



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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The Role of IPR in Sports

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Received 18 February 2022; Accepted 07 March 2022; Published 10 March 2022

The world of sport offers enormous economic prospects, and IPR is at the core of those opportunities. IP rights (particularly patents, trademarks, and broadcasting rights) and the legal protection they provide aid, in securing sport's economic worth. This, in turn, supports the sports industry's growth, enables athletic organisations to fund high-profile sporting events, and offers resources for sports development. IP rights underpin all business activities, including sponsorship, retailing, broadcasting, and media partnerships. The sports business is having an increasingly positive influence on the global economy, as it creates employment, invests in public infrastructure, and mobilizes resources.¹ Nowadays, the world's famous sports stadium bears the names of their sponsors that include team logos and team names and brands. This is possible because of the International Trademark Registering System which is headed by the World Intellectual Property Organisation (WIPO). This system is also known as the Madrid System.²

Keywords: IPR, sports, ambush marketing, commercialisation.

¹ 'Sports and Intellectual Property' (WIPO) <[https://www.wipo.int/ip-sport/en/#:~:text=Sport%20shows%20intellectual%20property%20\(IP,events%2C%20teams%20and%20their%20gear](https://www.wipo.int/ip-sport/en/#:~:text=Sport%20shows%20intellectual%20property%20(IP,events%2C%20teams%20and%20their%20gear)> accessed 07 February 2022

² 'IP and Sports-Background Brief' (WIPO) <https://www.wipo.int/pressroom/en/briefs/ip_sports.html> accessed 07 February 2022

INTRODUCTION

Intellectual Property Rights (hereinafter IPR) provides the owner with the exclusive rights to use and exploit his/her product not allowing the third party to use them and hence reducing the competition. On the other hand, sports are generally regarded as a recreational activity which is now turned into a full-time business over the past decade or so, especially because of the advent of the Indian Premier League (IPL) and Indian Super League (ISL). Every day, there is something new coming up in the sports industry be it the clothes or the licenses and it becomes important for the owners or creators to get the IPR to get a first-mover advantage. Despite this fact, Sports Law is not a popular codified law in India. Although we have the National Sports Policy of 1984 and 2001 it is partially legal. And currently, the Ministry of Youth Affairs and Sports of India governs sports according to a code of conduct and not any law. The code is "National Sports Development Code of India". Talking about the organisation hierarchy of sports organisations internationally with respect to India, here goes the list of them:

- International Olympics Association
- Court of Arbitration for Sports(CAS)
- National Olympics Association
- Ministry of Youth Affairs and Sports
- Sports Authority of India
- National Sports Federation
- National Anti-Doping Agency

These bodies are special and independent hence, they enjoy autonomy but are also covered under writ jurisdiction and Right to Information Act, 2005. Having said that, the other aspects of law get intermingled in sports and help to regulate even better. For instance:

- Contract - Relation between Authorities and Players.
- Media - Broadcasting and Advertising.
- Competition

- Drug Abuse and Anti-Doping
- Employment Laws - For Players and Crew Members
- Intellectual Property Laws- Logos and Names of the teams
- Public Procurement Laws- Contract with Players given in the public domain.

According to different nations, there are various sports regulating agencies. In the USA, sports laws are governed by independent authorities and not by any ministry. In the UK, a government body named UK sports is responsible for governing the sport's laws. In the EU, Directorate-General for Education and Culture is the governing authority. For international games, WADA- World Anti-Doping Agency regulates the rules related to the drugs to be used and not used by the players.

RELATING IPR AND SPORTS LAW

Trademarks: Trademarks are extremely important in the sports sector. With the emergence of sports event branding, components such as a logo, captions, taglines, slogans, and team names are used to create brand value in athletic teams, organisations, players, and goods (together referred to as trademarks). By developing a degree of association with the public and fan base, team names and symbols boost a team's, clubs', or players' popularity ratings. Even the players' names have become trademarks as a result of their celebrity. This popularity and brand image is eventually translated into a monetary gain through advertisements, brand ambassadors, the sponsors' goodwill and reputation, and other ways. Essentially, Trademark allows for takeover or sui generis regimes in sports, i.e. absolute marketing rights.³

Personality rights in sports have been shown to play an important role in the branding of both individual athletes and teams. Celebrity status encourages the formation of various forms of images, brand advertising, and money generation. Federations, coordinators, team owners, and sports equipment manufacturers must opt to get their team names, logos, settings,

³ Ayushi Pandey, 'Sports Law under the ambit of IPR in India' (*Mondaq*, 4 December 2021) <<https://www.mondaq.com/india/trademark/1138074/sports-law-under-the-ambit-of-ipr-in-india?type=mondaqai&score=76>> accessed February 08 2022

subtitles, slogans, and mottos registered as trade names under the Indian Trademarks Act 1999⁴, which will make safeguarding their trade names in Indian courts much easier.⁵

Copyrights: In sports, copyright can be found in a number of areas, such as artwork linked with logos and trademarks, promotions, slogans, images of players or events, and so on, all of which are protected in India under the Copyright Act, 1957⁶. Although copyright registration is not required in India and international copyrights are protected because India is a signatory to the Berne Convention of 1906⁷ for the Protection of Literary and Artistic Works and the International Copyright Order, 1999, it is advisable to register copyright in India because the copyright registration certificate is accepted as "proof of ownership" in courts and by police authorities, and is acted upon smoothly.⁸

Commercialisation and Brand Licensing: Commercialization and brand licensing have become one of the most lucrative trends among sports clubs. Sports teams provide a variety of items, such as hats, shoes, t-shirts, and sports equipment that are quite popular among the general public. The logos of numerous firms are emblazoned on the t-shirts of the athletes. By licensing their work to a third party, such groups participate in merchandising operations. The parties enter into license agreements with numerous provisions setting terms and conditions.⁹

Patents: Innovative patent-protected technology is currently driving the sports sector to new heights. From the practice field to the sports stadium, and all the way to our living rooms, these advancements are transforming the sporting experience. The possibilities for sports equipment incorporating sensors and communication technology are currently limitless.

⁴ Trademark Act, 1999

⁵ Shivani Singh, 'Role of Intellectual Property Rights Law in Sports Sector' (*Ipleaders*, 17 October 2020) <https://blog.ipleaders.in/role-intellectual-property-rights-law-sports-sector/#Ambush_marketing> accessed 14 February 2022

⁶ Copyright Act, 1957

⁷ Berne Convention, 1906

⁸ *Ibid*

⁹ Akriti Thakur & Shilpi Sharan, 'IP on the field' (*Mondaq*, 9 February 2016)

<<https://www.mondaq.com/india/trademark/464762/ip-on-the-field?type=mondaqai&score=65>> accessed 09 February 2022

Athletes and trainers of all levels may use these smart inventions to assess their performance and find areas where they can improve.¹⁰

Industrial Designs: Industrial Designs have a broad influence on the sports business since they contribute to the distinctive character of sports teams and their equipment. By making a sports product or event more appealing and marketable, designs play an important role in increasing its economic worth. The Industrial Design Protection Act (IDPA) protects the expenditures made in new sports-related designs.¹¹

IPR INFRINGEMENT IN SPORTS ARENA

IP conflicts arise as a result of a variety of infringements or unlawful uses of IP. With the increased commercial exploration of IPR in sports, various legal issues that can arise in the sports industry include trademark infringement (the illegal use of trademark protect substances), brand abuse (faking, imitating, and misleading customers to an already established brand), misbranding, misuse in bad faith, using a sports personality's name without permission or without paying any license fee or royalty; copyright infringement with regard to copyrighted merchandise, sports equipment, artwork in logos, broadcasting without a license, piracy in audiovisual recording; and copyright infringement with regard to copyrighted merchandise, sports equipment, artwork in logo, the use of patented technology without the permission of the patent owner. These difficulties can result in reputational harm (defamation), unfair trade practises (black marketing, hoarding), unfair competition, and commercial disputes, all of which can result in significant business losses, defeating the primary goal of studying the commercial aspects of the sports sector.¹²

¹⁰ 'Role of Intellectual Property in Sports' (KIPG) <<https://www.kashishworld.com/blog/role-of-intellectual-property-in-sports/>> accessed 15 February 2022

¹¹ *Ibid*

¹² Singh & Associates, 'Role of IPR in Sports' (Mondaq, 22 May 2019)

<<https://www.mondaq.com/india/sport/808132/role-of-ipr-in-sports>> accessed 08 February 2022

AMBUSH MARKETING

Ambush marketing is a marketing tactic in which firms try to take advantage of the benefits that come with becoming official sponsors of a sporting event. The Ambusher promotes its product brand by linking it to athletes, teams, tournaments, and events, all without having to pay for the privileges. Despite the fact that the Ambusher is not an official sponsor of the athletic event, it nonetheless spends money on advertising. Apart from fighting the plan in order to avoid ambush tactics, it is necessary to safeguard the IP owners' trademarks and copyrights by registering all marks, brands, logos, and other items involved with the athletic event.¹³

The Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal & Anr. This incident occurred in 1993 when the "Cricket Association of Bengal" held an international ODI cricket competition to commemorate its "diamond jubilee." The bidding for the ODI's telecasting rights was called off, with Doordarshan submitting the lowest bid. The CAB rejected Doordarshan's bid and instead awarded the telecasting rights to the commercial business "Trans World International," which had submitted the highest bid. The CAB was then sued by Doordarshan in the Supreme Court. The CAB had the right to enter into a contract agreement selling broadcasting rights to private news channels, according to the Supreme Court, but it was important to note that the airwaves and the frequencies used for broadcasting are public property and thus cannot be monopolized by commercial companies. The Supreme Court of India had instructed the Indian government to ensure that the regulations for telecasting such competitions on air frequencies are in the public interest.

REGISTRATIONS UNDER VARIOUS IP HEADS

Rudolf Lettner patented the "steel edge ski" in 1926, and today there are a variety of sports equipment and manoeuvres that have the seal of approval from national and international IP offices. For example, Usain Bolt's "Lightning Bolt" and his motto "to di world" are registered trademarks, while Michael Jordan's "Jumpman posture" is a trademark. Unauthorized use of

¹³ Trademark Act, 1999

these marks or phrases might be considered trademark infringement. Sporting events such as FIFA, the Olympics, the World Cup, and the Indian Premier League (IPL) have been a hotbed of IP commercialization and valuation in recent years.¹⁴ A trademark search indicates that Kolkata Knight Riders have submitted around 650 trademark applications, whereas Chennai Super Kings (India Cements Ltd.) and Mumbai Indians (India win Sports Pvt. Ltd.) have filed about 6 and 113 trademark applications, respectively.¹⁵ In 1929, George L. Pierce received the first patent (US1718305) for a ball specially constructed for "basketball," as it was then known. This ball had offered a better balance between their equatorial and polar zones, allowing for material savings and the placement of the valve on a polar zone during construction.¹⁶ The installation of an electromagnetic transmitter inside the puck, which sends electromagnetic impulses outside of the visible spectrum and allows the puck to be bigger or brighter for the television viewer, was patented in 1996 (US5564698, Stanley Honey et al).¹⁷

CONCLUSION

The government must develop strict legislation for the enforcement of IP rights in sports as soon as possible. In order to protect the value of sports and sporting assets as well as actively protect intellectual property from infringement and abuse, owners of intellectual properties in the field of sports should be aware of the importance of IP and protect it by registering, obtaining proper licenses, and making contracts. To safeguard all parties and their financial interests, the importance of legal contractual agreements must be recognised, and contracts must be put in place to protect all types of intellectual property developed in athletic events, teams, individual players, and so on.¹⁸ Providing citizens with this kind of legislation will help in increasing the economy, infrastructure, and wealth of the country which will help India grow from a developing nation to a developed nation as IPR Protection in every field has

¹⁴ Akriti Thakur & Shilpi Sharan (n 6)

¹⁵ Akriti Thakur & Shilpi Sharan (n 6)

¹⁶ Vitor Sergio Moreira, 'Worldwide: The Role of Patents in Sports' (*Mondaq*, 24 June 2019)

<<https://www.mondaq.com/patent/818194/the-role-of-patents-in-sports>> accessed 16 February 2022

¹⁷ *Ibid*

¹⁸ Ayushi Pandey (n 3)

become an international phenomenon now. It will further increase the stake of India in the UN and other global organizations.