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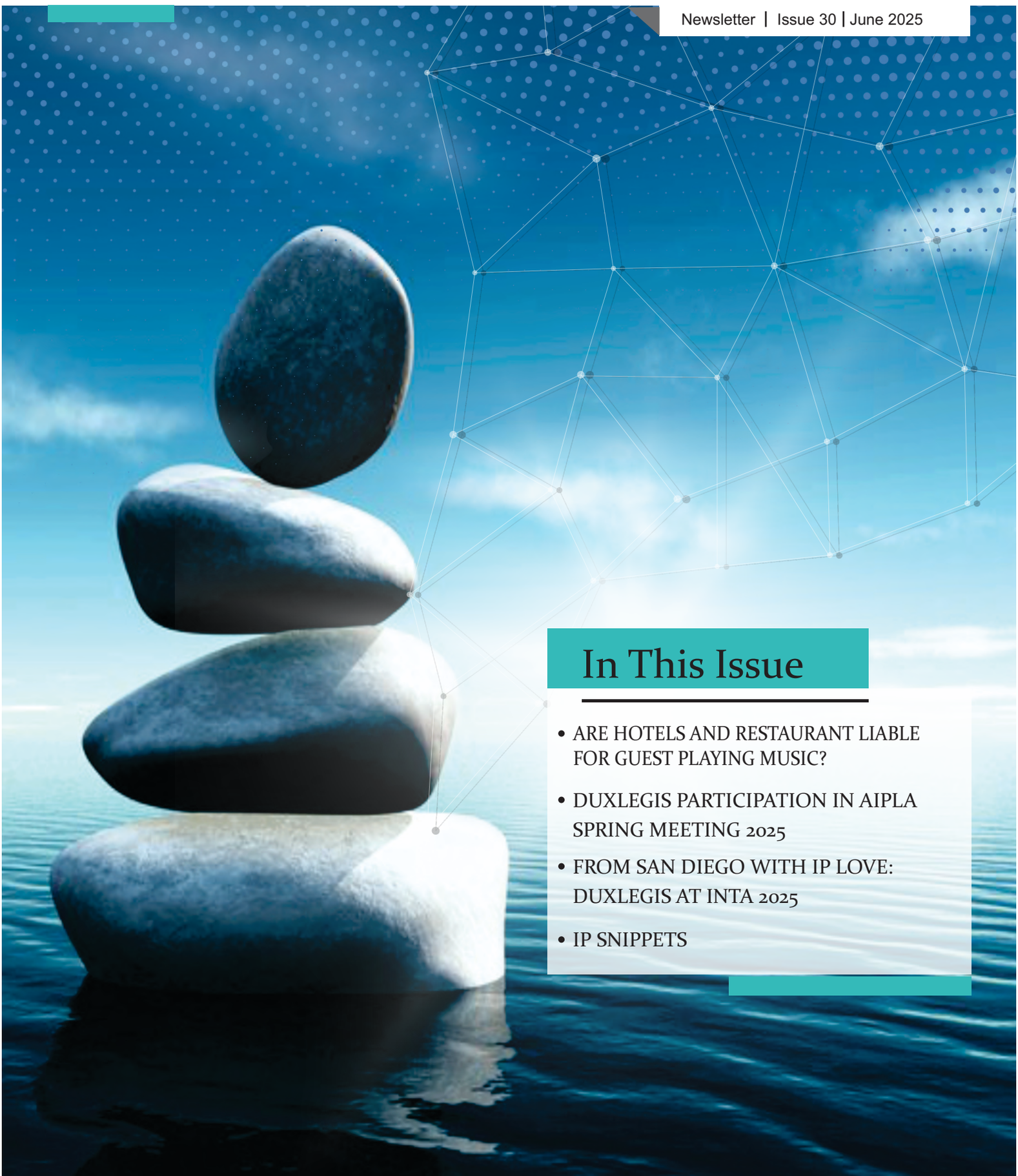
Newsletter | Issue 30 | June 2025



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ARE HOTELS AND RESTAURANT LIABLE FOR GUEST PLAYING MUSIC?

- By Ananya Sinha

It is said that ignorance of law is no excuse. Many a times, many people violate the law and take shelter in the excuse that they were not aware of the law.

Commercial organizations cannot escape laws using this excuse, they are supposed to be organizations that profit from the activities that take place inside them. Hotels, Restaurants and Party Venues can be seen adhering to the 10 p.m. deadline for playing of music on powered systems, but they are often found to be in fault of using copyrighted music.

Through this writeup, we want to bring you up to date on laws that you could be violating when you allow use of copyrighted music in your premises, although you may not be the one playing the music!

INTRODUCTION

Copyright law plays a crucial role in regulating the use of creative works, including music, particularly in public venues where such content is often shared with large audiences. In the hospitality industry—ranging from hotels and restaurants to bars and event spaces—the use of music is common for enhancing customer experience. However, with this comes the legal responsibility to ensure that music is used in compliance with copyright regulations. Understanding liability for music use is essential for venue owners and operators, as unauthorized performances can lead to significant legal and financial consequences. One complex and often misunderstood aspect of this issue is whether a venue can be held responsible for the actions of its guests or performers. This article explores the core question: *Can a venue be held liable for copyright infringement if the infringing act is committed by a guest? The answer is an emphatic yes, let us explain you how.*

1. CAN THE HOTEL BE SUED FOR COPYRIGHT INFRINGEMENT IF A GUEST PLAYS A SONG?

Under the **Indian Copyright Act, 1957,** the term ***"public performance"*** is used to describe the performance of a copyrighted work in a place open to the public or where a substantial number of persons are present beyond a normal circle of family and friends. This distinction is crucial for hospitality businesses, where music use is common and sometimes mismanaged.

1.1 Personal Use vs. Public Performance

If a hotel guest plays music for personal enjoyment within the confines of a private hotel room, such use typically falls under personal or domestic use and does not attract copyright infringement liability.

However, if music is played in shared or common areas of the hotel-such as banquet halls, lawns, lobbies, or restaurants—it may be classified as a public performance, especially if the audience consists of people beyond a close personal circle. In such cases, playing copyrighted music without a proper license could amount to infringement under Indian law.

1.2 When Guest Actions Could Trigger Hotel Liability?

The specific circumstances under which a hotel may be liable for a guest's actions depend on how and where the music is used:

- **Guest Plays Music in a Private Room:** In general, when a guest plays music on a personal device within their hotel room, it is deemed private use. The hotel is unlikely to be held liable, as this does not constitute a public performance under Indian copyright law.
- **Guest Plays Music in a Banquet Hall or Common Area:** If a guest hosts an event such as a wedding or party in a banquet hall, lawn, or any other space managed by the hotel, and plays copyrighted music without obtaining a public performance license (e.g., from IPRS or PPL India), then liability may arise. This is particularly true if the hotel provided sound systems or facilitated the event in any way.
- **Problem is many a guest does not even know that there exist organizations that will license them the use of copyrighted material.** Thus, it becomes important for the venue to sensitize the guest about the use of copyrighted material and guide them to acquire necessary licenses for use of such material in a public place. Failure to do so may lead to disruption of the event and loss of good will for the venue for having failed to guide the guest properly.

1.3 Factors Affecting Liability Under Indian Copyright Law

In India, liability is not automatic and depends on several legal and factual considerations:

- **Control Over the Venue:** If the hotel has control over the venue or is actively involved in organizing or managing the event (e.g., providing DJs, sound systems, or playlists), it could be held liable for unlicensed public performances. In such a case all liability lies on the venue provider.
- **Knowledge and Participation:** If the hotel knew that the guest planned to use music publicly and took no steps to ensure compliance with licensing laws, it may be seen as complicit.
- **Recurring Events or Business Model:** Hotels that regularly host public events, parties, or performances may have a higher duty to ensure music licensing compliance. Repeated negligence could lead to civil or even criminal liability under the Act.

Hotels are expected to ensure that either they or the event host obtain the appropriate licenses when music is publicly performed on their premises.

2. IS THE VENUE PROVIDER (HOTEL/RESTAURANT) LIABLE UNDER THE COPYRIGHT ACT?

The question of whether a hotel, restaurant, or similar venue can be held liable for copyright infringement when music is played on their premises—whether by themselves, guests, or third parties—requires an understanding of several legal principles under the Indian Copyright Act, 1957, especially **Sections 51 and 52,** as well as concepts of vicarious and contributory liability.

2.1 Legal Framework: Section 51 and 52(1) (za) of the Copyright Act

Section 51 defines acts that amount to copyright infringement. According to it, infringement occurs when a person, without a license or legal entitlement, does any act that only the copyright holder is permitted to do, such as public performance or communication to the public. However, **Section 52(1) (za)** provides an important exception—public performance or communication to the public of copyrighted works is not considered infringement if it occurs during a bona fide religious ceremony, including marriage processions and *"other social festivities associated with a marriage".*

Implication for Venue Providers:

If music is played during a marriage ceremony or related festivity covered under **Section 52(1) (za),** the venue may not be liable, provided the use falls clearly within the scope of the exception. However, if the performance is outside this exception (e.g., a DJ night in a hotel club or a ticketed live music event), then the hotel or restaurant may face infringement liability under **Section 51** unless appropriate licenses are obtained.

2.2 Role of Performance Rights Organizations (PROs): IPRS and PPL

In India, two major Performance Rights Organizations (PROs) handle music licensing:

- **IPRS (Indian Performing Right Society):** Manages rights related to lyrics and musical compositions (for composers, l yricists, and publishers).

- **PPL (Phonographic Performance Ltd.):** Issues licenses for the public performance of sound recordings on behalf of music labels.

Venue owners must obtain licenses from both IPRS and PPL if they intend to play recorded music (e.g., via DJ, live bands, or background playlists) in a public setting. Failure to do so may lead to legal action for copyright infringement.

2.3 Vicarious and Contributory Infringement: When Can a Venue Be Liable?

Even if a venue is not the direct user of music, it may still be liable under the doctrines of vicarious or contributory infringement, which are recognized in Indian copyright jurisprudence.

1. Vicarious Infringement

Occurs when a venue derives a financial benefit from the infringing activity (e.g., increased footfall, higher event fees), and has the right and ability to control the infringing act (e.g., managing event logistics, setting policies, or approving performances).

Example: A hotel rents out a banquet hall for a wedding and allows the use of its sound system. If a DJ plays unlicensed music, and the hotel profits from the event, it may be held vicariously liable, unless the exception under Section 52(1) (za) applies.

2. Contributory Infringement

Occurs when the venue has knowledge (actual or constructive) of the infringing activity, and makes a material contribution to it (e.g., providing the space, equipment, or promotion).

Example: A restaurant knowingly hosts a recurring live music night featuring unlicensed cover songs and promotes it to attract customers. This may result in contributory infringement liability.

3. LEGAL PRECEDENT AND CASE STUDY

3.1 Phonographic Performance Limited vs. Lookpart Exhibitions and Events Private Limited; {CS (COMM) 188/2022 and I.A. 4772/2022}

In this case Section 52(1) (za) came into the spotlight. **Phonographic Performance Limited (PPL)** alleged that **Lookpart Exhibitions and Events Private Limited**, an event management company specializing in social events such as weddings, had been using copyrighted music at these events without acquiring the necessary licenses. According to PPL, such use amounts to copyright infringement under Section 51 of the Copyright Act.

Lookpart in its defence invoked **Section 52(1) (za),** arguing that music played during weddings or related festivities falls under the exception for religious/social ceremonies, and thus, no license was required. They contended that such use is not "public performance" in the commercial sense envisioned by the infringement provisions.

Case Significant:

1.Unclear Scope of the Exception:

The exact boundaries of Section 52(1) (za)-especially the phrase "other social festivities associated with a marriage"—have not been clearly defined by Indian courts until now. **For example**, it's unclear whether events like sangeet, cocktail parties, or wedding receptions fall within the scope of this exception.

2. Cultural C ontext:

Music is central to Indian weddings, and this exception reflects the socio-cultural importance of allowing music during such ceremonies without burdening individuals or families with complex licensing requirements. However, with the rise of commercial wedding planners and high-budget events, the line between personal celebrations and commercial use is becoming increasingly blurred.

3. Balancing Rights:

The case raises an important tension between copyright holders and users. On one side, music producers and copyright owners want to ensure fair compensation when their work is used publicly. On the other, users (like event companies and families) argue that marriage celebrations should remain exempt from such obligations under existing law.

Expert Report and Judicial Review

Given the lack of academic writing or legal precedent on this provision and its cultural sensitivity, the Delhi High Court appointed an independent expert to study:

- The legal history and legislative intent behind Section 52(1)(za),
- Its socio-cultural context, particularly how marriage-related ceremonies are viewed in India,
- The distinction between private/religious use and commercial exploitation of music.

Dr. Arul George Scaria, Associate Professor of Law was appointed as an independent expert under Rule 31 of the Delhi High Court IPR Division Rules, 2022, to assist in interpreting this provision.

Dr. Scaria, in his detailed submissions, emphasized:

- The exception under Section 52(1)(za) aligns with international norms (e.g., Berne Convention, TRIPS).
- A broad interpretation is necessary, considering Indian socio-cultural practices.
- Music played during private, invite-only marriage festivities may not qualify as a public performance.
- Criminal provisions for copyright infringement necessitate a cautious approach to avoid misuse during weddings.
- Facilitators (like DJs or event companies) enabling such performances should not negate the protection under the law.

Parties settled the dispute amicably. The plaintiff withdrew the suit, and the court directed that the deposit of 1,00,000/- be released to the plaintiff. The court did not rule on the merits or decide the legal issue of interpretation under Section 52(1)(za). Dr. Scaria's expert opinion was officially recorded but treated as persuasive and not binding.

This case serves as a pivotal moment in the evolving dialogue between copyright enforcement and cultural practices in India. While the dispute itself concluded amicably without a judicial determination on the core legal question, the case highlighted the ambiguity surrounding Section 52(1)(za) of the Copyright Act, 1957. The Delhi High Court's decision to appoint an independent expert underscores the complexity and significance of interpreting statutory exceptions in a culturally nuanced context. Dr. Arul George Scaria's expert analysis provides a valuable interpretive framework, advocating for a broader, socially sensitive reading of the provision that accommodates India's rich wedding traditions while cautioning against the overreach of copyright enforcement into private and familial spaces.

Although no binding precedent was set, this case has sparked a critical discourse around the boundaries of "fair use" during marriage-related events and the need for clearer legislative or judicial clarification. It remains an important reference point for future disputes at the intersection of copyright law, cultural practices, and commercial enterprise.

3.2 Super Cassettes Industries Ltd. Vs. Nirulas Corner House (P) Ltd. {2008 (37) PTC 237 (Del)}

The Super Cassettes Industries Ltd. (Plaintiff), a copyright holder of various literary and musical works, discovered that songs under their copyright were being played via televisions in the rooms of the Nirulas Corner House (P) Ltd. (Defendant) without a license. The Plaintiff argued this amounted to ***"communication to the public,"*** constituting copyright infringement. The Defendant contended that it merely received cable signals, made no profit from the broadcast, and was not liable as the broadcaster was not a party to the suit. The Hon'ble Court observed that under Section 51(ii) of the Copyright Act, allowing a place to be used for unauthorized public communication of copyrighted works constitutes infringement. Hotels are not exempt under Section 52(1)(k), which only applies to residential premises. Therefore, the hotel's provision of TV broadcasts to guests qualifies as public communication. The Hon'ble Court found a strong **prima facie** case of copyright infringement by the Defendant, as the hotel was facilitating unauthorized communication of copyrighted content to the public (its guests).

4. COMPARATIVE ANALYSIS: INDIA vs. UAE

In both India and the UAE, the legal foundations of copyright law provide copyright holders with exclusive rights to authorize the public performance or communication of their works. Indian law, under the Copyright Act, 1957, and UAE law, under Federal Law No. 38 of 2021, recognize that making copyrighted content accessible to the public—whether via broadcasting, streaming, or physical events—requires prior licensing. Venue operators such as hotels, clubs, and restaurants are considered liable if they allow copyrighted works to be publicly performed without authorization, especially when such performances are commercial in nature or enhance customer experience. This similarity forms a core legal obligation that international hospitality chains must respect in both jurisdictions.

The copyright laws of both India and the UAE grant copyright holders' exclusive rights to authorize the public performance or communication of their works, holding hospitality venues like hotels and restaurants liable for unauthorized use. However, enforcement differs notably. India follows a litigation-driven, case-specific approach, with exceptions for events like weddings under Section 52(1)(za), and liability hinging on control, knowledge, and commercial benefit. In contrast, the UAE enforces a strict, centralized model with active inspections by regulatory bodies, mandatory licensing, and no tolerance for unlicensed use—even by third parties. These differences create compliance challenges for global hospitality brands, requiring tailored legal strategies in each jurisdiction to navigate varied liability standards and enforcement mechanisms.

CONCLUSION

In conclusion, venue operators in the hospitality industry must be acutely aware of their potential liability for copyright infringement, even when the infringing act is committed by a guest or third party. As demonstrated through comparative legal frameworks in India and the UAE, liability often hinges on factors such as control over the venue, knowledge of the act, and whether the venue benefits commercially from the performance. Given the serious legal and financial risks involved, the best course of action for hotels, restaurants, and event spaces is to adopt a proactive approach. This includes securing the necessary licenses in advance, engaging with local or international performance rights organizations, and establishing clear internal policies to manage music use during events. Proactive licensing and legal clarity not only ensure compliance but also protect the reputation and operational continuity of hospitality businesses in a legally complex and globally interconnected environment.

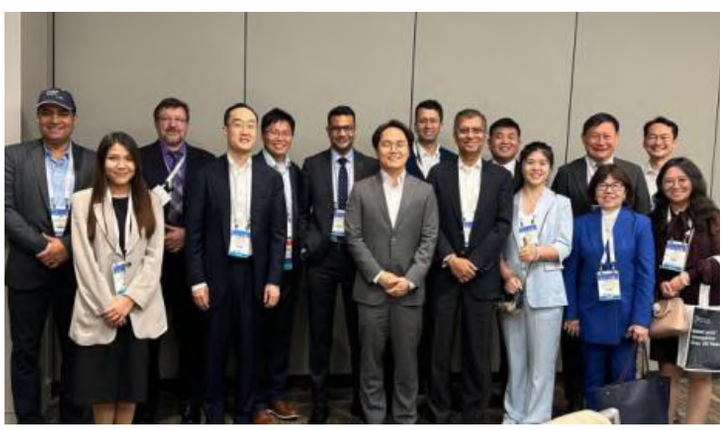
DUXLEGIS PARTICIPATION IN AIPLA SPRING MEETING 2025

The American Intellectual Property Law Association (AIPLA) Spring Meeting 2025, held from May 13–15 in Minneapolis, was a remarkable convergence of legal minds and innovation leaders. With a record turnout of nearly 600 attendees, this year's meeting was one of the most vibrant post-pandemic AIPLA gatherings to date.

Our Managing Partner, Adv. Divyendu Verma had the honor of speaking on a panel titled "Design Law Treaty: Global Implications and Perspectives", held on May 14 from 4:00–5:00 PM CST. The session explored the developments surrounding the Design Law Treaty (DLT) and its projected impact on the design law landscape in jurisdictions such as the USA, India, UAE, Saudi Arabia, and Taiwan. Alongside distinguished co-panelists Christopher Carani and Ishita Kapoor, the session was skillfully moderated by Dr. Rachel Kahler, who ensured our experiences from the Riyadh DLT negotiations in November 2024 were brought to light in an insightful and practical way.

In parallel, the Asia-Pacific Committee meeting, led by Vice Chair Sang Yoon Kang, was a highlight of the conference. We reflected on the achievements of our current delegation, charted out plans for next year, and initiated important discussions on the region's collaborative roadmap.

A heartfelt thank you to the stellar organizing team led by Christopher Santone, Rafael Heres, and Sonia Okolie - for their behind-the-scenes dedication and seamless coordination.



The event concluded with the private dinner of close friends and colleagues at the iconic Manny's Steakhouse in downtown Minneapolis.

FROM SAN DIEGO WITH IP LOVE: DUXLEGIS AT INTA 2025

The 2025 INTA Annual Meeting held in San Diego marked another milestone in the DuxLegis calendar. For the firm, INTA continues to be more than just a global gathering of trademark professionals - it is a cornerstone of business development, international collaboration, and thought leadership.

This year's meeting brought together nearly 10,000 IP professionals from across the globe. DuxLegis was proudly represented by Managing Partner Mr. Divyendu Verma, along with our partner firm's Managing Partner – Mr. Sarmad Hasan Manto and Abdullah, who attended his first INTA following a strong start to his tenure at the Dubai office.

Our Global Head of Patents & Designs, Mr. Divyendu Verma, had moderated a table topic on Data Privacy issues in Smart Cities and Mr. Abdullah moderated a table topic on Ethical Consideration of AI in Trademark Law. A major milestone for us was the debut of our exhibition booth by our partner firm (Audiri Vox - a true landmark in our INTA journey. We launched two specially curated, practical reference booklets on trademark and patent prosecution across all jurisdictions where Audiri Vox operates. The response exceeded our expectations — with over 450 copies picked up by visitors during the conference!

While the booth buzzed with activity and our team engaged with clients, peers, and new connections, I had the privilege to represent the firm at The Crossings IPFO Golf Tournament - a rare but cherished moment of calm before the whirlwind of meetings and receptions.

The days that followed were packed with back-to-back business meetings, thought-provoking discussions, and reconnections with our international colleagues. Our evenings were equally memorable - from rooftop receptions to private dinners, each event reminded us of the unique camaraderie that defines the IP profession.

We ended our INTA journey on a literal high at the famous Gaslamp Block Party, where INTA closed down 5th Avenue for a vibrant street celebration. Music, laughter, and memories flowed freely as we wrapped up an unforgettable week in sunny San Diego.

As always, INTA proved to be a time for renewal, reflection, and relationship-building. We return inspired, energized, and eager for what lies ahead.

See you all in London for INTA 2026!

IP SNIPPETS:

PATENT CASES:

VIIV HEALTHCARE COMPANY AND ANR (Appellants) vs DY CONTROLLER OF PATENTS AND DESIGNS AND ORS. (Respondents)

CASE NO.: IPDPTA/1/2025 IA NO: GA-COM/1/2025
DECIDED ON: May 14th, 2025

The appellant has filed an appeal against the respondent challenging the impugned order rejecting the appellant's patent application. The appellant states that several pre-grant opposition were filed against the present patent application, of which the High Court order dated 15 July 2024 regarding not considering the expert affidavits was only limited to the opposition proceedings filed by respondent 6 [Natco Pharma Ltd.]. The appellant argued that they relied on the expert affidavit and the respondent misinterpreted the High Court order passing an impugned order by not considering the expert affidavit while deciding the pending objection.

The Hon'ble Calcutta High Court stated that the consideration of the expert affidavit on which the appellant is relied on is of evidentiary value. The Hon'ble Court further states that the respondent has "misinterpreted and misconstrued" the High Court's order dated 15 July 2024, resulting to pass an impugned order, as the High Court's order was only limited to respondent 6 and not on any other objection of any other respondents. The Hon'ble Court concluded by setting aside the impugned order and ordered to reconsider the appellant' patent application by the different Controller without causing unreasonable delay during the process for grant of patent.

TAIHO PHARMACEUTICAL CO. LTD. (Appellant) vs THE CONTROLLER OF PATENTS (Respondent)

CASE NO.: IPDPTA/1/2025 IA NO: GA-COM/1/2025
DECIDED ON: May 14th, 2025

In the present appeal the appellant has challenged the respondent for refusing the appellants patent application for lack of inventive step under section 2(1)(ja) and non-patentable under section 3(d) of the Patent Act. The appellant argued that the respondent failed to provide clear and efficient suggestion leading a person skilled in the art towards the subject patent application and further the respondent has also failed to identify the 'known substance' while objecting under Section 3(d) of the Act. The respondent countered that the compound disclosed in the subject patent application is already disclosed in the prior art lacking inventive step and compound claimed in the subject patent application are the derivatives of the known compounds from the prior art.

The Hon'ble Delhi High Court observed that the respondent has failed to identify the 'known substance' in the hearing notice leading no opportunity to the appellant to respond to the same. The Hon'ble Court states that as the objection under section 2(1)(ja) is linked with the assessment under section 3(d), therefore reconsideration of the same is required upon identification of the 'known substance' from the closest prior art. The Hon'ble Court concluded by setting aside the impugned order and remanding the matter back for fresh consideration.

CRYSTAL CROP PROTECTION LIMITED (Plaintiff) vs SAFEX CHEMICALS INDIA LIMITED & ORS. (Defendants)

CASE NO.: I.A. 5255/2024 IN CS(COMM)196/2024 & CC(COMM)28/2024
DECIDED ON: May 7th, 2025

The present suit has been filed by the plaintiff restraining the defendants from infringing the plaintiff's patent. The plaintiff argued that the defendant was infringing the plaintiff's patent by manufacturing and marketing the product under the name of 'RACER' having composition identical to the plaintiff's patent. The defendants countered that their composition do not contain any pigment, dyeing agent, or colouring substance which the plaintiff propose to be a novel and essential component in the patent.

The Hon'ble Delhi High Court analyzed the complete specification of the plaintiff's patent and agreed that 'dyeing agent or pigment' is an essential element serving a specific purpose in the invention as highlighted by the plaintiff. The Hon'ble Court states that *"the plaintiff has failed to make out a prima facie case for the grant of an injunction"*. The Hon'ble Court concluded by dismissing the grant of interim injection and favouring balance of convenience to the defendant.

ITC LIMITED VS (Appellant) vs THE CONTROLLER OF PATENTS, DESIGNS & TRADEMARK (Respondent)

CASE NO.: IPDPTA No. 121 of 2023
DECIDED ON: April 30th, 2025

ITC Limited

The present appeal has been filed by the appellant against the respondent for rejecting the appellant's patent application under section 3(b) of the Patents Act. The appellant argued that the respondent submitted the document under Section 3(b) only during the hearing and not with the First Examination Report, also the examples or explanations given in Section 3(b) do not address exclusions related to tobacco, smoking, nicotine or any inventions relating the same. The appellant submits that the Patent Office cannot decide policy issues on encouraging or discouraging innovation, as this is the Government's/Executive's responsibility. The respondent countered that the appellant's patent application falls under Nicotine Replacement Therapy (NRT) which replaces smoking with nicotine and the nicotine used in the present invention is beyond the permissible limit as per Drugs and Cosmetics Act, 1940 and Drugs Rules, 1945.

The Hon'ble Calcutta High Court observed and stated that none of the examples discussing Section 3(b) also including the *"Patents Manual"* mentions tobacco/smoking/ nicotine related inventions and a patent cannot be denied only because the product's sale is restricted by domestic law, as the patent granted do not prohibit the Central Government to protect public health. The Hon'ble Court concluded by setting aside the impugned order and remanded the matter back to the different officer for fresh consideration.

BMI GROUP DANMARK APS (FORMERLY ICOPAL DANMARK APS) (Appellant) vs THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS AND ANOTHER (Respondent)

CASE NO.: C.A.(COMM.IPD-PAT) 7/2024
DECIDED ON: April 23rd, 2025

BMI icopal

The present appeal has been filed by the appellant challenging the rejection of the appellant patent application under the grounds of section 2(1)(ja). The appellant argued that the respondent has failed to understand the teaching of the prior arts and provided proper reasoning on how the subject patent application is rejected. The respondent countered that the subject patent application is obvious to a skilled person based on prior arts D1 to D3, lacking an inventive step.

The Hon'ble Delhi High Court observed that the respondent has failed to appreciate the invention as claimed in the subject patent application. The Hon'ble Court stated that the controller has incorrectly assessed the subject patent application by relying on the non-analogous prior art D2 along with D1 and D3 and when assessed with the prior art D1 and D3 the subject patent application is not obvious for a person skilled in the art. The Hon'ble Court concluded by setting aside the impugned order and ordered to proceed with the grant in favour of the appellant.

BLACKBERRY LIMITED (Appellant) vs ASSISTANT CONTROLLER OF PATENTS AND DESIGNS (Respondent)

CASE NO.: C.A.(COMM.IPD-PAT) 125/2022
DECIDED ON: April 23rd, 2025

BlackBerry

The present appeal has been filed by the appellant against the respondent for passing an impugned order rejecting the appellant's patent application under Section 2(1)(j), Section 3(k), Section 3(m) and Section 8 of the Act. The respondent states that the amendments made by the appellant failed to comply with the requirements under section 57 and 59 of the Act. The appellant argued that the amendments were made within the scope of section 59 and the respondent also failed to provide any reasoning on how the amendments were beyond the scope of section 57 and 59 of the Act.

The Hon'ble Delhi High Court observed that the respondent has simply rejected the appellant's patent application without providing any reasoning on how the amendments were beyond the scope of the section 57 and 59. The Hon'ble Court concluded by remanding the matter back to the respondent for a *de-novo* consideration to examine the proposed amendments along with the post-hearing written submissions.

HUAWEI TECHONOLOGIES CO. LTD. (Appellant) vs THE CONTROLLER GENERAL OF PATENTS DESIGNS AND TRADEMARK AND ANR. (Respondent)

CASE NO.: IPDPTA/6/2025
DECIDED ON: April 22nd, 2025

HUAWEI

In the present appeal the appellant has challenged the order passed by the respondent rejecting the appellant's patent application under the ground of invalidity of the General Power of Attorney (GPA). The appellant contended that the objection issuing GPA was only raised during the hearing stage, however they had submitted the original copy in another application and the copy of the GPA was submitted in the present patent

application. The appellant further stated that the respondent has misplaced by relying on sections 127 and 132 of the Patent Act, 1970 read with rules 126 and 135 of the Patent Rules, 2003 in the impugned order.

The Hon'ble Calcutta High Court observed that the respondent has passed the impugned order solely on the ground of invalidity of the GPA without discussing the subject invention. The Hon'ble Court states that none of the section or rule portrays refusal of the patent application under this ground alone but provides suspension of action on pending issue. However, the refusal of the patent application by the respondent claiming invalidity of the GPA is unjustified. The respondent also failed to provide an adequate opportunity to the appellant to address the issue. The Hon'ble Court concluded by setting aside the impugned order and remanded the matter back to the different hearing officer for consideration.

TRADEMARK CASES

ELIZABETH ADRENA (Plaintiff) vs MR. JAYESH BHAI TRADING AS M/S JAYESH FRAGRANCE (Defendant)

CASE NO.: CS (COMM.) NO. 213/2022
DECIDED ON: May 14th, 2025

The plaintiff, a partnership firm in the business of perfumery and cosmetic goods since 1974, filed a suit against the defendant for infringement of its registered trademark **"PASSPORT"**, alleging passing off, damages, and seeking a permanent injunction. The plaintiff has been using the mark **"PASSPORT"** since 1962 and holds several trademark registrations under Class 3. Plaintiff claimed the defendant adopted and sold products under deceptively similar marks like ***PASSPORT, PASS SPORT,*** and ***BLACK PASSPORT***, intending to pass them off as plaintiff's goods. Defendant did **not file any written statement,** and the court struck off the defence for failure to respond.

The Hon'ble District Court stated that the defendant's mark was found to be visually and phonetically similar, causing confusion among consumers. Plaintiff's evidence went unrebutted; the Hon'ble Court acknowledged the *mala fide* intent of the defendant. The Hon'ble Court emphasized the need to look at overall similarity in essential features between the products. Defendant and its associates are permanently restrained from using the mark **"PASSPORT"** or any deceptively similar mark.

RAINBOW CHILDREN'S MEDICARE LIMITED (Appellant) vs RAINBOW HEALTH CARE (Respondents)

CASE NO.: CS (COMM.) NO. 213/2022
DECIDED ON: April 23rd, 2025

In the present suit the appellant, a leading chain of pediatric and women's healthcare hospitals in India, claims trademark infringement by the respondents using the name ***"Rainbow Healthcare"*** in Bengaluru. The appellant, incorporated in 1998, has been using the trademark '**Rainbow**' since then, with registered rights under the Trademarks Act. They argue that the respondents' use of a deceptively similar name for identical services causes confusion and dilutes their brand. Legal action was initiated after the appellant discovered the respondents' listings and issued a cease-and-desist notice.

The respondents counter that they have been using the name ***Rainbow Healthcare*** since 2013 in a *bona fide* manner, with supporting documents like medical registrations, licenses, and online presence since 2015. They argue the appellant was aware of their existence for years but took no action until 2023. They also claim the suit is not maintainable due to non-compliance with the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act.

The Hon'ble Karnataka High Court refused to grant an interim injunction against the defendant using the ***'Rainbow Health Care'*** mark. Despite the appellant use of the trademark since 1998, the Hon'ble Court noted the defendant's documented use since 2013 and questioned the delay in enforcement. This ruling emphasised that these delays weigh against injunctive relief in trademark cases.

EUREKA FORBES LIMITED (FORMERLY FORBES ENVIRO SOLUTIONS LIMITED (Plaintiff) vs NANDANSALESANDORS (Defendants)

CASE NO.: CS(COMM)566/2023 with I.A. 15571/2023 and I.A. 5300/2025
DECIDED ON: May 8th, 2025

In the present suit the plaintiff filed a commercial suit against the defendants. The suit sought a permanent injunction restraining the defendants from infringing its registered trademarks 'AQUAGUARD'/ Aquaguard '**AQUASFILTER**', and '**ACTIVE COPPER**', as well as related copyright-protected artworks. The plaintiff asserted ownership of well-established trademarks dating back to 1982 and 1992, substantial market presence, and significant reputation. Defendants failed to appear or file written statements despite service of summons. Some opted for mediation and offered to settle, while others remained ex-parte.

The Hon'ble Delhi High Court accepted that the plaintiff is the rightful owner of the trademarks and copyright-protected product artwork. Defendants were found to have deliberately sold counterfeit products using identical or deceptively similar marks to mislead consumers and trade on the plaintiff's goodwill. The absence of a written statement or any form of contest by these defendants was taken as an admission of the allegations. The Hon'ble Court decreed the suit in favour of the plaintiff, passing a permanent injunction restraining the defendants from manufacturing or selling any goods bearing the infringing marks or similar get-up.

SUN INDIA PHARMACY P LIMITED (Plaintiff) vs HYETO HERBALS PRIVATE LIMITED (Defendant)

CASE NO.: CS(COMM) 381/2020
DECIDED ON: May 7th, 2025

In the present suit the plaintiff filed the suit seeking a permanent injunction against the defendant for infringement of its registered trademark and copyright, as well as for passing off its products as those of the plaintiff. The plaintiff claimed long-standing use of the mark **"SWASTH VARDHAK"** since 1986 and alleged that the defendant had dishonestly adopted an identical mark and deceptively similar packaging for identical products, thereby infringing upon the plaintiff's intellectual property rights.

Plaintiff's claimed ownership and registration of the mark **"SWASTH VARDHAK"** since 2004, with use dating back to 1986 and have been using the unique packaging/trade dress since 2002, protected under copyright law. The defendant had earlier acknowledged infringement and undertook not to use the impugned mark in 2019. Despite the undertaking, the defendant resumed use and also filed a trademark application for the identical mark. Defendant's claimed honest adoption of the mark and alleged that their packaging was different. Argued that the undertaking was given under pressure and denied plaintiff's exclusive rights on the mark

The Hon'ble Delhi High Court found that the defendant's mark and packaging were identical/deceptively similar to that of the plaintiff. The defendant's dishonest intent was evident from the earlier undertaking and subsequent resumption of use. The plaintiff had successfully established trademark infringement, copyright infringement, and passing off. The Hon'ble Court emphasized that the defendant's conduct warranted not just injunctive relief but also aggravated damages and costs. The Hon'ble Delhi High Court decreed the suit in favour of the plaintiff. The defendant was permanently restrained from using the impugned mark **"SWASTH VARDHAK"** and the deceptively similar trade dress.

COPYRIGHT CASES

TORRENT PHARMACEUTICALS LTD (Plaintiff) vs INDORBIT PHARMACEUTICALS P. LTD. & ANR. (Defendants)

CASE NO.: CS(COMM) 912/2024, I.A. 42669/2024-Stay
DECIDED ON: May 14th, 2025

The plaintiff, a pharmaceutical company, filed a suit against two defendants seeking a permanent injunction for alleged passing off and copyright infringement of its newly adopted trade dress for ***SHELCAL-500 label/ carton and strip packaging/ artistic work,*** a calcium and Vitamin D3 supplement. The plaintiff claimed rights over the new packaging design since September 2022, acquired through an Assignment Deed dated 07.03.2024. Plaintiff argued that the defendants' ***ORBITCAL-500*** packaging was deceptively similar to ***SHELCAL-500*** and likely to cause confusion in the market, particularly concerning public health. **Defendants did not appear or file written statements** despite service of notice; were proceeded **ex parte.**

Though the defendants remained ex parte, the The Hon'ble Delhi High Court **refused to pass a decree under Order VIII Rule 10 CPC** without trial, citing recent **Supreme Court rulings** *(e.g., Asma Lateef v. Shabbir Ahmad and Balraj Taneja v. Sunil Madan)* that warn against mechanical decrees in the absence of a written statement. The Hon'ble Court found **insufficient evidence** on record to establish that the plaintiff was **the prior adopter or user** of the new trade dress before the defendant. Invoices and promotional materials lacked clear **date references**, and the Assignment Deed was **unregistered** and executed long after the claimed adoption date. The Hon'ble Court **rejected** the plaintiff's oral request for decree at this stage. The earlier **ex parte interim injunction remains**, but no final relief granted yet.

SUPER CASSETTES INDUSTRIES PVT. LTD. (Plaintiff) vs M/S DIGITAL CABLE NETWORK (Defendant)

CASE NO.: CS (Comm) No.1234/2023
DECIDED ON: May 07th, 2025

Plaintiff filed a commercial suit against Defendant, a cable operator in Haridwar, Uttarakhand, alleging unauthorized broadcasting of its copyrighted audio-visual content, including songs from films such as ***Sadak, Baaghi-2, Boss, and Qayamat Se Qayamat Tak.*** The plaintiff claimed copyright infringement and sought permanent injunction and damages of ₹25,00,000/-. Plaintiff owns the copyrights to the said songs and Defendant broadcasted the songs via its cable channel **"DCN"** without obtaining a license, violating plaintiff's rights under Section 14 of the Copyright Act, 1957. Evidence included investigator's recordings, cue sheets, screenshots, and affidavits. Notices were served but ignored or refused by the defendant. Defendant remained ex-parte after service by publication. Advocate appearing briefly claimed to represent "M/s Digital Cable TV Network," not the named defendant, creating confusion and leading the Hon'ble Court to disregard the cross-examination as misdirected.

The Hon'ble Court stated that the plaintiff successfully proved copyright ownership and infringement through unrebutted evidence including recordings and documents. The Hon'ble Court acknowledged that while exact subscriber count (25,000) was not proven with documentary precision, the unauthorized broadcast was established. Cross-examination conducted by advocate on behalf of the unrelated entity was ruled inadmissible. The Hon'ble Court applied the principle of ***Preponderance*** of ***Probabilities*** and acknowledged clear copyright violations. ***Permanent Injunction*** granted restraining the defendant from further unauthorized use of plaintiff content. Damages of ₹5,00,000/- awarded to the plaintiff as notional damages, considering absence of precise data to quantify actual loss.

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Editorial Board

This Newsletter is published by DuxLegis Attorneys from 902,Kamdhenu Commerz, Sector 14, Kharghar, Navi Mumbai, Maharashtra,India on 4th June, 2025.