual work) in concern is a Collective work, which means a work that is created by two more physical persons under the direction of a physical person or legal entity, the duration of protection for such works shall be 70 years from the date of first publish or 70 years from making the work, in the event the work was never published.
3. Works where the author remains anonymous or is published under a pseudonym then the copyright protection shall last for 70 years from the date of first publication.
4. The economic and moral rights protection afforded for a work of applied art is 25 years from the making of such work.

### Ownership with regard to copyright

Ownership of a copyright can essentially be broken down into two parts; Economic Rights and Moral

Rights. In order to better understand the ownership of economic rights, it must be understood what type of authorship is vested in the works. The nature of the authorship dictates the manner in which ownership of the economic rights of a work will operate.

I. Individual authorship

The original owner of the economic rights shall be the author who created the work.

ii. Joint authorship

The economic rights shall be held by the co-owners. However, in the event the work consists of parts which can be separated and attributed to individual authors in the joint authorship, then each author shall have economic rights on such separated part which they created.

iii. The economic rights of a Collective work vests with the physical person or legal entity which provided the direction to create the work.

iv. Works which are created by employees during the course of their employment

Unless otherwise agreed between the employer and the employee, the economic rights of a work which has been created by an employee during the course of his employment shall vest with the employer.

v. Commissioned works

As in works created by employees, unless the parties have agreed, the economic rights of a commissioned work shall be with the person who commissioned such work.

vi. Audio visual works

The producer of an audio-visual work shall be the original owner of the economic rights of such work, unless a contract provides for otherwise.

vii. Assignment or transfer of economic rights

Upon the economic rights of a work being transferred or assigned, the owner of the economic rights shall then be the assignee or transferee.

## Moral Rights of Work

Unlike economic rights, the moral rights of a work shall belong to the author of a work. Even if the author for some reason (as explained above), does not hold the economic rights of a work or ceases to hold the economic rights, the moral rights shall remain with him. After the death of the author, the heirs are able to exercise this right for 70 years from his death.

## Presumption of Authorship

In the absence of any proof being provided, to prove the contrary, at all times the person whose name is indicated as the owner of a work shall be considered as the owner of the work. This presumption is effective even in the instance where the author or a work goes under a pseudonym, where there is no doubt as to the identity of the author. Supposing it is an audio-visual work that is directed by a physical person or a legal entity, then in the absence of proof the producer shall be the author of the said work.

It is noteworthy that works of Sri Lankan authors are protected in all the member countries of the Berne Convention for the Protection of Literary and Artistic Works.

In our next issue, with wrapping up our series of articles on copyright law, we will discuss the area of related rights and have an overview of other connected aspects which are of relevance to the copyright regime in Sri Lanka.



## TRADEMARK DILUTION: A POTENTIAL THREAT



By Krutarth Sontakke

A trademark plays a crucial role in Brand Building, as it is the only face of the products or services and also reflects the quality of the product and services. It also creates a distinct image of a brand among the market so that an individual can differentiate the brand from the other competitors. It takes years of hard work and consistency to provide quality products and services which creates and maintains the reputation of that brand among the businesses. There are several risks that could damage a trademark reputation or an overall brand, includes – Passing off, Infringement, and Dilution of trademark.

The concept of trademark Dilution has gone through centuries, it was argued that “trademark protection should not be limited to addressing issues related to the deception of the public but should extend to preventing people from destroying the originality and uniqueness of the mark” as said by the renowned author Frank Schechter also known as the '*Father of Dilution*'. Trademark dilution is recognized and forbidden by Section 29(4) of the Act. It declares that any use of a mark that is identical to or similar to a registered trademark constitutes infringement and dilutes the original mark's distinctiveness.

The trademark dilution occurs when an unauthorized party uses a trademark in a manner that would tarnish or diminish the image of a well-known trademark. Trademark dilution deals with the weakening or diminishing of a famous mark's unique identity even if the consumer does not confuse the two products or services. There are 2 types of

Trademark dilution which includes – Blurring and Tarnishing.

**Blurring** takes place whenever a well-known mark loses its distinctiveness or uniqueness as a result of duplicated marks that appear to be identical to the well-known mark, regardless of whether the products or services are similar.

When a third party uses a mark, it will blur the possibility that the mark will particularly function as a identifier of owner's product or services only and may hinders owners ability to sell. *For instance*, if a business uses the “Amul” mark on a shoe, consumers may begin to associate the well-known “Amul” mark with the footwear brand. This may negatively impact on Amul's brand image.

Unauthorized use of well-known trademarks can cause **tarnishing** by seriously harming the brand reputation. Providing ill-quality product or services under the well-known trademark. For instance, “Bisleri”, one of the leading brands of packaged drinking water, its brand has been tarnished by so many other deceptively similar brands like Bilseri, Bilseir, Bisferi, Bisslari, etc. Each of these counterfeit uses colours and label styles of the original and passes itself off as the original. The consumer buys thinking he is buying the original only to be disappointed later. As these counterfeits have nothing at stake, any quality of water can be passed off as the original, hurting the reputation of the original via substandard quality, with the user not even able to comprehend that he was deceived at the time of purchase itself.



There are a few exceptions where the infringing mark would not be considered as a dilution. This includes situations where advertising or promotional activities that allow consumers of a brand to compare goods or



services are permitted and will not be actionable as trademark dilution. Such cases may fall under the ambit of descriptive or nominative fair use and hence, cannot be considered trademark dilution. In addition, marks are used to criticize, parody, news reporting, commentary, educational, and entertainment purposes.

An interesting example of trademark dilution can be seen in the case of **Dumb Starbucks**. In the case of Dumb Starbucks, the use of the word “**dumb**” in conjunction with the Starbucks brand could be considered tarnishment if Starbucks could prove that the prank harmed its reputation or associated the brand with inferior products. Since the prank was for marketing purposes, the usual “non-commercial use” defense wouldn’t apply, as the setup was ultimately revealed to be an advertising stunt funded by Viacom for Comedy Central. This case highlights how trademark dilution can impact even well-known brands through public perception, especially when the trademark is used in a way that could harm the brand’s image.

## Notorious Cases on Dilution of Trademark in India:

### 1. BMW v DMW:

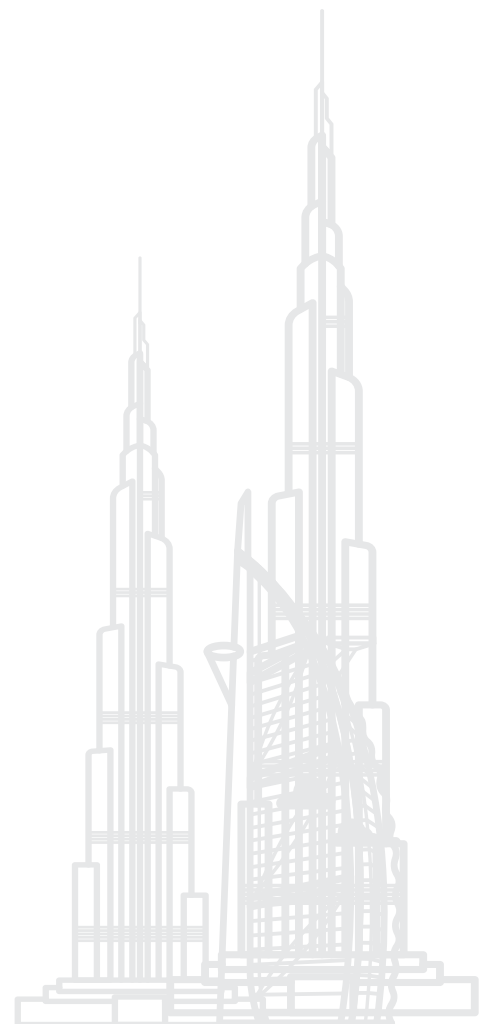
According to the Court, the defendant has used the key aspects of the plaintiff’s mark. There is a significant visual and linguistic resemblance. The trademark was being dishonestly used in respect of similar goods and thus, resulting in passing off and free riding. As a result, the defendant’s mark DMW is likely to deceive and cause confusion, establishing a case of dilution.

### 2. BATA INDIA PRIVATE LIMITED VS PYARELAL:

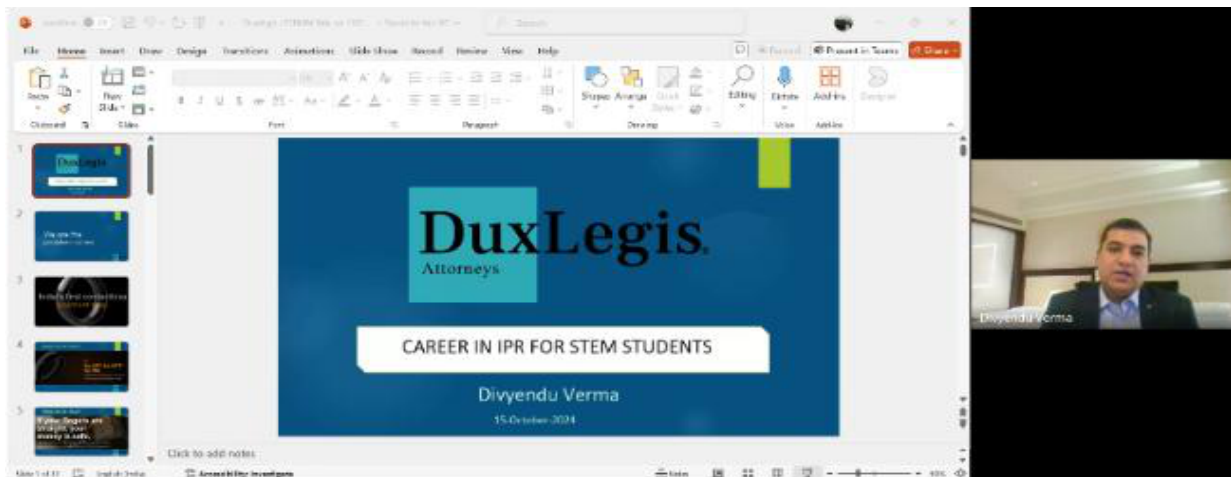
In this case, the plaintiff initiated a dilution case against the defendant. The legal issue centered on, whether the defendant’s use of the mark “**Batafoam**” constituted dilution, thereby disparaging upon the plaintiff’s recognized trademark “Bata”. Even though the defendants focused on a different product, it still harms the reputation and goodwill of plaintiff’s mark. Hence the injunction was granted.

In conclusion, a brand may suffer from trademark dilution just as much as it would from trademark infringement. Trademark dilution rights are somewhat less well-known than infringement, yet they can nonetheless be enforced just as severely, if not more so, to safeguard a brand’s

distinctiveness. Gaining an understanding of trademark dilution can be challenging but important for businesses, how it occurs, and ways to prevent it. By registering trademarks, tracking their use, and going to court can prevent trademark dilution and also protect their reputation and goodwill.



## AROHAN-2024: DELIVERED LECTURE ON IP CAREER INSIGHTS FOR STEMM GRADUATES



Mr. Divyendu Verma, the Global Head of IP Patents, Audiri Vox, recently taken an insightful lecture on career opportunities in Intellectual Property (IP) for graduates from STEMM (Science, Technology, Engineering, Mathematics, and Medicine) in the **AROHAN-2024** webinar organized by **Directorate of Collegiate and Technical Education** under the **Higher Education Department of the Government of Karnataka**.

**AROHAN-2024** is an educational initiative organized by the **Government Engineering Colleges**, showcasing commitment to excellence in education and innovative practices. The program consists of a series of lectures and seminars aimed at exposing students to the latest trends, challenges, and opportunities in various technical fields.

The Arohan-2024 program features expert speakers from diverse areas such as intellectual property law, artificial intelligence, core engineering disciplines, and mechanical engineering. The objective is to provide students with insights into emerging career pathways, industry trends, and the importance of innovation in today's economy.

The Lecture aimed to shed light on the diverse and dynamic career paths available within the IP sector, specifically for

individuals with a strong technical background. The Lecture also delved into various career paths, from working in law firms to in-house roles at tech companies, startups, and research institutions. Attendees were introduced to the roles of patent agents, IP consultants, and even non-legal roles such as technology transfer officers. Our Managing Partner Adv. Divyendu Verma emphasized that the demand for IP professionals, especially those with technical expertise, is on the rise as companies across industries seek to safeguard their innovations.

Overall, the lecture provided a comprehensive overview of how STEMM graduates can build a rewarding and impactful career in IP, contributing to the innovation ecosystem while expanding their professional horizons.



## AUDIRI VOX ATTENDED AIPPI ANNUAL CONGRESS 2024 IN HANGZHOU, CHINA

*From October 19-22, 2024, Team Audiri Vox, led by our Global Head of Patents Practice, Adv. Divyendu Verma, along with Mr. Chandra Kant, Director of Business Development at Audiri Vox, had the privilege of attending the AIPPI (International Association for the Protection of Intellectual Property) Annual Congress held in Hangzhou, China. This prestigious event brought together thought leaders, experts, and professionals from around the world to discuss the most pressing challenges and innovations shaping the field of intellectual property.*



This year's congress placed significant emphasis on the transformative role of **Artificial Intelligence (AI)** within the IP landscape. Key sessions explored AI's potential to revolutionize patent examination, copyright management, and trademark enforcement, sparking engaging discussions on the ethical, legal, and regulatory complexities posed by AI. In particular, the congress addressed how AI intersects with data protection and privacy laws, fuelling conversations on creating frameworks that balance technological innovation with robust legal safeguards.

Following the AIPPI Annual Congress, Audiri Vox was honoured to be invited to a local event organized by leading Chinese firms, with support from UNIDO and the Chinese government. This half-day conference offered a unique platform for collaboration, and our Global Head of Patents, Adv. Divyendu Verma, shared his insights on the IP ecosystem in the Middle East and Data Privacy Law in the UAE. The event was extraordinary, and we were thrilled to contribute to the conversations on IP laws, furthering cross-regional dialogue and understanding.

This recent trip to China has undoubtedly been one of our most memorable, highlighting the importance of global collaboration and staying informed on the latest technological and policy shifts in IP. We are excited to bring the insights gained back to our team and clients, reinforcing our commitment to navigating the evolving IP landscape.



## IP UPDATES

### SAUDI ARABIA: SAUDI ARABIA: NEW REGULATIONS FOR TRADE NAMES IMPLEMENTED



In October 2024, the Saudi Cabinet approved new regulations for the registration and management of trade names, published in Official Gazette No. 5050 on October 4, 2024, these

regulations will come into effect 180 calendar days later the publication date and introduce essential updates to the commercial registry framework. This legislative update underscores the government's commitment to streamlining business practices and safeguarding intellectual property rights across the Kingdom.

The new regulations mandate that all merchants register their trade names, with penalties for non-compliance. Registered names are legally protected against unauthorized use, allowing businesses to seek compensation for misuse. The regulations also prohibit the registration of misleading or politically sensitive names, as well as names similar to well-known trademarks without proper ownership. To expedite business operations, trade name registration applications must be processed within ten days. Additionally, registered trade names must be displayed at business premises and on official documents to ensure public access to information. Non-compliance could result in fines of up to SAR 50,000 (approximately USD 13,300), and the system includes mechanisms for correcting registration errors and addressing disputes over name usage.

We appreciate your understanding and patience during this period. For any inquiries or assistance, please feel free to reach out to us at [global@audirivox.com](mailto:global@audirivox.com)

## PATENTS CASES

### KYMAB LIMITED (Appellant) vs. THE ASSISTANT CONTROLLER OF PATENTS & DESIGNS (Respondent)

CASE NO.: (T) CMA(PT). No.200 of 2023.

[OA/SR.118/2020/PT/CHN]

DECIDED ON: 26 September 2024

The present appeal has been filed by the appellant against the respondent for rejecting the appellant's patent application under Section 3(i) of the Patent Act.

The appellant argued that the claimed invention discloses a process for the generation in non-human mammals of antibodies that comprise a human immunoglobulin variable region and further provides non-human animal models for the generation of such antibodies, therefore it does not fall within the scope of the Section 3(i). The respondent countered that the claimed invention is not in respect of specific bodies but rather discloses a method of administering antigens in transgenic mice, that qualifies as a method of treatment of animals, which is patent ineligible under section 3(i).

The Hon'ble Madras High Court observed the following issue and stated that the claimed invention does not intend to treat the mice or to increase the economic value, rather it intends to generate non-murine antibodies, which does not qualify as products of mice. The Hon'ble Court further concluded by rejecting the impugned order objecting the appellant's patent application under section 3(i) and hence proceeded the patent application for grant.

### BIOTYX MEDICAL (SHENZHEN) CO. LTD (Appellant) vs. ASSISTANT CONTROLLER OF PATENTS AND DESIGN (Respondent)

CASE NO.: (C.A.(COMM.IPD-PAT) 403/2022

DECIDED ON: 20 September 2024

The present appeal is issued by the appellant against the respondent for refusing the appellant's patent application under Sections 2(1)(j), 13(1)(b) and 2 (1)(ja) of the Act. The appellant argued that the cited prior arts were irrelevant and the reasons were unclear on how the cited prior arts can be combined to provide a clear identifiable and actionable roadmap to motivate a PSITA to reliably arrive at the appellant's patent application (i.e., present invention). The respondent defended that the sufficient reasons have been provided for refusing appellant patent application qua inventive step under section 2(1)(ja).

The Hon'ble Delhi High Court analysed that the respondent failed to refer to the five-step test promulgated by the Hon'ble Division Bench of this Court in **Hoffmann-La Roche Ltd. & Anr.** (supra) while examining the inventive step in the present application. The Hon'ble Court further states that the impugned order lacks a proper methodology and insufficient scientific reasoning, thereby highlighting the need of more detailed and reasoned analysis of the inventive step. The Hon'ble Court concluded by remanding the appellant's patent application for limited consideration of the inventive step and clearly specifying/analysing the inventive step before granting hearing to the appellant.

## GENMAB A/S (Appellant) vs. THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS (Respondent)

CASE NO.: (T) CMA(PT). No.134 of 2023.

[OA/01/2017/PT/CHN]

DECIDED ON: 06 March 2024

The current appeal has been filed by the appellant challenging the impugned order passed by the respondent regarding that the antibody claimed in the appellant's patent application is the discovery of a naturally existing molecules/substance, therefore the patent is ineligible under Section 3(c) of the Patents Act. The appellant contended that only the products i.e., directly isolated from nature are patent ineligible under Section 3(c), whereas any genetically modified microorganisms or nucleic acid having novelty, inventive step and industrial applicability cannot be excluded from patent eligibility. The respondent contended back that the claimed invention is in respect of antibodies which occurs in nature and therefore the claimed invention is not patent eligible under Section 3(c) of the Patents Act.

The Hon'ble Madras High Court found that the impugned order passed by the respondent under section 3(c) and lack of inventive step cannot be sustained and are overruled. The Court concluded that a synthetic version of a rarely occurring substance may not be excluded from patent eligibility, subject to meeting the non-obviousness and other patentability criteria. Hence, the Hon'ble Court directed to proceed towards granting the claimed invention on the basis of the submitted claims during written submission and by refiling the claims after renumbering.

## DESIGN CASE

1.MR. R. ARUN; 2. MR. M. DINESH; 3. M/S. ESPOIRS SOLUTIONS (Petitioners) vs.  
1. M/S.INTEGRAY HEALTH CARE PRIVATE LIMITED;  
2. Mr. Vijayakumar Irusappan; 3.Mr.Sabrinathan Irusappan; 4.The Deputy Controller of Patents & Designs (Respondent)

CASE NO.: (T) CMA(PT). No.134 of 2023.

[OA/01/2017/PT/CHN]

DECIDED ON: 06 March 2024

In the present case, the petitioner has filed an original petition under Section 19 read with Section 4 of the Designs Act, 2000, to cancel the registration of the first

respondent which was granted by the fourth respondent. The petitioner submitted that, originally the Design office was only in Kolkata but presently it is in Chennai as well, and both the petitioner and the respondent are in Chennai, so it would be improper and unfair to direct petitioner to go to Kolkata for cancellation of the Design in the present case. The respondent submitted that the Court cannot act as a Controller and decide on cancellation of registration of the Design, therefore the original petition should be dismissed as not being maintainable.

The Hon'ble Madras High Court observed and stated that the original petition filed before this Court is not maintainable and that the petitioner has to approach the Controller having jurisdiction and canvass all its objections there. The Hon'ble Court dismissed the Original petition, granting liberty to the petitioner to move the jurisdictional Controller.

## TRADEMARK CASES

### YAHOO INC. (Plaintiff) Vs OMKAR COTTAGE INDUSTRIES (Defendant)

CASE NO. - CS(COMM) 909/2022 & I.A. No. 7654/2024

DECIDED ON - October 23, 2024

Defendant's mark	Plaintiff's mark
	

The present suit has been filed seeking permanent

injunction against the defendant for using the trademark "YAAHOO! Mouth Freshner". The plaintiff has used the trademark "YAHOO!" continuously since 1994 and has also been recognized as a well-known mark by the Hon'ble Court. The 'YAHOO!' trademarks have been used by the plaintiff in connection with a wide variety of goods and services. The defendant claimed that they had been using the mark "YAAHOO! Mouth Freshner" for their mouth freshener product for the last 9 years. The Hon'ble Delhi High Court noted that the plaintiff's trademarks have been used by the defendant in a deceptively similar manner. The use of the "YAAHOO!" trademark by the defendant is a violation of the plaintiff's exclusive rights on their trademark. By doing so, the defendant is piggy back riding on the

goodwill and reputation of the plaintiff. The defendant's dishonesty and mala fide intention are shown by the fact that it has used the infringing trademark even after the Trademark Registry rejected its trademark application for it. Thus, suit is decreed in favour of the plaintiff.

#### **M/S ABBOTT GMBH (Appellant) vs REGISTRAR OF TRADEMARKS & ANR (Respondents)**

CASE NO. - C.A.(COMM.IPD-TM) 9/2023

DECIDED ON - October 22, 2024

In the present suit the appellant the proprietor of the trademark "BRUFEN," opposed the registration of the mark "MEBUFEN" by the respondent No. 2, asserting potential confusion because of the similarities between the two marks. The Registrar of Trademarks denied appellant opposition, leading to this appeal. Appellant argued that "MEBUFEN" and "BRUFEN" are deceptively similar and may confuse consumers, as both marks relate to pain relief products containing *ibuprofen*. Respondent No. 2 countered that "BRUFEN" and "MEBUFEN" differ structurally, visually, and phonetically, sharing only the suffix "FEN," which derives from "*ibuprofen*" and is commonly used in pharmaceutical trademarks. The Hon'ble Delhi High Court found no structural or phonetic similarity between "BRUFEN" and "MEBUFEN," noting the distinct prefixes "BRU" and "MEBU." The Hon'ble Court concluded there was no likelihood of confusion and dismissed the appeal, upholding the Registrar's order.

#### **DHARMA PRODUCTION PRIVATE LIMITED (Appellant) Vs BHALLARAM CHOUDHARY (Respondent)**

CASE NO. - D.B. Civil Misc. Appeal No.2784/2024

DECIDED ON - October 10, 2024

In the present case, the appellant filed an appeal against the order dated October 8, 2024, where an *ad interim injunction* was issued against appellant, preventing the release of their film "Jigra" in response to a trademark infringement claim by the respondent, who alleged violation of his registered trademark rights related to education and entertainment. The appellant contended that they had obtained trademark registration for "Jigra" and argued that naming a movie does not constitute a trademark violation since they are not trading in goods or services under that name. On the contrary, the respondent

maintained that his trademark rights would be infringed if the film were released, as it could adversely affect his business interests.

The Hon'ble Jodhpur High Court observed that *prima facie*, the name "Jigra" does not infringe upon the respondent's trademark rights, emphasizing that Dharma Production is not engaged in any trade associated with that name. It was noted that any potential violation could be remedied through monetary compensation if necessary. Consequently, the Hon'ble court stayed the operation of the injunction order until the next hearing.

#### **MASTER ENTERPRISES PVT LTD. (Petitioner) vs JAY KAY COIR FOAM PVT LTD (Defendant)**

CASE NO. - CS(COMM) 698/2023

DECIDED ON - October 08, 2024

The plaintiff filed a suit against the defendants for permanent injunction against trademarks and copyright infringement. The plaintiff sought protection against the defendants' use of the mark 'POWRNYM', which it argued was confusingly similar to its registered trademarks 'NIMYLE' and 'JOR-POWR'. The plaintiff argued that it had acquired exclusive rights to the trademarks 'NIMYLE' and 'JOR-POWR' through several agreements and had invested significantly in promoting these marks. It contended that the defendants' use of the mark 'POWRNYM' constituted confusion among consumers.

The Hon'ble Delhi High Court observed that the plaintiff had established a *prima facie* case for an *ex-parte ad interim injunction*. The Hon'ble Court noted that the defendants had knowingly adopted the mark 'POWRNYM' after assigning their rights in the 'NIMYLE' and 'JOR-POWR' trademarks to the plaintiff. The Hon'ble Court emphasized that allowing the defendants to continue using the impugned mark would likely cause irreparable harm to the plaintiff and create confusion in the minds of consumers.

#### **KOTESHWAR CHEMFOOD INDUSTRIES PVT. LTD. (Petitioner) Vs SACHDEVA AND SONS INDUSTRIES PVT. LTD. AND ANR. (Respondents)**

CASE NO.- C.O. (COMM.IPD-TM) 375/2021

DECIDED ON - September 17, 2024

The present petition was filed by the petitioner against respondent no.1 seeking the rectification/cancellation of the trademark "PRIME". The petitioner claims that the

trademark is deceptively similar to their trademark "PRIME," which they have used for iodized salt. The petitioner contended that he has been using the trademark "PRIME" since 1995 and has built significant goodwill and the registration of respondent no.1's mark is invalid. The Hon'ble Delhi High Court noted that respondent no.1 failed to appear in court despite being aware of the proceedings. The mark "PRIME" creates a likelihood of confusion among consumers due to the similarity and the overlapping nature of goods. The Hon'ble Court emphasized that a layperson's perception of the marks is critical in assessing similarity and potential confusion. Thus, the Hon'ble Court ordered the rectification of respondent no.1's trademark registration for "PRIME" to delete any registration pertaining to salt and spices.

#### MERRYVALE LIMITED (Plaintiff) v JOHN DOE AND ORS (Defendants)

CASE NO. - CS(COMM) 678/2024

DECIDED ON - August 12, 2024

In the present suit, the plaintiff filed a suit against the defendants for using the mark 'BETWAY' without permission. The plaintiff sought to restrain the defendants from using the mark, alleging that they misrepresent themselves as associated with the plaintiff to deceive consumers. The plaintiff argued their extensive global presence and marketing efforts, highlighting the registration of the 'BETWAY' trademark and the emergence of websites misleadingly claiming to be successors of the plaintiff. The defendants, however, contended that their use of the mark was permissible.

The Hon'ble Delhi High Court observed that the defendants' use of the 'BETWAY' trademark was likely to cause confusion among consumers, posing a risk of irreparable harm. Thus, the Hon'ble Court issued an *ex parte interim injunction*, restraining the defendants from using the 'BETWAY' mark or any similar variations, ruling in favor of the plaintiff.

#### HIMALAYA WELLNESS COMPANY & ORS. (Plaintiffs) Vs WIPRO ENTERPRISES PRIVATE LIMITED (Defendant)

CASE NO. - CS(COMM) 118/2023 & I.A. 4329/2023

(O-XXVI R-4, 9 & 10 of (CPC), I.A. 4330/2023

(O-XI R-1(6) of CC Act)

DECIDED ON - July 12, 2023

In the present suit, the plaintiffs, renowned manufacturers of ayurvedic products since 1930, filed suit against the

defendant for permanent injunction, alleging infringement of their registered trademark 'EVECARE'. They claimed the defendant's similar mark, used for feminine hygiene products, causes confusion in the market. The plaintiffs emphasized their longstanding goodwill and extensive use of the 'EVECARE' mark in pharmaceutical preparations, contrasting it with the defendant's relatively new entry in the cosmetic sector. The defendant contended that their mark was adopted bona fide, following a trademark search indicating no conflicts.

The Hon'ble Delhi High Court observed a prima facie case of passing off in favor of the plaintiffs, highlighting the significant market presence and prior use of plaintiffs product compared to the defendant's recent launch. The Hon'ble Court restrained the defendant and all associated parties from using the mark 'EVECARE' or any deceptively similar marks, thus ruling in favor of the plaintiffs.

## COPYRIGHT CASES

#### SAGA MUSIC PRIVATE LIMITED (Plaintiff) vs KARMA ENTERTAINMENT (Defendant)

CASE NO.- CS(COMM) 174/2022 & I.A. 4429/2022

DECIDED ON - October 01, 2024

The plaintiff filed a suit against the defendant. The defendant signed two Content Assignment Agreements, assigning all rights, including copyright, of two sound recordings, "*Black Suit*" and "*Suit Lahore Da*," to the plaintiff for a consideration of Rs. 24,50,000 and Rs. 16,50,000, respectively. The plaintiff paid Rs. 25,76,000 royalties in advance, but the defendant failed to deliver the content, breaching the agreement. The plaintiff claimed ownership of the sound recordings due to the Assignment Agreements, asserting copyright infringement by the defendant's failure to deliver. Despite reminders, the defendant neither delivered the content nor contested the suit in court. The Hon'ble Delhi High Court ruled in favor of the plaintiff, affirming their copyright ownership and issuing a permanent injunction against the defendant to prevent copyright infringement. The court also ordered the defendant to refund the advance payment of Rs. 25,76,000 with 12% interest and awarded Rs. 3,00,000 in costs to the plaintiff.

**R. C. PLASTO TANKS AND PIPES PVT. LTD.**  
(Appellant) vs **GANESH GOURI INDUSTRIES & ANR** (Respondents)

CASE NO. - RFA(OS)(IPD) 1/2023, CM Nos.39/2023, 40/2023 & 42/2023

DECIDED ON – August 05, 2024

The appellant, a company dealing in water storage tanks under the “**Plasto**” trademark, sought removal of the respondent's copyright registration for a label titled “

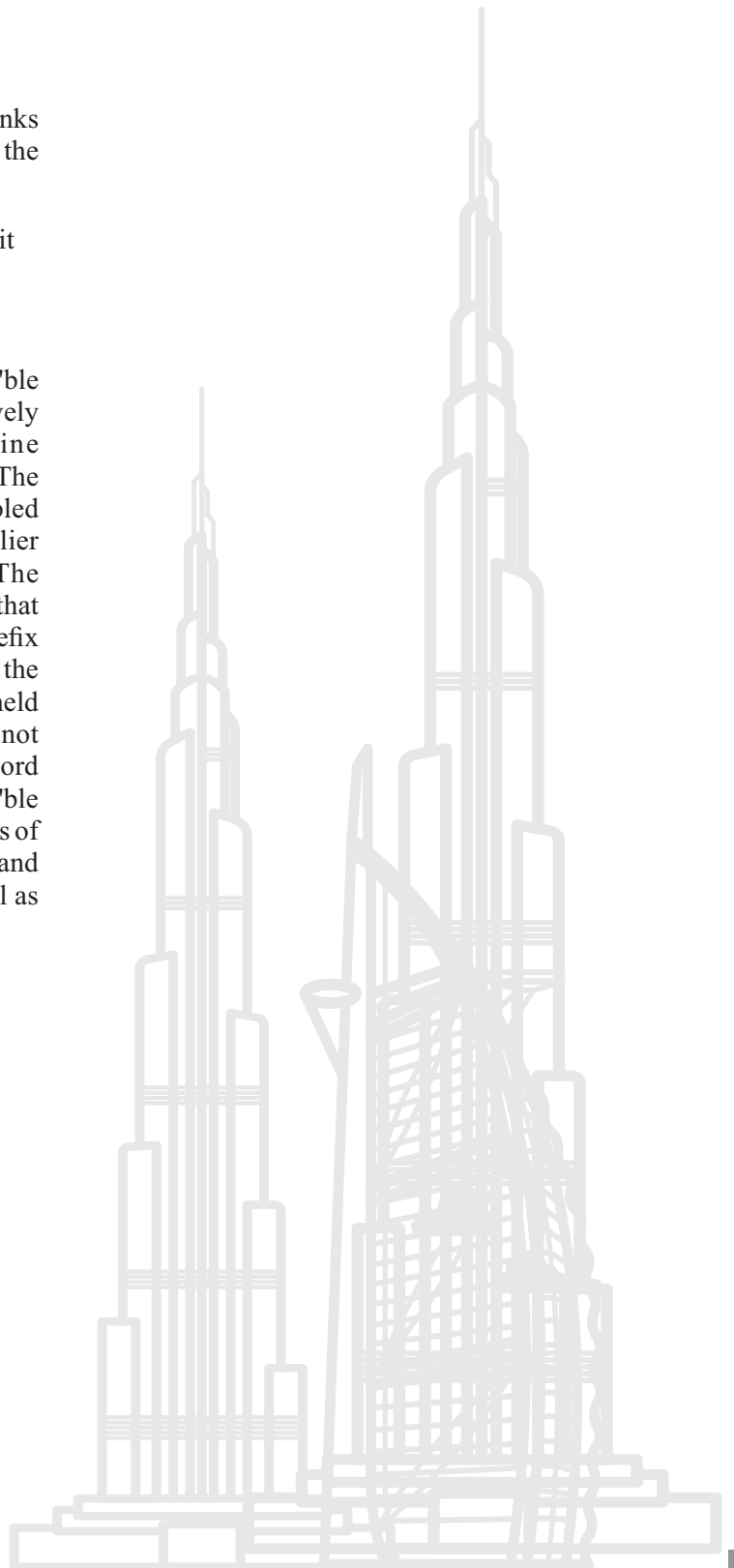


”/ “**Gauri Aqua Plast**” arguing that it was deceptively similar to its own “



“label. The respondent, also in the

water tank business, had previously agreed in a Hon'ble Nagpur Court settlement not to use marks deceptively similar to “**Plasto**” or the appellant's Tagline “**PLASTO HAI TOH GUARANTEE HAI.**” The appellant argued that the respondent's label resembled their own in design and color, violating the earlier settlement and infringing on their copyright. The respondent countered that the labels were distinct and that their label's elements, such as the ‘**Aqua Plast**’ prefix and unique graphical features, differentiated it from the appellant's label. The Hon'ble Delhi High Court upheld the prior decision, finding that the labels were not identical, with the only common element being the word “**PLAST,**” which is derived from “plastic.” The Hon'ble Court ruled that the Copyright Act protects expressions of ideas, not generic elements like color or shape, and dismissed the appeal, affirming the respondent's label as sufficiently distinct.





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