



Jus Corpus Law Journal

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

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

BTS and Intellectual Property: Building a Felicity Empire and Forming a Legacy

Isiri Madhukeshwar Kugore^a

^aKLE Society's Law College, Bengaluru, India

Received 17 November 2022; *Accepted* 28 November 2022; *Published* 09 December 2022

Korean boyband BTS has gained fame for breaking world records and connecting with its fans globally. BTS is an acronym for Bangtan Sonyeondan which means 'bulletproof boy scouts' in Korean. The band self-produces its music and has become a global phenomenon. This study aims to explain the importance of copyright and its impact on the music industry. To order to grow as a brand and make a name in any industry, a loyal customer/fanbase is much essential. One has to show that one cares about customers and be open to criticism and thank them for their input. Thanking the clients for their patronage is another way to grow a brand name. Offer tiny bonuses to people who have supported your brand over the years. This fidelity is mutual. For brands to employ consumers as their true advocates more successfully, they must value them.

Keywords: *intellectual property, customer loyalty, brand growth.*

INTRODUCTION

Never underestimate the reach of a teenage heartthrob, however in this case the famous Korean boyband BTS, an acronym of Bangtan Sonyeondan which means "bulletproof boy scouts" in Korean, has fans across all age groups. One can find a 10-year-old child grooving to Dynamite, a hit single, which was a delightful and welcoming change during the tedious and wearisome

pandemic, to a 70-year-old grandmother attending birthday events organized by their much devoted, one of the most intelligent, hard-working group of fans called the A.R.M.Y (Adorable Representative MC for Youth). BTS, usually connotes 'behind the scenes but the fame and widespread adoration of this boy band has made the mass ask "BTS, as in the Korean boy band or behind the scenes?". This speaks volumes as a group making people question the most commonly used acronym must have impacted the music industry and they have rightly impacted so.

Debuting in June 2013, they came to be known as "monster rookies" both domestically and internationally, capturing the hearts of millions of fans globally. The members of BTS are RM, Jin, SUGA, j-hope, Jimin, V, and Jung Kook. One of the most admirable qualities is that the septet self-produces their music and the entire music-making process is authentic. BTS has gained recognition for its top-notch performances, earned fame for breaking world records, and most importantly connected with its fans on a personal level. BTS has established itself as a "21st-century icon" breaking countless world records. While imparting a positive influence through activities such as the LOVE MYSELF campaign and the UN 'Speak Yourself' speech, the band has mobilized millions of fans across the world, collected four No. 1 song in a span of 9 months, performed multiple sold-out stadium shows across the world, and been named TIME's Entertainer of the Year 2020. BTS has been nominated for Best Pop Duo/Group Performance for the 63rd Grammy Awards and recognized with numerous prestigious awards like the Billboard Music Awards, American Music Awards, and MTV Video Music Awards.

COPYRIGHT

Copyright is an exclusive right protecting the creator's expression or fixation of an idea but not the idea in itself. It is a term used to describe authors' rights over their literary, creative, and artistic works. Earlier, Copyrights were protecting only books and copies of books, over time they included translations and derivative works. In the modern days, with the fast-paced growth in technology, copyright protects a wide range of works including maps, performances,

photographs, paintings, sculptures, technical drawings, and advertisements and not limited to books, music, and films.¹

WHAT CAN BE PROTECTED UNDER COPYRIGHT?

Copyright as discussed above extends only to expressions or fixations of ideas and not the idea itself. It does not protect procedures, methods of operations, or mathematical calculations.

Includes: literary works, novels, plays, references, newspapers, articles, and computer programs.

Excludes: ideas, procedures, methods of operation, or mathematical concepts.²

BENEFITS

There are two types of rights/benefits which an author can attain under copyright law and they are as follows:

- **Economic rights:** these rights allow the creator to derive monetary benefits through the usage of their works by others and;
- **Moral rights:** moral rights remain with the creator despite the transfer of economic rights. According to Article 6 of the Berne Convention, moral rights include the right to claim authorship; to object to certain modifications and other derogatory actions. It is maintainable even after the author's death up until the expiry of economic rights.³

A copyright-protected musical composition enables the music artist to economically benefit through various means like performance royalties, mechanical royalties (generated each time a composition is reproduced), synchronization (e.g., when a song is played in a movie, TV show, or advertisement), and other publishing rights.

¹ Ana Clara Ribeiro, 'How the boy band BTS is using IP to build its legacy' (*WIPO*, March 2022) <https://www.wipo.int/wipo_magazine/en/2022/01/article_0007.html> accessed 10 November 2022

² *Ibid*

³ *Ibid*

BTS songs are peppered with references to their previous music videos creating a storyline, idioms, adages, abstract expressions, metaphors, and unusual wordplay for rhyming effects. A recent song “*Yet to come*”, lyrically goes into such depth on personal references that one cannot understand the entire music video if one is not a part of the community of fans. (A.R.M.Y) The fans indulge in in-depth discussions creating various theories across all social media platforms, interacting with each other and thus creating interpersonal bonds among themselves and also with the artist.

The main rappers of the band; RM, SUGA, and j-hope, all have song-writing credits and are full-time members under KOMCA (Korean Music Copyright Association), a prestigious, non-profit organization in South Korea administered and managed by the copyright owners themselves. It has 30,000 members who are songwriters, composers, and music- publishers from famous K-pop bands like EXO, and Super Junior and solo artists like Psy.⁴

- RM has 200 credits and has joined the top league of artists with the highest KOMCA credits.
- SUGA comes second in the group with 147 credits
- J-hope comes third in the group with 134 credits.

Their legacy extends beyond and extends to books, comics, Webtoon, music videos, variety shows, documentaries, DVDs of regional and world tours, mobile games, streaming, etc. Along with dominating the music industry through their songs, South Korean talent managing company giant Hybe Co. has also created a fictional universe named ‘Bangtan Universe’ through which BTS builds a storyline via their music videos. They sell photo cards along with albums with specific concepts thus creating and narrating a story. BU also contains Notes 1 and 2 which take the form of albums; HYYH albums. The storyline has well continued into the Love Yourself series. The purpose of creating this universe is to provide the band with stories and possibilities to expand into and explore while creating music.⁵ These Notes, comics, Webtoons, and the entire fictional universe help build personal relationships with fans as the themes are

⁴ *Ibid*

⁵ Ana Clara Ribeiro (n 1)

relatable experiences that any individual would go through in the entirety of their lives. This creates a para-social relationship that helps in the sale of merchandise which is in sync with the concepts.

LANDMARK CASE OF IMAGE RIGHTS IN FAVOR OF BIGHIT

This case includes Mr. Jung, editor of an entertainment magazine whose issues of January, June, and November in the year 2018, and the March issue of the year 2019 printed extensive photos of BTS. This covered more than half of the entire magazine i.e., 45-65 pages out of the total 108 pages of the magazine. Bright, BTS's agency took action to protect the portrait rights of the band and to prevent people from freeloading on the success, fame, and growth of the band.⁶

Lee & Ko, a successful Korean law firm acted as a legal representative of BTS and filed for an injunction at the trial court saying that the magazine was a photobook consisting of pictures of the band for more than half the magazine pages. The trial court sided with the entertainment magazine and observed that the magazine was merely reporting to the public about BTS and also further stated that the entertainment companies are not entitled to prevent media from using the pictures of the band as there is no specific legislation preventing the same. Such activities were termed 'media coverage' and were legally permissible to be used due to freedom of the press.⁷

This called for an immediate introduction of a new legal basis that could protect the entertainment companies from people free-riding on their artists' fame. Following this, Lee & Ko developed a new legal basis under the UCPA act (Unfair Competition Prevention and Trade Secret Protection Act).⁸ The UCPA prohibits actions that infringe on another person's economic interest by using such a person's achievements, which are the result of substantial efforts and

⁶ 'Court Rules In favor Of BigHit in BTS's Portrait Rights Violation Case' (*Koreaboo*)

<<https://www.koreaboo.com/news/bts-portrait-rights-court-case-decision/>> accessed 10 November 2022

⁷ 'LEE & KO SUCCESSFULLY REPRESENTS BIG HIT ENTERTAINMENT AGAINST UNAUTHORIZED USE OF BTS' PHOTOS' (*The Legal 500*, 20 August 2019) <<https://www.legal500.com/developments/thought-leadership/lee-ko-successfully-represents-big-hit-entertainment-against-unauthorized-use-of-bts-photos/>>

accessed 10 November 2022

⁸ *Ibid*

investments for many years, without permission for unjust profit. Using the UCPA, Lee & Ko asserted that the economic success of BTS (logos, pictures, brands)⁹ can be attributed to Bighit's meticulous, diligent investments made by the entertainment company towards their success was the combined efforts of the band as well as the company; they planned and mapped out the entire career of bts since their debut in 2013 up until the recent Grammy nominations, for 2023.

Convinced by Lee & Ko's arguments, the Seoul Southern District Court granted an injunction stopping the unauthorized publication, distribution, sale, and export of BTS photobooks and imposed a strict penalty of 20 million KRW (approx. 20,000 US dollars) per day in the event of continued violation.¹⁰ Despite the Court's order, the publishing companies found ways to go around the Order of the court and continued selling photobooks fronted as magazines that still included plenty of BTS's pictures. An injunction was filed to stop the publishing companies from selling such magazines. The Seoul southern district court denied the claim by holding that the magazines also published pictures of other artists as well, hence they constitute media coverage and freedom of the press.

Lee & Ko appealed to the Seoul High Court and after submitting exhaustive evidence that included fan surveys, a general perspective of the public, comparison with other legitimate magazines, the High Court reviewed the same and expressly acknowledged that the magazines are similar to 'photobooks' or 'photobook-like magazine' similar to the official photobooks sold by Bighit as official merchandise.¹¹ Further held that the publishing company's act of publishing and selling such magazines exceeds the scope of ordinary media coverage and therefore cannot be protected under the freedom of the press. The Seoul High Court granted an injunction relief and ordered the publishing company to pay Big Hit 10 million KRW (approximately 10 thousand USD) per day in the event of continued violation.¹²

The two recent Korean Court's decisions are significant in that they serve as first-ever decisions to recognize that entertainment companies are also independently entitled to legal protection

⁹ *Ibid*

¹⁰ Court Rules In favor Of Big Hit in BTS's Portrait Rights Violation Case (n 6)

¹¹ *Ibid*

¹² Court Rules In favor Of Big Hit in BTS's Portrait Rights Violation Case (n 6)

for their artists' names, logos, portraits, and photos under the UCPA, therefore extending the scope of legal protection from artists to the entertainment companies that built the artists' customer attractiveness through substantial investments and efforts.¹³

TRADEMARK

What is a Trademark?

A trademark is a symbol that makes it easier to tell one company's products or services apart from those of another. Intellectual property rights protect trademarks. A trademark is a symbol that makes it easier to tell one company's products or services apart from those of another. Intellectual property rights provide *can one protect their trademark?* By submitting a registration application and paying the required fees to the national or regional trademark office, a trademark may be secured through registration. Two alternatives are available at the international level: using the Madrid system of WIPO or submitting a trademark application to the relevant country's trademark office.¹⁴

What rights does trademark registration provide?

The right to use a trademark is granted only upon trademark registration. This indicates that the owner has the sole right to use it or may provide a license to another party in exchange for payment. Registration is not required, but it offers statutory protection and supports the position of the right holder, for instance, in a court of law.¹⁵ Although the duration of trademark registration varies, it typically lasts for ten years. By paying an additional cost, it may be renewed indefinitely.¹⁶

¹³ LEE & KO SUCCESSFULLY REPRESENTS BIG HIT ENTERTAINMENT AGAINST UNAUTHORIZED USE OF BTS' PHOTOS (n 7)

¹⁴ Ana Clara Ribeiro (n 1)

¹⁵ Ana Clara Ribeiro (n 1)

¹⁶ *Ibid*

What kind of trademark can be registered?

A trademark can be a word or a phrase and a letter or numeral combination. However, trademarks can also be drawings, symbols, three-dimensional features like the shape and packaging of goods, audible or fragrances, signs, colour shades, or other distinguishing characteristics. The possibilities are virtually endless.

TRADEMARKS AND BTS

The intellectual property rights of BTS have raised the status of South Korea through music. There are so many products that KIPO has standardized then internationally and classified the trademarks into 45 groups and designed products for each category. The agreement was signed in Nice, France. Among 45 classifications, classes 1-34 are for class by-products, and classes 35-45 are classified by the service industry. In the case of BTS, in March 2011, two years before their debut, they applied for service trademarks called 'BTS bang tan boyz' in both categories, the 35th category, the advertising industry, and the 41st category, the entertainment category. Since then, the field has continued expanding, and currently, 46 trademarks are registered in the name of BTS alone. Due to the band's fanbase, ARMY, one of the most hard-working and smart communities of fans, trademarks are being filed in various fields like cosmetics, clothing, accessories, stationery, and food. It is not just the name of the band having a registered trademark but also other related products mostly because of the merchandise.

There are 183 registered trademarks for "BTS" as of Aug 2021. HYBE has also registered 96 trademarks for "ARMY." Park Sungwoo of the Korean Intellectual Office on YTN Radio says "it's not easy to make anything using BTS, Bangtan Sonyeondan, or ARMY because they have all the trademarks in various categories." As of Aug 2021, HYBE has applied and registered a total of 531 trademarks related to Bangtan Sonyeondan, BTS, and ARMY included. Of those 531, 505 have been approved. Some of the ones that are pending review are related to a recent incident regarding the phrase "Borahae," coined by Taehyung (V).

A cosmetics brand LALALEES attempted to register for a trademark on the phrase "BORAHAE," which was quickly followed by a large uproar. In June 2021, HYBE took action to

have “BORAHAE” trademarked to protect the rights of its company and artists.¹⁷ However, that request has been denied. In explaining their reason for denying the request, KIPO noted, “The term ‘BORAHAE’ is a new word invented by group member V (Kim Tae Hyung) at a BTS fan meeting on November 13, 2016,” and they stated that the application could not be accepted as it went against “the principles of good faith.”¹⁸

KIPO pointed out that the individual entitled to the trademark is not Big Hit but rather V who first invented the phrase. They point out that Big Hit is not V and is rather a company that “has a partnership and employer-employee relationship with Kim Tae Hyung.” KIPO further explained, “The applicant (HYBE) is recognized to have applied for trademark rights even though they know that it is a trademark used by V.¹⁹In addition, BTS has trademarked events and initiatives it has managed, including BANGBANGCON, ARMYEDIA, BU, 7FATES, and BTS UNIVERSE STORY.²⁰BTS registered more trademarks with the Korean Intellectual Property Office (KIPO) in 2021 than any other pop group, according to data from the South Korean National Assembly.

PATENTS

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application. To enhance the entertainment experience of the fans, HYBE partnered with several high-tech startups by investing significant amounts in developing patented technologies. They include slide viewers, lightsticks, the newly formed HYBE insight,

¹⁷ ‘Korean Intellectual Property Office Denies HYBE’s Request To Trademark V’s “BORAHAE”’ (*Soompi*, 11 October 2022) <<https://www.soompi.com/article/1549182wpp/korean-intellectual-property-office-denies-hybes-request-to-trademark-vs-borahae>> accessed 10 November 2022

¹⁸ *Ibid*

¹⁹ *Ibid*

²⁰ Ana Clara Ribeiro (n 1)

a dedicated museum with pre-recorded messages, and narratives of the BTS members used as a guide are patented as well.

What kind of protection does it offer?

In theory, the holder of a patent has the sole authority to forbid or obstruct others from making use of the innovation for financial gain. In other words, patent protection prevents anyone from economically producing, using, distributing, importing, or selling the innovation without the patent owner's permission.

Validity of Patents

Patents are territorial rights. Generally speaking, the exclusive rights are only valid under the laws of the nation or territory where a patent application was made and approved.

Duration of a Patent

Generally, 20 years from the application filing date are the maximum amount of time for which protection is granted. HYBE invested in the AI startup "Supertone" in 2021, whose singing voice synthesis technology made it possible to duplicate the band members' voices. Together with HYBE, another AI business called Neosapience created a study guide called "Learn! Korean" for fans to learn the fundamentals of Korean. It comes with an electric pen (moti-pen) that utilizes the voice-cloning technology developed by the startup. The voices of the BTS members provide an audio rendition of the text in the languages of Korean, English, Japanese, and Spanish when the pen hovers over a text. Trademarks and copyrights are the most popular IP tactics used in the entertainment industry, but there are other alternatives as well. Large companies like HYBE Co. are aware of their choices for patenting new ideas and designs and have staked their money on them to improve the fan experience through a variety of products.

Each K-pop group has its lightstick, which it uses during performances and tours. Lightsticks play a significant role in the fan experience among K-pop fandoms. When the fans chant the names of their idols and sing songs in tune with the beat of the music, these lightsticks begin to glow. The ARMY Bomb of BTS comes in a variety of iterations—four versions have been

launched so far—each with several enhancements. According to Biz World, HYBE purchased the rights to three patents from LG Electronics and Kimin Electronics in 2020. The patents cover the synchronization of lighting devices with performances, and it is expected that they will be used for K-pop fans' light stick experiences.

DESIGNS

Design rights are a significant addition to BTS's developing IP portfolio because they safeguard major aspects of the brand experience. For musicians, the sale of products is typically a major source of income. Design rights, which safeguard a product's aesthetics, can generate new IP assets that are shielded by the time and money spent on merchandise design. For instance, the ARMY Bomb, a key representation of BTS fan loyalty, has been made available in a variety of forms. According to the Korean IP rights information system, HYBE currently has ownership rights to three ARMY Bomb designs (KIPRIS). Typically, each K-pop group has an official light stick with its logo and name. Battery-operated BTS's ARMY Bomb works with the official BTS app. During performances, it uses Bluetooth to change colour in time with the band's music.²¹

LICENSING AND OTHER IP STRATEGIES

BTS is generating numerous chances to broaden its market and establish new revenue sources, including licensing, by strategically utilizing its intellectual property rights. BTS has developed multiple fictional personas and product lines to achieve this. As an illustration, BT21, a futuristic co-creation initiative in collaboration with the LINE FRIENDS CREATOR platform, features mascots that resemble the members of the BTS band and appear in video animations, as well as a variety of clothing, stationery, cosmetics, and food goods. Converse, Reebok, Hello Kitty, Antisocialsocialclub, Neighborhood, UNIQLO, Melissa, The Crème Shop, Olive Young, Jandaia, Riachuelo, MediHeal, Dunkin' Donuts, Mc Donald's, and many more are just a few of the international companies that BTS is collaborating with through BT21. The TinyTAN cartoon

²¹ Ana Clara Ribeiro (n 1)

characters, which are representations of the personalities and stage names of the BTS band members, also have their own YouTube accounts and brand.²²

CONCLUSION

BTS is embodying how thoughtful use of IP can improve brand experiences, generate revenue, and open up new avenues for innovation by safeguarding their creative works and forging a distinctive relationship with their fans. Business innovation and intellectual property (IP) are undeniably significant drivers of the band's success and are essential to establishing and maintaining its legacy. At Silicon Slopes, Jessica Klondnicki, CMO of Skull Candy spoke of brands saying, "We are not going to be the best for everyone but we are going to be the best for our users." ARMY wants to connect with BTS beyond their music. BTS even rebranded its name in 2017 to mean "Beyond the Scene." It extends outside of music, concerts, videos, and merchandise. They create global fan experiences. In 2017 they partnered with UNICEF for their LOVE MYSELF campaign to help end child and teen violence and spoke in front of the UN.

CEO of Hubspot Brian Halligan emphasized the strongest reason for buying from companies is when customers influence other customers. Put the power into the hands of your customers to do the work for you, and with you. This creates trust, and that trust will organically drive the growth of your brand. BTS not only forges but also fosters a bond with its followers that motivates them to support them. The fans were given control of the situation. And the ARMY performs. According to what I understand and what can be inferred from the study done to create this research paper, it is very suggestive and only conceivable if there is a devoted fan audience or client base to be able to construct a brand and have intellectual property rights over the smallest elements. The strength of building brand loyalty and trust is exemplified by the fact that your customers will move mountains for you. BTS continues to be humble and modest toward its fans despite all of its success. They show their appreciation by creating insightful content. They express how much they value their followers and how much they care about them. Do this with your loyal customers. Show that you care about your customers. Be open to

²² *Ibid*

criticism and thank them for their input. Thank the clients for their patronage. Offer tiny bonuses to people who have supported your brand over the years. This fidelity is mutual. For brands to employ consumers as their true advocates more successfully, they must value them.