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## UNDERSTANDING OF BRAND MASCOTS AND ASSOCIATED IP PROTECTION



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### INTRODUCTION:

In today's competitive and dynamic marketplace, establishing a distinct presence has become challenging for businesses. Branding serves as a crucial tool to set a business apart from its competitors and foster goodwill in the market. It involves utilizing a name, symbol, or imagery to distinguish products and services. The brand name becomes an intangible asset, adding value to the business offerings.

A brand is essentially an abstract concept of reputation residing in the minds of consumers when exposed to marketing efforts. It transcends business's self-description, thriving when recognized and positively regarded by the masses. Illustrating this, renowned businesses such as "Fly Emirates" in aviation, "Taj Hotel" in hospitality, and "Nike" in sports have become brands due to their consistent delivery of quality products and services.

Branding is a strategic communication process involving elements like logos, names, social media presence, mascots, brand stories, and various marketing techniques. Notably, creating a 'Brand Mascot' stands out as a paramount method, proving highly effective in marketing and enhancing customer engagement. These mascots function as intangible assets deserving of protection, contributing significantly to a brand's success.

### MASCOT AS A PART OF BRAND IDENTITY

Understanding the link between a mascot and brand identity requires insight into what constitutes brand identity. It is the presentation a business makes to the public, differentiating itself from competitors. Brand identity is the unique essence that sets a brand apart, serving as the basis for consumer differentiation.

Brand mascots prove to be effective tools for creating brand recognition. They foster relationships, enhance brand attractiveness, distinguish from competitors, promote

offerings, and humanize the business. Let us understand it with the help of a few examples.

1952: Colonel Sanders for Kentucky Fried Chicken



Colonel Sanders, the founder of KFC, served as the brand mascot, his image becoming synonymous with the brand. Colonel Sanders is recognized for his iconic beard style and his string tie.



1966: Amul Girl for Amul

Amul girl is one of the most successful and well know brand mascots in India. The mascot has grown along with the brand, so much that people associate the mascot as the identifier of the brand. The identity of Amul is incomplete without its mascot.

In the case of L.G. Electronics India Private Limited and Ors. Vs. The Asstt. Commissioner of Income Tax Circle-3 Noida the Income Tax Appellate Tribunal of India explained about what a brand is and how mascots and other branding tools were adopted by businesses to communicate with their customers.

*"Brand is the name, term, design, symbol or any other feature that identifies one seller's goods or services as distinct from those of other sellers"*

*"..... companies adopted slogans, mascots, and jingles that began to appear on radio and early television. Later, (by 1940s) the manufacturers recognized the way as to how the consumers get socially, psychologically and anthropologically related with their 'Brands'. This journey*

*has reached a stage when the customers now buy the "Brand" and not exactly the product. They go by the brand-name."*

The ITAT opined that mascots became a method for businesses to differentiate themselves from others and it was a way of connecting socially, psychologically and anthropologically with their customers.

## WHY DO MASCOTS NEED PROTECTION?

Brand identity profoundly influences consumer trust, loyalty, brand equity, and competitive advantages, all pivotal for business success. In today's digital landscape, businesses face the pervasive threat of trademark copying, product counterfeiting, and impersonation, undermining their hard-earned identity. Establishing a distinct brand identity in consumers' minds is a laborious endeavor, especially when closely linked to a mascot, making its protection paramount.

When brand identity suffers due to intellectual property (IP) infringement, the repercussions are severe, leading to irreparable damage to goodwill, revenue, and overall brand integrity. Thus, IP protection for a brand transcends mere formality; it's an essential safeguard against infringement, preserving the core identity of any business.

Mascots are meticulously crafted to convey specific messages to target customers, requiring significant time and effort to create a unique and appealing character. As a result, mascots represent intellectual property, embodying the essence of the business and warranting robust protection measures.

## IP CONSIDERATIONS:

In India there are various statutes that are made to protect intellectual property, the relevant statutes with respect to our a propos are:

- 1) The Copyright Act, 1957
- 2) The Designs Act, 2000
- 3) The Trademarks Act, 1999

### The Copyright Act, 1957:

A mascot, being a man-made fictional character, qualifies as an artistic work under the Copyright Act. To protect a mascot, businesses can register it with the copyright office, gaining various rights granted to original creators. Copyright safeguards the expression of the work, limiting the number of copies to fifty. Registration involves fulfilling legal requirements, followed by an examination of the work's originality.

Registering a mascot under copyright law provides extended protection, lasting the author's lifetime plus 60

years after their death. However, caution is essential, as reproducing the work beyond fifty copies can terminate the copyright, in accordance with section 15(2) of the Copyright Act, 1957.

While copyright law offers prolonged protection, it restricts the reproduction of the mascot. Design law becomes relevant in scenarios where a business seeks broader use cases for the mascot without compromising the protection period. Moving forward, we'll explore the application of the Designs Act, 2000, in safeguarding a brand mascot.

### The Designs Act, 2000:

Mascots fall within the scope of 'design' as defined by Section 2(d) of the Designs Act, 2000, rendering them eligible for protection under design law. This law covers characteristics of shapes in both two-dimensional and three-dimensional forms, granting creators exclusive ownership rights upon registration.

Registering a mascot involves a process starting with a public search to confirm its novelty. Once the Patent office confirms availability for design protection, the applicant proceeds with the application, including required documents and fees. The patent office examines and grants a 10-year validity for the registered design, extendable for an additional 5 years upon renewal.

Registering a mascot under the Designs Act nullifies its copyright but offers protection against copying and intellectual property infringements. Unlike copyright law, design law allows greater commercialization opportunities by lifting restrictions on reproductions. However, the protection under design law is capped at a maximum of 15 years.

### The Trade Marks Act, 1999:

The brand mascot, as a representation of brand identity, embodies figurative or graphical elements categorized as a Device Mark under Trademark Law. Device Marks encompass logos, images, combinations of logos and words, or drawings. Trademark Law mandates that marks seeking registration must possess distinctiveness, setting them apart from existing marks.

Mascots fulfill this requirement by establishing their unique presence, thus qualifying for protection under the Trademarks Act. They serve as key differentiators for businesses. Registering brand mascots under trademark law empowers businesses to safeguard their marks against copying, fraudulent activities such as passing off, infringing fan use, impersonation, and counterfeiting. An example of how a mascot was protected under

trademark law:

KUMAMON was a mascot used by Kumamoto Prefecture (plaintiff) for promoting their tourism campaigns. To protect the mascot the proprietor had registered it under trademark law. Unique Design Company Limited (defendant) applied for the registration for their own mascot which was alleged by the plaintiff as being deceptively similar to KUMAMON. Below is the comparison of the 2 mascots.



(KUMAMON)



(Disputed Mascot)

The Japanese Patent office held the disputed mascot as being deceptively similar to the mark of the plaintiff and invalidated its trademark application.

Another notable example involves the Michelin Man, the iconic mascot of the Michelin tire company. The Michelin Man, registered as a trademark, is a distinctive symbol recognized globally. In the event of unauthorized use or attempts to create similar mascots, the Michelin company can rely on trademark protection to preserve the uniqueness of its brand identity.

## CONCLUSION:

In the fast-paced landscape of contemporary business competition, the significance of branding cannot be overstated. It is a pivotal factor that not only sustains a business in the competition but also propels it to prominence within its dedicated industry segment. The

success of a brand is intricately tied to the reputation it cultivates over time, and as a brand ascends to the pinnacle of its industry, safeguarding its brand identity becomes paramount. Brand identity encompasses every distinguishing characteristic that sets a brand apart from its competitors, bestowing upon it a unique and valuable essence. Within this multifaceted realm of brand identity, mascots emerge as indispensable elements, contributing significantly to the creation of a distinctive brand image. Given the invaluable nature of mascots as intellectual property assets, it becomes imperative for businesses to prioritize their protection.

Amidst the array of legal avenues available for safeguarding mascots, the decision on which route to take ultimately hinges upon the specific use case scenarios envisioned by the business. The choice becomes subjective and depends on factors such as the nature of mascot use, the extent of commercialization, and the anticipated evolution of business dynamics over time. For businesses seeking hassle-free long-term protection with limited and niche use of their mascots, Copyright law stands as a suitable option. In contrast, those engaging in commercialization and foreseeing dynamic shifts in their business landscape may find the 15-year protection offered by Industrial Designs law to be fitting.

Crucially, when a mascot serves as the brand icon, incorporating figurative and graphical elements while acting as a key differentiator for a business, trademark law emerges as the optimal choice. Trademark law offers comprehensive and perpetual protection, ensuring the enduring uniqueness and integrity of the brand representation. The decision-making process boils down to a nuanced evaluation of the business's objectives, use case scenarios, and long-term strategies, encapsulated by the adage – 'it depends.' Ultimately, businesses must align their legal protection strategy with the dynamic needs of their mascot use to fortify their brand identity and navigate the evolving terrain of business competition successfully.

[Note: Mr. Mohammad Ishraque Haider, co-author of this article, contributed significantly during his internship at DuxLegis Attorneys in the Trademark Department. This collaborative article is a product of our joint efforts and represents one of his completed projects during his tenure with DuxLegis Attorneys.]

# STARTUP INDIA PHASE-II ELEVATES DEEP TECH TO NEW HEIGHTS ON ITS ANNIVERSARY

## ANNIVERSARY ON JANUARY 16:

In recent years, India has emerged as a global hub for deep-tech startups, with a focus on cutting-edge technologies such as artificial intelligence, blockchain, IoT, and more. According to a report by NASSCOM, the deep tech startup market in India raised over US\$ 2.7 billion in venture capital in 2021, marking significant growth. Despite this, deep-tech startups face challenges related to funding, talent acquisition, and scaling R&D operations.

To address these issues and provide a comprehensive framework, the Government of India introduced the draft National Deep Tech Startup Policy 2023 (draft NDTSP) on July 31, 2023. The policy was open for public consultation until September 15, 2023, and aims to foster innovation, economic growth, and societal development. However, we are still awaiting for release of the final policy by the Government of India.

## WHAT IS DEEP TECH START-UP:

As per Nasscom, the Deep Tech start-ups are active start-up that create, deploy or utilize advanced technology in their products or services. Advanced technologies largely include Artificial Intelligence (AI)/ Machine Learning (ML), Internet of Things (IoT), Blockchain, Big data and Analytics, Augmented Reality (AR)/ Virtual Reality (VR), Robotics, Drones etc. There are over 3000+ start-up working across mature Deep Tech technologies. Among them, 1900+ start-ups are Artificial Intelligence based product/services offering start-ups. 240+ are Blockchain based product/services offering start-ups, 560+ belong of IoT based Start-ups and 570+ are Big Data analytics-based start-ups. As per Nasscom report, around 12-18% of deep tech start-ups (apprx 400 start-ups) are from Mumbai & Pune, Maharashtra state, 25-30% of deep tech start-ups (apprx 900 start-ups) are from Bangalore, Karnataka and 15-20% of deep tech start-ups (apprx 600 start-ups) are from Delhi and rest 35-40% start-ups belong to other states of India. Specifically, in Mumbai, among 300+ deep tech start-ups, the majority, around 210 start-ups are funded start-ups. The notable start-ups are Revolt Motors (India's 1st AI-enabled smart electric bike with next-gen computing & mobility solution), Agrex, AG NEXT & others.

## UNDERSTANDING DEEP TECHNOLOGY STARTUPS:

Deep technology startups focus on early-stage technologies rooted in scientific or engineering advancements, often developing solutions for unexplored sectors. These startups are distinct in that they create and own intellectual property, particularly in sectors like AI, machine learning, quantum computing, biotechnology,

and more. The draft NDTSP acknowledges the unique challenges and opportunities in this sector.

## KEY HIGHLIGHTS OF THE DRAFT NDTSP:

The policy, built on four pillars, envisions securing India's economic future, progressing toward a knowledge-driven economy, bolstering national capability through Atmanirbhar Bharat, and encouraging ethical innovation. The policy's priorities include nurturing research and development, strengthening the intellectual property regime, facilitating access to funding, enabling infrastructure access, creating conducive regulations, attracting talent, promoting procurement, and enhancing policy interlinkages.

## PRIORITIES OF POLICY:

- **Nurturing Research, Development & Innovation:** The policy emphasizes increased R&D investment, knowledge commercialization partnerships, and support for entrepreneurship in academic institutions.
- **Strengthening Intellectual Property Regime:** Measures include creating a Single Window Platform, guidelines for deep tech IP and cybersecurity, and building in-house capabilities.
- **Facilitating Access to Funding:** The policy suggests a centralized platform for grant payments, long-term patient grants, and fiscal incentives to attract investments.
- **Enabling Infrastructure Access:** Establishment of Frontier Scientific Infrastructure (FSI), incentivizing academic institutions, and facilitating access to data are proposed.
- **Conducive Regulations:** The policy aims to reduce costs and promote innovation through regulatory frameworks, sandboxes, and subsidies for certifications.
- **Human Resources & Capacity Building:** Focus on talent attraction, specialized courses, workshops, mentorship programs, and global partnerships.
- **Promoting Procurement & Adoption:** Utilizing public procurement as a first market, simplifying tendering processes, and exempting startups from certain clauses.

- **Policy & Program Interlinkages:** Aligning initiatives, promoting international collaborations, and reducing import dependencies.

- **Sustenance of Deep Tech Startups:** Overcoming the Valley of Death (VoD) through funding programs, strategic investments, and simplified approval procedures.

## CONCLUSION:

The draft NDTSP 2023 signifies a pivotal step in fostering the growth and sustainability of deep tech startups in India. With a strategic approach, the policy aims to unlock collaboration, increase investments, and streamline the exploration of avant-garde technologies. Once implemented, it is expected to contribute to India's economic and technological development, steering the nation towards a more innovation-driven startup landscape.



## IP SNIPPETS:

### PATENT CASES:

**NOVARTIS AG (Appellant) vs. NATCO PHARMA LIMITED & ANR. (Respondents)**

Case Number: LPA 50/2023

Decided on: January 09, 2024



In the present case, the Divisional Board of Delhi High Court has set aside an impugned judgment given by the single judge setting aside the order issued by the Controller for grant of Appellant's patent application. The respondent contended that the order permitting the amendments to the patent application was issued without providing any opportunity for the hearing. Whereas Appellant highlighted that the respondent caused an intentional delay in grant of patent for more than 16 years by filing serial opposition. Further the Appellant submitted that the respondent cannot claim right of hearing when the amendments were proposed by the controller on the basis of independent examination and evaluation.

The Hon'ble Delhi High Court observed the following issue and stated that patent examination and pre-grant opposition are distinct, and the rejection of opposition does not automatically lead to grant of a patent, the controller must conduct independent examination of patent. The court further clarified that while Rule 55

prescribes for a hearing with regard to the representation filed and does not confer a right to participate in the examination process comprising of independent evaluation and assessment of the patent application.

**HARYANA PESTICIDES MANUFACTURES ASSOCIATION (Petitioner) vs. ASSISTANT CONTROLLER OF PATENTS AND DESIGNS & ANR. (Respondents)**

Case Number: W.P.(C)-IPD 45/2023 & CM 150/2023

Decided on: January 08, 2024

In the present case, the writ petition was filed by the petitioner against the impugned order dismissing the petitioner's pre-grant opposition "*ex parte*" the petitioner and granting the patent application for an invention titled "*Weedicidal Formulation and method of manufacture thereof*" under No.538/DEL/2010. The petitioner had filed the pre-grant opposition under Section 25(1) in the said application. Thereafter the petitioner addressed a letter to the Controller of Patents intimating their change of the email ID. The petitioner claimed that even after intimating about their change in email ID, respondent continued to send the notice of hearing on their old email which was not accessible by the petitioner and due to which they were not able to attend the hearing, and which resulted in grant of the application. The respondent argued that any amendment regarding the existing position should have been communicated via form 13 or form 30. The respondent also pointed out that the letter written by the petitioner regarding change in email ID did not mention any patent application that it pertained to.

The Hon'ble Delhi High Court has considered all the arguments from both parties and dismissed the writ petition. The Hon'ble Court also stated that the petitioner had a remedy of filing the post grant opposition. The Court further stated that "*the petitioner is not entitled to the relief as sought in the petition; therefore, the question of considering that possibility does not arise.*" The Court has not made any observations on the merits of the petitioner's opposition to the patent.

### TRADEMARKS CASES:

**PREMIER SPG AND WVG MILLS PVT. LTD (Appellant) vs. FOOTBALL ASSOCIATION PREMIER LEAGUE LTD. & ANR. (Respondents)**

Case No. - C.A.(COMM.IPD-TM) 15/2023 & I.A. 12418/2023

Decided On - January 22, 2024

## TATA SONS PRIVATE LIMITED & ORS. (Plaintiffs) vs. TUSHAR FULARE (Defendant)

Case No. - CS(COMM) 242/2022  
Decided On - January 10, 2024



The present suit has been filed by the plaintiff seeking inter alia permanent injunction against defendant for using similar trade dress and packaging of the plaintiff trade dress. The defendant contended that no injunction should be directed in respect to the mark “ZINC WATER PLUS” as words are common and generic words in respect to

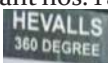
packaging of water. Plaintiff agreed to the statement and stated that packaging used by Defendant is same should be enjoined, as it uses the unique and distinct packaging of the plaintiffs' products. The Hon'ble High Court of Delhi observed that the defendant trade dress and packaging on its product is bound to create confusion as to the source of the product and it is likely to cause confusion. The Hon'ble High Court of Delhi gave judgment in favor of plaintiffs and the defendant was directed to take down all references to the products bearing plaintiffs' Marks from their websites and from all other platforms (online and offline) owned.

## HAVELLS INDIA LIMITED & ANR. (Plaintiffs) vs. COSMIC COMMUNICATION & ORS. (Defendant)

Case No.: CS(COMM) 924/2023  
Decided On: January 04, 2024



The present suit was filed by the plaintiff seeking an *ex-parte ad-interim injunction* against defendants for causing confusion with the plaintiff's well-known trademark. Plaintiffs contended that

the defendant nos. 1 and 2 are selling CCTV cameras under the mark “”, causing confusion.

The Hon'ble Delhi High Court, after examining evidence, finds a prima facie case of confusion and infringement. The Hon'ble court passed an order in favor of the plaintiffs and restrained Defendant nos. 1 and 2 from further sales under any mark similar to the plaintiff's mark.

## PUMA SE (Plaintiff) vs. INDIAMART INTERMESH LTD (Defendant)

Case No. - CS(COMM) 607/2021  
Decided On - January 03, 2024



The plaintiff is aggrieved by the sale of its counterfeit products on the website of the defendant. By allowing

third party sellers to sell counterfeit products through their website, the defendant was gaining monetary benefit out of it. The defendant argued that it only functioned as an intermediary and thus was not liable for infringement. The defendant contended for protection under section 79 of the IT act. The main highlight is that the defendant allowed a seller to select keywords for its products, upon input of the keyword, the products of the seller are displayed on the website. The plaintiff alleged that offering 'PUMA' and 'PUMA SHOES' as keywords amounts to infringement under Section 29 of the Trade Marks Act. The Hon'ble Delhi High Court observed that the defendant's website lacked due diligence in verifying sellers and is thus aiding the sale of counterfeit products. Allowing a third-party seller to use registered marks of others as keywords amounts to infringement of the trademark. The Hon'ble Court denied giving protection to the defendant under section 79 of the IT act. The Hon'ble Court stated that e-commerce platforms are required to conduct diligent verification of sellers in order to protect intellectual property rights of others. The Hon'ble Court stated that the defendant is not entitled to claim 'safe Harbor' as an intermediary as their platform promotes counterfeiting and sale of fake products. The Hon'ble Court ordered the defendant to take down all the product listings that were using the trademark of the plaintiff and stop its practice of offering the plaintiff's trademark as a keyword for product listing.

## TRENT LIMITED (Plaintiff) vs ZUDIOFRANCHISE.NET AND ORS. (Defendant)

CASE NO. - COM IPR SUIT (L) NO.30195 OF 2023  
DECIDED ON - January 02, 2024



The plaintiff has filed a suit for infringement of their registered trademark 'ZUDIO' and for the infringement of the copyright in their original artistic work and for passing off by the defendants. The plaintiff contended that the defendants used their name and intellectual property rights to defraud consumers. They gave false offers to the public for setting up Zudio franchises. The Hon'ble Bombay High Court found that the contentions of the plaintiff to be prima facie and granted an *ex-parte ad-interim* relief in favor of the plaintiff. Thus, the Hon'ble Court ordered immediate restraint on their practice by preventing the defendant from using the trademark.



The Appellant has filed an appeal against the respondent no. 2, challenging the rejection of their opposition to the registration of the respondent's mark 'BARCLAYS PREMIER LEAGUE' under class 25.

The appellant claims similarity to its registered mark 'PREMIER' under class 25 dating back to 1949. The registrar has found no similarity and considers 'PREMIER' a generic term. The appellant contested this as a citing prior use and class relevance. The Hon'ble High Court of Delhi observed that the marks, 'PREMIER' and 'PREMIER LEAGUE,' were dissimilar on a holistic view. The Hon'ble Court applied the rules of "anti-dissection" and "identification of dominant mark" to assess composite marks, emphasizing that the generic term 'PREMIER' is weak, not exclusive, and related to sports leagues. The Hon'ble Court concluded by dismissing the appeal, stating 'PREMIER' lacks distinctiveness for exclusive use, and the respondent's mark has a distinctive element associated with football, making them dissimilar.

### STARBUCKS CORPORATION & ANR (Plaintiffs) vs. NATIONAL INTERNET EXCHANGE OF INDIA & ORS. (Defendants)

Case No. - CS(COMM) 224/2023, I.A. 7252/2023, I.A. 12183/2023, I.A. 16389/2023, I.A. 18317/2023 & I.A. 1506/2024  
Decided On – January 22, 2024



The present suit was filed by the plaintiffs against defendants, seeking a permanent injunction for infringement of their 'STARBUCKS' mark and copyright in its logos. The suit was prompted by impostors posing as "Starbucks Franchise" in

India, misleading the public. Plaintiffs argued that unauthorized entities were posting Google Forms on defendant No.4's platform, soliciting applications for non-existent Starbucks franchises. Defendants did not contest the relief sought and agreed to suspend specific URLs related to these Google Forms. The Hon'ble High Court of Delhi observed that the impostors sought information for non-existent Starbucks franchises, posing a threat to public privacy. Considering the potential harm, the Hon'ble Court granted the relief sought by the plaintiffs, directing defendant No.4 (Google LLC) to immediately suspend the specified URLs. The Hon'ble Court further directed the plaintiffs to submit an affidavit listing additional URLs related to similar fraudulent activities in the future. The defendants were also instructed to provide user details of the registrants of these Google Forms.

### AMIR BIRI FACTORY & ORS (Plaintiffs) vs. MOHD. ASLAM (Defendant)

Case No. - IA No. GA 4 of 2022-CS 211 of 2012  
Decided On – January 16, 2024



The plaintiffs have filed a suit against the defendant for permanent injunction, alleging infringement and passing off of their registered label

"MAZDOOR BIDI." The defendant filed an application seeking to vacate the injunction order. The defendant contended that the plaintiffs concealed material facts, including restrictions on their trademark to sell only in West Bengal, and the defendant is a prior user selling products only in Uttar Pradesh and Uttarakhand. The Hon'ble High Court of Calcutta observed that the plaintiffs obtained the injunction by suppressing material facts about the trademark restrictions and failed to prove the defendant's sales in West Bengal. Consequently, the Hon'ble Court vacated the ad-interim order and confirmed the injunction in favor of the defendant.

### ALLIED BLENTERS @ DISTILLERS PRIVATE LIMITED (Plaintiff) vs. HERMES DISTILLERY PRIVATE LIMITED (Defendant)

Case No.: CS(COMM) 274/2021 and I.As. 7301/2021 & 4441/2023 Decided On: January 15, 2024



The plaintiff has filed the present suit seeking an injunction against the defendant

whose mark is almost identical to the plaintiff's mark 'OFFICER'S CHOICE.' The defendant contended that the plaintiff has been changing its labels from time to time and there has been no consistency. It is unclear since when the plaintiff has been using the labels in question. Further, the use of the color combination, red and white is common to the trade. The Hon'ble Delhi High Court observed a strong prima facie case, that there is a clear attempt to indulge in "smart copying" which in the opinion of the Court would still be copying. The broad similarities are so obvious at first look and broad features of the label have been imitated, and not merely the red and white color combination. Thus, the use of the defendant's label would constitute a misrepresentation likely to result in passing off. The Hon'ble Court decided in favor of plaintiff restrained the defendant from manufacturing, selling, offering for sale of whisky or any other liquor products under the impugned label.

## PLANT VARIETY CASES:

**PEPSICO INDIA HOLDINGS PVT LTD (Appellant)  
vs. KAVITHA KURUGANTI (Respondent)**

Case No. - LPA 590/2023 & CM APPL. 42282/2023  
Decided On – January 09, 2024



The present appeal was filed by the appellant against an order which revoked a registered potato breed called 'FL 2027' given by the Plant Variety Authority. The legal battle ensued when the appellant filed suits against a few farmers in Gujarat for infringement of its right under the said act. The respondent who was also a farmers activist petitioned the PPVFR Authority for revocation of the protection granted to the appellant for the 'FL2027' potato. The PPVFR Authority accepted the plea of the respondent and revoked the plant variety protection given to the appellant for 'FL 2027' potato on the basis of section 34(a), (b), (c) and (h) of the Act. The appellant contended the certificate's revocation, citing section 34(a) for a filing error, corrected later. They challenge sections 34(b) and (c), noting an application error due to irrelevant stamping regulations in the USA. The appellant questions section 34(h), asserting lawsuits targeted unprotected farmers. The respondent argued that 'FL 2027' is public after 2017 and highlighted alleged wrongful use, justifying section 34(h). Furthermore, the appellant failed to provide documentary proof of ownership rights for 'FL 2027,' lacking the original breeder's signature, justifying the invocation of Section 34(b) and (c). The Hon'ble High Court of Delhi observed that section 34(a) was wrongly invoked. The mistake of filing of application for registration in the wrong category was corrected by the registrar by registering it in the correct category. The application for registration of 'FL 2027' was filed on 18th February 2011, therefore the application would fall within the time limit be it computed from 2002 or 2009. The Hon'ble Court also observed that section 34(h) was wrongly invoked because mere filing of suit against someone does not constitute the act being against public interest. Hence, the Hon'ble Court allowed the appeal in favor of the appellant.

## COPYRIGHT CASE:

**SAGA MUSIC PRIVATE LIMITED (Plaintiff) vs.  
ROGER DAVID & ORS. (Defendants)**

Case No. - CS(COMM) 44/2024, I.A. 1128/2024, I.A. 1129/2024, I.A. 1130/2024 & I.A. 1131/2024  
Decided On – January 16, 2024

The present suit was filed by the plaintiff seeking inter alia permanent injunction restraining the defendants from infringing the copyright which accrued to the benefits of the plaintiff by virtue of the “**Exclusive Talent Engagement Agreement**”. Plaintiff is the owner of “Saga Music.” Defendant No.1 is a singer, song writer and music composer working under the screen name “Bohemia” in the Punjabi Music Industry. The plaintiff, claiming substantial goodwill, highlighting agreement with defendant no.1, who allegedly breached terms by collaborating with other labels. The defendant, in response, claimed non-performance by the plaintiff. The Hon'ble High Court of Delhi observed a prima facie case, granting ex-parte ad interim relief. The Hon'ble Court considered the balance of convenience and potential irreparable damage. The Hon'ble Court provided interim relief to the plaintiff, restraining the defendant from further collaboration. The observations hinted at the significance of contractual obligations and potential damage in the music industry.



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