

DuxLegis[®]
Attorneys



IPAY ATTENTION

Gateway to IP World

Newsletter | Issue 1 | January 2023



In This Issue

- Editorial
- Are “Fevi Kwick & Fixo Kwick” deceptively similar?
- Legal Briefs
- Recognition
- News Report on Kisan Expo

Editorial

Hello,

We welcome 2023 with loads of excitement and hope. May this year turns out to be one of the best you have experienced so far.

Intellectual property litigations are the core services offered by DuxLegis Attorneys. Our proficient network with IP firms across the globe, empowers us to endeavour IP services to our clients worldwide.

We have a proven track record of remaining committed to providing our clients with the highest level of services and expertise.

Getting inventions, ideas or software protected through IP is an quintessential process for several organisations.

Maneuvering through the legal landscape could be challenging, our team of attorneys armed with experience is fully focused and dedicated to providing you with

the guidance and assistance you require to achieve your legal goals.

Following the IP industry's development and changes in its laws is essential for all of us. Keeping your needs in mind we are all charged up as we present the first issue of DuxLegis monthly newsletter, I Pay Attention. It aims at offering you a gateway to help you navigate the maze of recent developments in the IP field.

I Pay Attention is packed with news and developments from the world of patents, trade marks, designs, and other Intellectual Property rights (“IPRs”). The first edition of the newsletter highlights the expected increase in patent and trademark cases related to application AI, Internet of Things and machine learning domains.

I Pay Attention features one main article and updates on new legislations and court decisions,

tips and strategies for managing your legal affairs, with an aim to provide you with the information you need to make informed decisions.

Our aim is to protect and propagate the IPR and are seeking ways to enhance our services and meet our clients needs.

Your views, suggestions on the newsletter are welcome and also are areas of concern pertaining to IP. We would be happy to address those through the issue.

At DuxLegis, we have taken a step forward. We invite our friends and colleagues to join us, as we journey through the “Gateway to IP World” so that we could bond, connect and co-create, making this expedition wonderfully creative.

We are grateful for your continued trust and support.



Divyendu Verma

Managing Partner
DuxLegis Attorneys

Are “ FEVI KWICK” & “ FIXO KWICK” deceptively similar?

The popular adhesive brand seek court's intervention



Adv. Rohit R Singh



Adv. Sphurti Dalodria

Deceptive similarity, one of the recognised grounds of trademark infringement in the trademark regime, refers to a mark that is deemed to be deceptively similar to another mark, if it so nearly resembles that other mark as to be likely to deceive or cause confusion. Deceptive similarity of marks refers to similarity between trademarks that can lead people with average intelligence to believe that the mark in question is somehow related to a registered or well-known trademark. The Indian Trade Marks Act, 1999 does not clearly define the criteria of judging deceptive similarity. However, the criteria for the determination of the deceptive similarity of marks had been decided in many cases where the Hon'ble Courts had set out specific rules for deciding the nature of similar or misleading marks. Now, the question is whether the placement of the words used in a mark, designing of packaging of the product, colourable imitation or a substantial reproduction of an original packet are deceptive similarity.

ABOUT THE CASE:

A suit has been filed before the Bombay High Court (COMMERCIAL IP SUIT (L) NO. 6245 OF 2022) by the Pidilite Industries Limited (Plaintiff) (hereinafter referred to as “plaintiff”). The plaintiff is an Indian adhesives manufacturing company based in Mumbai. “FEVI KWICK”, an instant adhesive is one of the products of the plaintiff as well as the brand. The plaintiff seeks Ad-Interim reliefs against Fixo Industries and another (defendants) (hereinafter referred to as “defendants”) for selling adhesive products by the name “FIXO KWIK”, which is deceptively similar to plaintiff's mark “FEVI KWICK”, in the manner the words have been displayed and overall design of the package containing the product, similar colour usage or a substantial reproduction of the original packet of the plaintiff. When a temporary order of injunction is passed by the court, while the suit is still pending, is termed as Ad Interim relief, which is granted when the petitioner establishes that there would be irreparable damage without it. Section 95 of The Trade Marks Act, 1999 provides for the provision of interim orders.

FEVI KWICK Mark:

The FEVI KWICK mark was conceived and adopted in the year 1987 by the plaintiff, which is popular in the market. It has been continuously in use since 1991 and has a unique design and distinctive package. While FEVI KWICK has generated tremendous revenue, a lot of money has been spent on its promotion and advertisement.

The defendant was selling impugned product under the mark “FIXO KWIK”, which is deceptively similar to the mark “FEVI KWICK” of the petitioner. The defendant had applied for the registration of Fixo Kwik mark, but was refused by the Trademark registry. Despite the refusal for registration of the mark, the defendant has continued to blatantly use his counterfeit mark.

It can be clearly seen that the defendant has made an attempt to illegally take advantage of the petitioner's product's goodwill and has also infringed the petitioner mark. This is also a clear case of infringement because according to section 29(1) of the Trade Marks Act, 1999,



where a registered trade mark is infringed by a person who is not being a registered proprietor or a person using by way of the permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark. On learning that the impugned product was sold by the defendant in the market, the petitioner filed the case in the Bombay High Court for urgent Ad-Interim reliefs.

DECISION OF THE COURT:

The Hon'ble Bombay High Court while considering the submissions of the plaintiff stated that there is sufficient material placed on record to show that prima facie the mark allegedly being used by the defendants would have the tendency of causing confusion in the mind of a purchaser.

The Ad-interim reliefs granted on this basis by the Hon'ble Court shall continue until further orders.

CONCLUDING REMARKS:

As a closing remark to the present article, the authors would like to conclude by stating that the Hon'ble Courts are now very strict when the registered trademark of any company/entity is infringed in any way especially through deceptive similarity.

Registered trademark is also an asset in the form of weapon so as to put the competitors indulging in infringement or selling impugned products. Only because when the trademark is registered, we have the absolute right to sue the unfair company which is not possible in case of an unregistered trademark.

The onus to prove that the trademark is infringed is on the person or company who has the proprietary rights on that trademark. The court will not allow any person to sell his/her product or services which are in violation of trademark rights.

We can also infer from this case that in today's world how vulnerable the companies and their products are from the infringers, unfair practice companies, cheaters etc.

This is where trademark comes which protects our brand, name, products of companies and provides remedies in the form compensation, transfer of profits, injunctions from the infringers and remedy to initiate civil actions as well.



About the Authors:

(Rohit R Singh is an Advocate & Trademark Attorney, Sphurti Dalodria is an Advocate & Patent/Trademark Attorney)

(Note: We will publish the next part of this article after the conclusion of the final hearing.)



Briefs

Predictions in the field of AI in 2023:

May witness in increase in patent litigation cases in domains of natural language processing (NLP), machine learning, autonomous vehicles, Integration of AI and IoT:

As technologies advance further and get widely adopted, there will be a surge in patent applications related to activities of NLP and machine learning algorithms.

Machine Learning:

Machine learning has the potential to revolutionise the healthcare industry, and we can expect to see an increase in patents sought for technologies developed in the machine learning domain for the healthcare sector such as predicting patient outcomes or diagnosing diseases.

Autonomous vehicles:

As self-driving cars and other autonomous vehicles become more accepted and popular among public, there will be a rise in the number of patents sought for technology used behind these vehicles, including machine learning algorithms and sensor systems.

Integration of AI and the Internet of Things (IoT):

As AI and the IoT become more closely intertwined, we can expect to see an increase in patents sought for the integration of these technologies, such as using machine learning to analyse data collected from IoT devices.

Ethical and societal implications of AI:

As AI becomes more widespread, there will be a need to address the ethical and societal implications of these technologies. We can expect to see an increase in patents sought for the ethical use of AI and the development of frameworks to govern the use of these technologies.

IPR in Entertainment Sector

Trademark Infringement

AJINOMOTO CO INC vs. DATTATREY STUDIOS

CS(COMM) 822/2022
Decided on November 28, 2022



The AJINOMOTO CO INC (hereinafter referred to as “Appellant”) has filed the instant suit, inter alia, seeking permanent injunction restraining infringement of registered trademark “AJINOMOTO”, passing off, unfair competition, delivery up, rendition of accounts, damages, among other ancillary reliefs. The Delhi High Court has ordered to the Defendants that the Tamil film under the title “AJINOMOTO” or any film bearing an identical or deceptively similar title/ name in any format i.e., cinema hall release, DVD/ VCD release, release through OTT platforms, etc., shall not be released. The final judgement has not passed yet. We shall update in future.

Copyright Infringement

YASHRAJ FILMS PVT. LTD. vs. TRILLER INC.

CS(COMM) 9/2023
Decided on January 10, 2023



The Delhi High Court issued summons to American video sharing and social networking platform Triller Inc. (Defendant) on a copyright infringement suit filed by Indian production house Yashraj Films Private Limited (YRF) (Appellant).

The video platform of the defendant uses an extraction tool, which makes available the Appellant's copyright works to its users for uploading of audio-visual content/short videos, stores, reproduces, makes copies, creates new works embodying the Appellant's copyright works, commercially exploits, communicates to the public, modifies, synchronizes and/or otherwise exploits or permits the aforesaid acts by the users of the defendant's platform, without a valid license from the plaintiff.

IPR in food Sector

TRADEMARK CASES



HAMDARD NATIONAL FOUNDATION (INDIA) & ANR vs. SADAR LABORATORIES PVT. LTD.

FAO(OS) (COMM) 67/2022 and CM No. 13491/2022
Decided on December 21, 2022

An appeal has been filed by the Hamdard National Foundation (hereinafter referred to as “Appellant”) before the Delhi High Court seeking a permanent injunction restraining the respondent from using the trademark “SHARBAT DIL AFZA”. The respondent's trademark is deceptively similar to an appellant's registered mark “ROOH AFZA”. The Hon'ble Court has stated that use of the word “AFZA” lends a certain degree of similarity, and the trade dress of both products is also similar, making the Respondent's mark deceptively similar to that of the Appellant.



LT FOODS LIMITED vs. SARASWATI TRADING COMPANY

2022/DHC/004806
Decided on December 21, 2022

The Delhi High Court has recently passed an order to the SARASWATI TRADING COMPANY (defendant) in favor of LT Foods Limited (appellant) for the product Daawat Basmati Rice in a trademark infringement suit. The Hon'ble Court rewarded Twenty-Five Lakhs in damages and costs to the Appellant. In this case, the defendant misuses the brand of the Appellant. The Defendant was using counterfeit packaging, which was identical to the Appellant's packaging to sell Jawaphool Rice portraying the same to be Basmati Rice. Considering the Appellant's reputation and the fact that 'DAAWAT' is a well-known mark in India, the suit is liable to be decreed.

Knowledge Corner INFORMATION TECHNOLOGY ACT

INTRODUCING ONLINE GAMING IN INFORMATION TECHNOLOGY ACT

The ministry of electronics and information technology (MEITY) has proposed amendments in the Information Technology Act to define Online Gaming. In Rule 2, sub-rule 1, the definition of “online game” is proposed which means that a game that is offered on the Internet and is accessible by a user through a computer resource if he makes a deposit with the expectation of earning winnings. The proposed amendments also include intermediary online games, Additional due diligence to be observed by online gaming intermediary, safeguards for online gaming intermediaries, and notification of any other game as online game.

Section 1- So Simple but Patentable!

Avery Dennison Corporation versus Controller of Patents and Designs,

**IN THE HIGH COURT OF DELHI AT NEW DELHI
C.A. (COMM.IPD-PAT) 29/2021**

Decided on November 04, 2022



This is a very interesting case where the Hon'ble Court decided that simple inventions are patentable. The appeal has been filed by Avery Dennison Corporation (hereinafter referred to as "Appellant") before the High Court of Delhi. The Controller of the Patents and Designs (hereinafter referred to as "Respondent") has refused the application number 5160/DELNP/2013 on the ground that the subject matter does not constitute an invention under Section 2(1)(j) of the Patents Act, 1970 (as amended). The subject matter of the patent application is related to creation, position, shape, and direction of the notch. The Hon'ble Court has stated that the prior art document cited by the Respondent which was belonged to the Appellant, and the subject patent application was filed almost 18 years after the filing of the prior art document. The complete specification of the subject patent application which was filed by the Appellant explained the disadvantages of the prior art document and sets out in clear terms the various advantages of the subject invention. Therefore, the invention is patentable. One of the sure tests in analyzing the existence of inventive step would also be the time gap between the prior art document and the invention under consideration. If a long time had passed since the prior art was published and a simple change resulted in unpredictable advantages which no one had thought of for a long time, the Court would tilt in favour of holding that the invention was not obvious.

Section 2 - PATENTS CASES

DS BIOPHARMA LIMITED vs THE CONTROLLER OF PATENTS AND DESIGNS AND ANR,
IN THE HIGH COURT OF DELHI AT NEW DELHI
(C.A., (COMM.IPD-PAT) 6/2021 & I.A. 12828/2021)

DS Biopharma 

The appeal has been filed on behalf of the Appellant - DS Biopharma Limited, under Section 117A of the Patents Act, 1970, challenging the order passed by the Id. Assistant Controller of Patents & Designs (defendant). The Court has clarified that the Patent office has not identified the compound which constitutes the 'known substance', in the hearing notice.

For the purposes of a Section 3(d) objection, the one specific known substance is to be identified and the manner in which the claimed compounds are 'new forms' ought to be mentioned by the Patent Office, even if not in detail but at least in a brief manner.

NOVARTIS AG (Appellant) vs CONTROLLER OF PATENTS AND DESIGNS (Defendants),
IN THE HIGH COURT OF DELHI AT NEW DELHI
C.A.(COMM.IPD-PAT) 12/2022

 **NOVARTIS**

The appeal filed by the Appellant challenges the impugned order of the Asst. Controller of Patents. Vide the said order, the divisional application of the Appellant being 7863/DELNP/2014 (hereinafter 'divisional application') has been rejected on the ground that the subject matter of the granted claims of the parent application being 8114/DELNP/2007 (hereinafter 'parent application') and the subject matter of the divisional application belong to the same broad class and group of inventions linked so as to form a single inventive concept. Thus, the Controller has held that the divisional application is not maintainable. The Court does not find any reason to refuse the divisional application on the ground that it is not a valid divisional application and thus the Court is of the opinion that the divisional application in question is a valid divisional application and deserves to be examined in accordance with law.

FMC CORPORATION & ORS. (Plaintiff)
vs. GSP CROP SCIENCE PVT. LTD. (Defendant),
IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 662/2022, I.A. 15628/2022 and 16508/2022



The present is a suit filed by Plaintiff, seeking inter alia, an injunction restraining the infringement of Indian Patent No. IN252004 by the Defendant.

From the analysis and discussion, the court has arrived at the conclusion that the suit patent is invalid and plaintiff has suppressed the material fact and misleads the Patent office as well as the court. In the facts & circumstances of this case, the application for interim injunction is dismissed with costs of Rs. 2 lakhs.

Recognition

Divyendu appointed as National Chair of Trademarks, Designs, and Merchandising Committee of LES India

DuxLegis group (DuxLegis Attorneys & DuxLegis IP LLC) is pleased to announce that Advocate Divyendu Verma Managing Partner of the firm – DuxLegis Attorneys and Global Head of Patent Department of AudiriVox, has been appointed as National Chair of Trademarks, Designs, and Merchandising Committee of LES (Licensing Executives Society), India.



Divyendu Verma

Advocate Divyendu Verma is a Trademark & Patent Attorney registered with the Indian Bar Council. He has more than 18 years of experience in the field of Intellectual Property Rights (IPR).

The Trademarks, Designs and Merchandising Committee is an LES India Professional Committee that serves as the focal point for the members of the licensing profession involved with the licensing of trademarks, designs and merchandising. The committee involves in contacting and collaborating with relevant professional and business organizations involved with the licensing of trademarks, designs and merchandising. The committee regularly conduct workshops and webinars on key issues related to licensing of trademarks, designs and merchandising.

The Licensing Executives Society India (LES India) is primarily a non-profit association comprised of professionals engaged in the transfer, use, development, manufacture and marketing of technology and Intellectual Property. The LES India is a part of LES International which is a UNO like body in the field of IPR and have a world-wide family comprises of 30 National and Regional societies, representing over 60 countries and 10,000 executives.



Adidas loses three-stripes trademark battle to Thom Browne

Thom Browne won a trademark battle against sportswear giant Adidas over the use of three stripes on clothing in a recent trademark battle in New York.

The dispute centered around Adidas' use of a three-stripe design, which luxury fashion brand Thom Browne claimed was too similar to his own four-stripe signature design.

The court agreed with Thom Browne, ruling that Adidas' use of the three-stripe design was likely to cause confusion among consumers and therefore infringed on Thom Browne's trademark. As a result, Adidas has been ordered to stop using the three-stripe design on its products and to pay damages to Thom Browne.

This is not the first time Adidas has faced legal action over its use of stripes. The company has been sued in the past by German Football Association, and other fashion designers.

The ruling is a significant victory for Thom Browne, who has built his brand around his signature four-stripe design. It also serves as a warning to other companies to be mindful of existing trademarks when creating their own designs.

IPR vital for farmers to encourage innovation in agriculture sector

DuxLegis interacts with farmers

By Priti More

India being an agrarian economy, it becomes crucial to make its innovative farmers aware that intellectual property protection is extended over agricultural products. Intellectual Property Rights (IPR) could play a vital role in enabling innovation in the agricultural sector. IPR is required for innovative farmers as an incentive and to protect them from getting exploited economically. IP laws play a key role in the welfare of farmers, protection and conservation of environment and welfare of humanity. We at DuxLegis, as part of our social responsibility engagements, conduct awareness drives on IPR among various stakeholders of innovators.

Recently, we participated in two major Agro-events which attracted a lot of attention from the participants.

At the Agriculture Expo "Krishithon" in Nashik on 27 November, we got an excellent response as we interacted with farmers, breeders, medium and small scale agro-based entrepreneurs and explained to them the relevance of IPR to protect their innovations. We participated in the Kisan Expo in Pune during 14 to 18 Dec 2022, the country's largest trade fair, where Indian government officials, policy makers and media representatives meet farmers. Our stall at the Innovation section of the Expo, was visited by more than 5,000 farmers and agri-entrepreneurs. Our team led by Managing Partner Divyendu Verma included Pramod Chunchuwar, Sphurti Daldoria, Preeti More, Santosh Singh, Rohit Singh & others. The breeders who visited our stall were curious to understand processes to protect their agricultural inventions and innovations. We observed several farmers selling their quality products without registering the trademark of their company. We tried to explain to them about the Plant Variety and Protection Act, Patents for Biofertilisers, Agricultural tools and Machinery, and importantly, how trademark registration can protect their business and financial interests. As



majority of participants were from Maharashtra, we distributed leaflets published in Marathi "Shetila Kaydyache Kumpan (Legal fencing for your farm)". Mr. Navnath Kaspate, a breeder and a farmer, whose NMK Golden-1 variety of custard apple, among several developed by him, have become popular, appreciated our efforts of educating farmers on the occasion. Kaspate is currently National Chairman of Custard Apple Growers Federation. Impressed with our commitment towards educating farmers in a simple manner, Prof. B. B. Ghorpade, Assistant Professor, College of Agricultural Biotechnology, Loni (Pravaranagar) invited DuxLegis to address his students for which we have happily agreed.

Vilas Parkhi, Head of Biotechnology Division of MAHYCO, one of the largest seed producing company, specially visited our stall and interacted how we can serve farmer's inventions. Dr. Dilip Nikam, Head of Radio Oncology Department is also interested in innovations in farming. He visited our stall and discussed how farmers can be motivated and helped for innovations and research. The main organizer of Kisan, Mr. Deshpande, who has been organising the event for the last two decades, expressed the need for DuxLegis to take a lead in spreading knowledge regarding IPR at various Agro Expos organised across the country.

It was a great learning experience, getting first hand information and positive feedback from farmers and attending to their queries and it provided new insights on the agriculture sector. We strongly believe that IP can bring prosperity to farmers, overall development for the agriculture sector and thus ultimately benefit humanity.





902, Kamdhenu Commerz, Sector - 14, Kharghar, Navi Mumbai - 410210. MH, INDIA
+91 83739 80620 / +91 98926 44872
info@duxlegis.com

www.duxlegis.com

Editorial Board

Editor-in-Chief
Pramod Chunchuwar



Consulting Editor
Chitra Sawant

Designer
Nilesh B.

Disclaimer: This publication is intended to provide information to clients on recent developments in IPR industry. The material contained in this publication has been gathered by the lawyers at DuxLegis for informational purposes only and is not intended to be legal advice. Specifically, the articles or quotes in this newsletter are not legal opinions and readers should not act on the basis of these articles or quotes without consulting a lawyer who could provide analysis and advice on a specific matter. DuxLegis Attorneys is a partnership law firm in India.

© 2023 DUXLEGIS

This Newsletter is published by DuxLegis Attorneys from 902, Kamdhenu Commerz, Sector 14, Kharghar, Navi Mumbai, Maharashtra, India on 15th January, 2023.