

## SPORTS AND INTELLECTUAL PROPERTY RIGHTS – AN OVERVIEW ON THE INDIAN STANDARDS

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### **Introduction:**

People are drawn into sports activities since time immemorial and from passion it has evolved into a global industry with unlimited trade opportunities. Sports have created communities of players and fans alike and it is also an economic engine that provide jobs around the world. The sports industry being a massive sector across the world has helped to bring various cultures and economies together in the past century. The sports industry has a growing impact on the world economy, creating jobs, investing in public infrastructure and mobilizing resources. Money has acquired an enormous role in all sporting events as corporatization of sports made sporting events no more sporting events worldwide. The scope of Intellectual Property Rights is of immense importance in the sporting arena. Intellectual Property Rights vests in almost every component of the sports industry. Sports are showing Intellectual Property in action and the Intellectual Property in turn powers the business of sports.

World Intellectual Property Organization (WIPO), a Geneva based specialized agency of the United Nations promotes innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective Intellectual Property system. Intellectual Property Rights are usually associated with manufacturing industry and the main aim of Intellectual Property is to protect the mercantile community. Apart from easing the way for protection of Intellectual property such as patents, copyrights, trademarks, designs around the world, WIPO works to ensure that the benefit of the sports industry are spread wide and deep. Intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, designs<sup>1</sup>. Intellectual Property Rights such as copyrights, trademarks, and designs became a source of significant value to the sporting arena. Sporting gears, may be the subject of patent, design, copyright and

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<sup>1</sup> <https://sportandrecreation.nsw.gov.au/clubs/ryc/legal/intellectualproperty>.

trade mark rights. The technology used in a swim wear is inventive in nature and therefore can be registered as a patent, the logo printed on the swim wear can be a registered trade mark, the designer can get copyright and the physical design can be registered as an industrial design. These registrations help to protect the value of the unique design and marketing capabilities associated with the sporting gear.<sup>2</sup> Another example is a simple sports shoe which could be protected by several IP rights: patents protect the technology used to develop the shoe and designs protect the look of the shoe and trademarks distinguish the shoe from similar products and protect the reputation of the shoe and the copyright protects any artwork and audiovisual creations used to publicize the shoe.<sup>3</sup> Also Intellectual Property Rights are associated with many other aspects of sporting business, such as event promotions, athletes, sponsorship deals and merchandising.

Intellectual Property Rights are used as marketing tools towards the branding of sporting games, sponsorship, teams, celebrity status, broadcasting and media deals 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.<sup>4</sup> Intellectual Property promotes the growth of the sports industry and enables sporting organizations to finance sporting events and assists in the development of the sports.

In this era of globalization, protection of intellectual property rights is of utmost importance and there are different national legislations as well as international laws and treaties, which governs Intellectual Property Rights. Through this article, the author tries to examine the current state of affairs in India and how are the specific rights being guaranteed in Indian sports industry.

### **Intellectual Property Protection and sports in India:**

Sport is going to be the next big industry in India and certain sports are getting an unimaginable mileage over others due to the commercialization and investment interest. The growth of the sports industry opened up opportunities for broadcasting, sponsorship etc. and the field of branding and exploitation of branding could destroy the existing opportunities. As the Indian economy accelerates and India enhances its participation in the global sport arena there are

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<sup>2</sup> [http://www.jamaicaobserver.com/business/Sports-and-intellectual-property\\_8715018](http://www.jamaicaobserver.com/business/Sports-and-intellectual-property_8715018).

<sup>3</sup> <http://www.wipo.int/ip-sport/en/>.

<sup>4</sup> <http://www.mondaq.com/india/x/164974/Trademark/Intellectual+Property+Rights+In+SportsIndian+Perspective>.

several Intellectual Property issues to be addressed involving trademarks, broadcasting rights, sponsorship issues, licensing issues etc. In India the government tried to streamline the sports industry by keeping every parties interest in mind including teams, sponsors and the public at large by introducing the sports bill,2011 which was rejected by the cabinet. In early 2016, a new bill known as the **National Sports Ethics Commission Bill ,2016** was introduced in the parliament which aims to bring about legislative reform to help improve the integrity of sports in India which if becomes a reality will be able to control the management of sports to some extent.

The Formula One Race which was successfully organized in India has shown the commercial interest in the corporate world with respect to branding and event management. The organization and smooth execution of a race of such international standard in India for the very first time has brought the nation into a select league, putting further focus on the sports laws and the intellectual property rights, which can be used to create branding, leading to immense value generation.

Cricket is synonymous to sports in India in olden days and it has now transitioned into a commercial game attracting huge capital investments and profits. The initiatives on T20- 20 format and Indian Premier League, Hockey India League, Indian Badminton League, Pro-Kabaddi, Indian Super League and heritage sports such as Goti, Lagori, Gatta Gusthi have proudly announced that it is the commerce, which is now on the forefront of the game and along with this transition the need for Intellectual Property rights protection in sporting events is gaining importance.<sup>5</sup>

In a legal perspective, the intellectual properties in the form of copyrights, trademarks, industrial designs, and patents have acquired immense value for protection due to commercialization and exploitation of commercial aspects of sportsmen and sporting events.

**Copyright in sports** is protected in India under the provisions of the Copyright Act, 1957, vests in various components of sporting events which includes the artwork connected to the trademarks, logos, promotions, slogans, images of a player, event etc. Advancement in communication technologies such as satellites, cable, broadband, and mobile internet have revolutionized broadcast and sports coverage and in turn enabled people around the world to take part in the excitement of major sports events.

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<sup>5</sup> <http://www.legalservicesindia.com/article/article/sports-and-ipr-2109-1.html>

Copyrights along with neighboring rights provides protection against unauthorized broadcasts and underpin the relationship between sports and television media. For the exclusive right to broadcast sporting events live, the media organizations pay huge sum of money.

There is absolutely no reason why residents of one or two parts of the world should be required to pay to watch what most of the world can see for free, particularly when those areas are characterized by great disparities of wealth within the population.<sup>6</sup>

India has signed Berne Convention of 1906 for the Protection of Literary and Artistic Works and the International Copyright Order, 1999. Though the fact that the registration of copyright is not mandatory in India and is comparatively easy to protect under the Indian laws, it is advisable to register the copyright in India as the copyright registration certificate is accepted as a proof of ownership of copyrights in courts and by enforcement authorities.

The copyright law in India provides for civil remedies in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings etc. and also makes an instance of infringement of copyright, which is a cognizable offence punished with a term which shall not be less than six months but may extend to three years with a fine which shall not be less than INR 50,000 but may extend to INR 200,000. The Copyright Act in India gives power to the police to register the First Information Report (FIR) and to act on its own to arrest the accused and to search the premises of the accused and seize the infringing material without any court's intervention.

**Trademarks in sports** is protected in India under the provisions of Trademarks Act, 1999 with the presence of features like a logo, captions, taglines, slogans and team names etc. that which are collectively referred as trademarks and that holds commercial value as it creates a level of association with public and fan following and that which is essential for brand value creation in sports teams, clubs, sponsors, athletes.

A trademark or service mark is a distinctive sign or symbol that uniquely identifies the source of products or services. World Intellectual Property Organization (WIPO's) international trademark registration system called Madrid System, enables trademark holders to file a single application for registration in up to 85 countries and to maintain and renew those marks through a single procedure. By an entry on a national trademark register, trademarks are protected and once it is registered, they are valid potentially for unlimited time as long as they are used.

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<sup>6</sup> <http://www.shiac.com/files/arablexportiva-presentations/004003.pdf>

Symbols and Team names (Deccan Chargers, Chennai super kings) create a level of association with the public and fan followers and helps the popularity ratings of any given team, club, and players. As sports have developed into a global business, so too has the significance of athletes' image rights.<sup>7</sup> Due to the celebrity status even the name of the players (Sachin Tendulkar, Dhoni) has acquired the status of trademarks. Businesses link their products and images with celebrities and supports sporting events. Celebrity athletes have **personality rights** also known as **the right of publicity** which prevents unauthorized use of their name and other personal attributes. The brand image and popularity converts into monetary profits through advertisements, brand ambassadors, goodwill and reputation of sponsors.

In India, personality rights are per se not recognized. They are generally invoked through right to privacy guaranteed by the Article 21 of the Indian Constitution or through right to publicity inferred from article 19 of the Indian Constitution. Personality rights are either protected as right to privacy or they can be protected as the property of a persona.<sup>8</sup>

For protecting their trademarks in Indian courts it is desirable that the organizers, team owners and sports gear manufacturers must opt for registration of their team names, logos, venues, captions, taglines and slogans as trademarks under the Indian Trademarks Act, 1999. Also there should be an initiative on the part of the players to register their names, photographs and caricatures as trademarks. If without the consent or license of the respective owners of trademarks, a third party unauthorizedly uses trademark which results in damage to the goodwill and reputation of the stakeholders and also it amounts to dilution of goodwill and reputation, unfair trade practice, unfair competition.

The Indian Trade Marks Act, 1999 provides both civil and criminal remedies and which are simultaneously available against infringement and passing off action. In India Registration of trademarks are not mandatory, people who seeks protection can enforce their rights in the court of law and interestingly violation of a trademark is a cognizable offence in India and therefore criminal proceedings can be initiated against the accused. This kind of enforcement mechanisms are expected to boost the protection of trademarks and to reduce infringement in trademarks in India.

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<sup>7</sup> [http://iipi.org/wp-content/uploads/2010/07/Sporting\\_Events\\_and\\_Intellectual\\_Property.pdf](http://iipi.org/wp-content/uploads/2010/07/Sporting_Events_and_Intellectual_Property.pdf)

<sup>8</sup> <http://www.mondaq.com/india/x/345080/Personality+Rights+Need+For+A+Clear+Legislaton>

**Domain names in sports** which are also treated as trademarks by Indian courts plays a substantial role in protection of intellectual property rights associated with sports. Domain names builds brand image, portability and search engine optimization. WIPO, among others, operates a quick dispute resolution procedure for website domain names based on internationally-accepted rules. <sup>9</sup>

As we know that the internet is a cost effective method to reach out to the public and it creates awareness about sports events, players etc. the sponsor companies conduct online competitions, online shopping portals, online ticket sales in an effort to reach out to the public. The websites became a great source of advertising as well as brand building. Events broadcasted through internet including online games related to sporting events have not only acquired an immense market share in branding and value creation but it gives an opportunity to cyber squatters to take the benefit of the confusion which is attributable solely to domain names.

It is necessary to register domain names with various permutations and combinations in order to escape from cyber squatters so that sports fans, online information seekers are protected from committing mistakes. Registering domain names with popular gTLDs i.e. .com .net .org .biz .info, .asia, .name, .in, .co.in, etc. Could promote and protect against brand abuse and trademark dilution, and Registering low-cost ccTLDs such as .at .be .cc .eu .ch .co.uk .dk .it .nl .ru .tv .us .ws should be mandatorily resorted to. Another guiding principle for domain name registrations include registering multiple variations of trademarks and slogans, including common & silly spelling mistakes.<sup>10</sup>

**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. <sup>11</sup>

The controversy between Pepsi and Coca Cola in *Pepsi Co., Inc. and Others. vs Hindustan Coca Cola Ltd. and Another.* [2003 (27) PTC 305 Del], is a classic example of ambush marketing in India where in the court issued a permanent injunction to the defendant by restraining its advertisements being broadcasted.

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<sup>9</sup> <http://www.wipo.int/ip-sport/en/branding.html>

<sup>10</sup> Supra 5

<sup>11</sup> <http://blog.ip.com/2012/02/intellectual-property-rights-in-sports/>

The creativity of these ambushers makes it necessary to adopt specific national legislation in order to prevent ambush marketing and also to implement strategies to counter the threat of ambush campaigns by securing trademarks, copyright registrations for all images, logos in sports events by entering into contractual obligations with explicit terms and conditions for the use of these Intellectual property rights. Many countries have already considered specific ambush marketing legislations as sporting events are becoming more and more lucrative business.

**Licenses and sponsorship in sports** play a very important role in sports industry. By acquiring intellectual property rights and then using them strategically, sports organizations and other rights owners can protect and increase their income-generating potential. Exclusivity is the key factor in sales generation and brand building. In light of counterfeit product markets, it is important to ensure that all intellectual property rights involved are adequately protected under relevant agreements.

**Trade Secrets**, in India there is no separate statute for protection of trade secrets and in sports industry there is always possibility of some information which requires confidentiality to be maintained. Trade secrets encompass manufacturing or industrial secrets and commercial secrets, formula, practice, process, design, instrument, pattern, commercial method, or compilation of information which is not generally known or reasonably ascertainable by other.<sup>12</sup>

Indian courts are protecting trade secrets on the basis of principles of equity, common law action of breach of confidence which amounts to a breach of contractual obligation.

Designs in the world of sport is far-reaching. In most countries industrial designs must be registered in order to be protected under industrial design law. However, protection is given only in the country where the design is registered. Where image and aesthetics are involved, so too is design, and where new materials emerge, aesthetics or design soon follow. Registration of a design does not discuss on how it works rather it gives the owner protection for the visual appearance of the product and to be registered, a design must be new or original. Examples include bicycles, football boots, cricket bat, merchandise etc.

Conclusion:

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<sup>12</sup> <http://www.mondaq.com/india/x/456442/Trademark/Intellectual+Property+Rights+IPR+For+Startups>

Intellectual Property protection in events like Trademark, Copyright, Design, Licensing etc. are inevitable as sports industry is commercialized. Intellectual Property Rights along with the legal protection helps to secure the economic value of sports.

Good management of intellectual property in return maximize economic returns. This has been rightly pointed out by Prof. De Werra in his book Sports and Intellectual Property, “If intellectual property has something to learn from the sports industry, it can conversely be considered that the sports industry may have something to gain from the assimilation of the key values of IP law.”

The author feels that India needs sports law experts so as to promote ethical practices in sports industry. It is indeed need of the hour that the owners invest resources in registration, proper licenses and contracts in order to protect the value the sports and sporting assets as well as, actively protecting intellectual property from infringement and abuse. It is recommended that the legal contractual agreements must be in place protecting all forms of intellectual property created in sporting events, teams, individual players etc., so as to protect all the stake holders and their financial interests. India should frame a legislation for personality rights and also try to build a successful sponsorship program so as to protect the image and status of celebrities of our country like other countries of the world.

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 use of domain names; which could address 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.

It is also recommended to adopt alternative dispute resolution techniques for enforcement of rights involving sports disputes. As a developing country and having a serious intent to attract and sustain investments, India needs to enact a law to protect confidential information particularly in sports industry so to act as an adequate deterrent for prospective offenders.

In spite of all the obstacles, government of India must try to pass the National Sports Ethics Commission Bill, 2016, which promises to improve the integrity of sports in India.

Protecting and enforcing Intellectual property in sports industry is an essential component so as to ensure that sporting events remain a possible financial actuality in India.