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Influencers on Social Media Platforms and IPR

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Influencers on social media platforms practise virtual interaction by gaining a million views on their post and active users. The influencers on these platforms possess the ability to influence the choices of the public at large. Brands may often collaborate with these icons to market their goods and services to maintain a consumer base. Such collaborations also improve their relationships with the consumers and make them an ideal preference. Advertising may involve demeaning another which becomes harsh for the brand owner and leads to brand disparagement. It may harm the business and reputation of the brand. Sometimes, the influencers do not collaborate with a brand but post their experiences related to it without any contractual obligations. The article attempts to discuss the role of intellectual property, which turns out to decide on disparagement as well.

Keywords: *media, ipr, influencers.*

INTRODUCTION

Influencers on social media platforms impact many millennial and gen z groups. They're individuals with good followers on these platforms who believe their reviews more than the brand itself. A brand may market itself hugely these days because they rely on advertising their goods and services through these influencers. Both parties may unite on their terms and conditions to market the product. As the brand may reach new buyers and influencers reach more audiences, the collaboration benefits them. These techniques to grow the brand

presumably give rise to competitive advertising when their promotion techniques compare products from different brands. Sometimes, these brands start to defame another that demeans that brand, losing consumer trust and getting on brand disparagement. It's possible that influencers may not always collaborate with these brands but give their feedback. They create videos and post them on various online platforms or post a picture of the product with a description of their experiences with it. The article discusses legislation in detail to make the distinction of disparagement clear.

WHAT CONSTITUTES THE ROLE OF IP?

The owners of intellectual property creations enjoy exclusive rights against their work by defying anyone other than them to distribute, license, or reproduce their work without their prior permission. Here IP law protects these creators of original work, so the third party cannot infringe their rights or passes off through misrepresentation, bad faith, or disparagement. Copyright guards the author against any violation or exploitation of their creative work. The influencers may take prior permission from the author while using it in their posts. A trademark can be a letter logo, numeric, or combination of either of them that distinguishes one trade from another based on the goods and services. It is a significant factor that assesses how a brand reaches the consumers and the market. Sometimes, there may not be a name on the goods or services to identify the source they come from and a logo is enough to present the brand to the public at large. The owner of a trademark can take legal action against anyone that uses it in trade without authorization from the owner of that mark. It is an unlawful act against the owner. Trademark law disregards anyone who tries to take advantage of the reputation of another trader through unfair practices. For example, the owner has the legal authority to claim violation of IP rights against anyone who uses their domain names for their businesses.

SHOULD INFLUENCERS BE AWARE OF IP LAW?

Any false information can be taken down by cease and desist notices or content takedown requests available on various internet platforms. The influencers must cross-check what they

post about in depth before advertising or sharing their views on a particular product. The online platforms can also remove your account for not supplying specific information protecting your content against removal complaints. It is advised to credit the author for their original work when it's a part of the content to be shared with the public. The individuals responsible for creating content must be specifically mentioned in the hiring agreements. It provides a solid ground of protection in the formation of false liability against the innocent. Confidentiality agreements play a vital role in deciding the extent of content to be shared with individuals outside of the agreement. The contractual agreements shall be read in detail because they may also determine the author of the content. Sometimes, it happens that the person who created content is not deemed to be the author because of the clause which clarifies so¹.

Influencers may get into trouble for referring to another brand without obtaining permission from the authorized owner. The majority of platforms like Instagram, Twitter, and YouTube have content takedown policies that can be read through on their official websites. They guide the creators to enforce their rights against any sort of harm to their intellectual property. One can file for a trademark or copyright application by contacting a particular IP lawyer authorized by law which may ease the application requirements because the process could be quite tricky and long to understand. With the advent of non-fungible tokens, the market is expanding in respect of collaboration with people who can influence the public at large such as influencers to buy these intangible tokens². Non-exclusive licenses are offered for a particular period restricting the usage of work by influencers. The Licensor has the authority to send cease and desist notice to anyone who does not oblige to the rules of using the work. Therefore, influencers must be aware of various legal agreements that may help in trouble.

¹ Influencers and intellectual property' (*Patterson Thuente IP*, 5 March 2021)

<<https://www.ptslaw.com/blog/2021/03/influencers-and-intellectual-property/>> accessed 25 March 2022

² 'IP for Social Media Influencers and Content Creators' (*The Michelson Institute for Intellectual Property*, 22 June 2021) <<https://michelsonip.com/how-to-protect-your-digital-content/>> accessed 25 March 2022

IS DISPARAGEMENT A DISTINCT TERM?

Recently, In the case of *Marico Limited v Abhijeet Bhansali*³, the plaintiff is the manufacturer of well-known Parachute coconut oil which is edible oil. They have also obtained trademark registration for the same in class 29 and obtained a license under the food safety and standards act, 2006 following all regulations by them. They found a YouTube video by the channel, 'Bearded Chokra' reviewing their product 'Parachute.' The YouTube channel is owned by the defendant who reviews various products from time to time on his channel. The plaintiff sent an email of cease and desist notice to the defendant that he removes the content of his video from every platform but he refused to do it. The defendant was ready to remove any particular clips of his impugned video or remake the part that harms the plaintiff but they refused. The plaintiff filed a suit against the defendant that restrains him to publish this impugned video to the public which disparages their product and infringes upon their registered mark.

WHAT DID HAPPEN?

The plaintiff claimed that the video communicates incorrect information to the public which degrades the quality in comparison to other products when the plaintiff holds approx. 47% of shares in the market through their oil. The plaintiff also argued that the defendant intended to increase views on video by comparing their product with another factually based on one freeze test only which is not sufficient to form if their product has less nutritional value than the virgin oil. The defendant compared parachute coconut oil with PURE & SURE coconut oil which was used by him regularly when he used PARACHUTE COCONUT OIL only once. The Youtube influencer has made several comments in comparison which included inferior packaging, smells like rotten coconut, less anti-bacterial properties, not disclosing the place where the coconut used was extracted from, poor quality, and impurities in the oil.

³ *Marico Limited v Abhijeet Bhansali*, 2020, COMIP NO. 596 OF 2019

CONFLICT OF INTEREST WITH INFLUENCERS

The plaintiff contested that the defendant did not even try to express his concerns regarding their product with them instead posted a video recklessly. The defendant knew what he has presented in the video so offered to edit it which he cannot now because it's caused special damage already to the plaintiff. The acts of defendants powerfully form malicious falsehood and disparagement against the product in conflict. The defendant refused all claims by the plaintiff and disputed that he has the right to voice his opinion. He posted the video in good faith and offered to re-edit it to settle the issue claiming that he has taken no monetary support from PURE & SURE to promote the video nor defamed the plaintiff in an attempt to educate the public. He showed that he received 2500 views only on his video which is not even sufficient to reach a wider audience. The V-Blogger said that he referred to a good range of literature for his comments on comparing other oils with Parachute coconut oil.

WHAT CONSTITUTES DISPARAGEMENT?

The court observed that the defendant holds greater responsibility towards the general public than an ordinary person. Social media influencers promote a brand because of their goodwill. They're responsible for the truthfulness of statements that can mislead the public with false information. The act of slander of goods happens when the defendant causes special damage to the plaintiff's goods by publishing false and malicious words. When the plaintiff proves that someone intentionally causes damage by publishing false words maliciously, it constitutes the act of malicious falsehood. The defendant did not have sufficient knowledge to conclude the facts he presented in the video. The literature referred by the defendant did not compromise any test or quality for coconut oil. The two factors that are significant to form disparagement include the intent and manner of the commercial not considering the traffic of the audience. The fundamental right of speech and expression cannot be claimed in a dispute between two parties specifically when the defendant imparted false information against the plaintiff already. The court directed the defendant to take down the impugned video from every place and block access so it could not be published or accessed in any way.

CONCLUSION

The social media influencers must check every part and read about the product in detail before they decide to post their views online. Any fault in the information they communicate may reiterate against making them the felon of false content. It is great to see that the contractual duty is obliged carefully by the parties to the agreement. For example, a license from the owner helps another person use their work for a particular period. Intellectual property rights assist the owners and authors for their creations are not harmed by anyone without prior permission. With the advent of such protection, individuals must protect and look after their creations responsibly. Influencers must make sure that no one uses their content without their consent and give credit to them.