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END OF LEGAL BATTLE OVER POTATOES: DHC UPHELD REVOCATION OF REGISTRATION OF POTATO VARIETY USED IN LAY'S



Ms. Priti More



Priyanshi Verma

Brief about Plant Variety Protection and Farmers' Rights (PPVFR) Act, 2001:

Plant variety protection safeguards a plant variety to a breeder by granting the Plant Breeder's Rights (PBRs). These rights, recognized as intellectual property rights, bestow exclusive privileges to the breeder of the registered variety.

In India, the Plant Variety Protection and Farmers' Rights (PPVFR) Act, 2001 is a *sui generis* system established with the objective of forming an efficient framework for the protection of plant varieties and the rights of both plant breeders and farmers.

The implementation of the PPVFR Act, 2001 expedites agricultural progress and encourages investments in research and development for the creation of new plant varieties. This, in turn, promotes the expansion of the seed industry and guarantees farmers access to superior quality seeds and planting materials, thus fostering agricultural growth.

What Is A Plant Variety?

A variety refers to a specific grouping of plants within a particular botanical taxonomic category, characterized by distinct traits resulting from a specific genotype or combination of genotypes. It is essential for the variety to be identifiable based on its expressed characteristics and be viewed as a distinct unit in terms of its ability to be reproduced without alteration. A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

Types Of Registerable Plant Varieties:

New variety: A variety that has not been available to the public in India for a period of at least one year prior to the filing date, or outside of India (in the case of trees or vines) for a period of at least six years, or in any other case, for a period of at least four years.

Extant Variety: A variety that is recognized under the Seed Act, 1966, which is widely known and acknowledged, or a variety that is cultivated by farmers, or any other variety that is publicly accessible or is in public domain.

Farmers Variety: A variety that has been traditionally grown and developed by farmers in their fields, or a variety that is a wild relative or locally known variety, for which farmers possess common knowledge.

Essential Derived Variety: An "Essentially Derived Variety" (EDV) is considered to be derived mainly from an initial variety. It can be derived from the initial variety or from a variety that is primarily derived from the initial variety. The EDV retains the essential characteristics that arise from the genotype or combination of genotypes of the initial variety while also being clearly distinguishable from the initial variety.

Distinctiveness, Uniformity, Stability (DUS) TEST under PPVFR: DUS tests serve as a fundamental component under the PPVFR Act, 2001, aimed at establishing the distinctive nature of a new plant variety when compared to existing ones. These tests meticulously examine the variety's attributes to ensure their uniformity and verify the stability of phenotypic characteristics across successive generations.



In order for the DUS tests to be conducted for an appellant's submission, they are required to furnish the prescribed quantity of seeds and the requisite fee as specified under the relevant Rules. India boasts an impressive network of over 100 DUS Centers, each specializing in specific categories of crops. These centers take up applications based on the crop variety category to which the submitted variety pertains, ensuring comprehensive and expert evaluation.

Case Summary:

PepsiCo India Holdings (Appellant) had registered the potato variety (FL 2027) in India and the registration was granted under the protection of plant Varieties and Farmers' Rights Act, 2001, in February 2016. Further the farmers' rights activist, Kavitha Kuruganthi (respondent) had filed an application under section 34 of the Act before the Plant Varieties and Farmers Rights Authority (hereinafter referred to as the "Authority"), seeking revocation of the registration granted in favor of the appellant. The Authority had allowed the application and revoked the registration of FL 2027, in view of this revocation, application for renewal of the registration was also rejected by the Authority.

The present appeal was filed by the appellant, challenging the impugned order of revocation passed by the Authority and the Authorities letter rejecting the renewal of the registration.



pic courtesy: PepsiCo/© Gettyimages/MariusFM77

Court proceeding:

The Hon'ble Delhi High Court, after hearing contentions from both parties, analyzed Sections 28 and 39 of PPVFR Act, 2001 which deals with the breeder's and the farmer's rights, respectively. The Court established the fact that the PPVFR Act recognizes and aims to provide a balance between both the breeder's rights and the farmer's rights.

The issue addressed by the Court in the present appeal was whether the Authority erred in revoking the registration granted to the appellant based on grounds mentioned in Section 34(a), (b), (c) and (h) of the PPVFR Act. Section 34(a) of the Act states that, the registration of a plant variety may be revoked if incorrect information was furnished by the appellant. The Authority revoked the registration on the grounds that the appellant had initially provided its "extant variety" as a "new variety" in the registration application.

The Hon'ble court pointed out here that Section 15(1) of the PPVFR Act mandates that a 'new variety' should only be registered if it conforms to the test of novelty, stability, distinctiveness, and uniformity. While the period of registration is the same for both the varieties, the appellant's mistake of registering the "extant variety" as a "new variety" could be considered a bona fide error, which the appellant later rectified by amending the application.

However, the appellant provided an incorrect date of commercialization, which determines the registration of a variety as an 'extant variety'. As stated by Rule 22 (2A), registration to 'extant variety' shall not be granted if, on the date of the application, fifteen years have passed from the date of the first sale". Therefore, the date of the first exploitation or sale was an, important and material information for the application.

The Act imposes certain rules and regulations on the appellant, which they failed to comply with. Hence, the Authority was justified in revoking the registration under section 34 (a) of the PPVFR Act.

Section 34 (b) and (c)

The court further observed that the appellant had filed Form PV-2 without filling in the required details and without obtaining the necessary signatures of the breeder or FLNA, the alleged assignee of the breeder. Rule 27 of the PPVFR Act states that when the application is made by the assignee, they should furnish the documentary evidence as outlined in Form PV-2 while making such application or within six months of making such an application. However, in this case, the appellant failed to comply with this requirement, which raised concerns about the validity of the application. Such omissions could have significant implications for the

registration process and may affect the credibility of the submitted information.

Section 34(c) of the Act specifically states that the registration may be revoked if the breeder fails to provide the Registrar with the necessary documents for registration under the PPVFR Act. In this case, the Authority was justified in invoking this provision as the appellant did not fulfil the requirement of providing the necessary documents. The Assignment Deed produced by the appellant, which indicated a transfer of rights from the breeder, Dr. Robert W. Hoopes, to Recot Inc., could not be considered as reliable evidence due to its lack of stamping, and there was no proof of change of name being filed.

Consequently, the appellant failed to prove their eligibility for protection under the PPVFR Act by not submitting the required information, documents, or material essential for registration process as mandated by the PPVFR Act. This non-compliance with the registration requirements cast doubt on the validity of the appellant's claim for protection under the PPVFR Act.

Therefore, it is evident that the application submitted by the appellant was deficient, and as per Section 34(b) and (c) of the PPVFR Act, the Authority was justified in revoking the granted registration.

Regarding the appellant's challenge on the respondent's locus to file the revocation application before the Authority, the Hon'ble Court referred to Section 34 of the PPVFR Act, which allows "any person interested" to file an application for revocation of a registration. The Court held that the respondent falls under the criteria of "any person interested", as the application was filed in the interest of the public.

Consequently, after examining the merits of the appeal, the Hon'ble Delhi High Court dismissed the appeal, as it found no grounds of merit to support the appellant's contentions.

Conclusion:

The enactment of the Plant Variety Protection and Farmers' Rights (PPVFR) Act, 2001, marks a significant milestone in India's agricultural sector. By conferring Plant Breeder's Rights, the PPVFR Act incentivizes innovation, fosters agricultural growth, and ensures farmers access to superior quality seeds. While the process demands meticulous adherence to registration criteria, it serves as a robust framework to safeguard

intellectual property, encouraging sustained advancements in crop development and enriching the agricultural domain. Recent legal disputes highlight the importance of diligently meeting regulatory requirements, emphasizing the significance of accuracy and compliance in the pursuit of effective plant variety protection.

PROTECTING BRAND IDENTITY IN INDIA WITH SERIES AND COLLECTIVE MARKS

By Ananya Sinha and Priyanshi Verma

Introduction


A trademark stands as a prominent example of Intellectual Property Rights. Trademark registration is a crucial aspect of brand protection, as it helps businesses establish and safeguard their unique identity. In India, there are various types of trademark classifications, including individual marks, series marks, and collective marks.

Trademarks typically encompass a logo, device mark, or a word mark comprising specific words or phrases. The primary purpose of a trademark is to uniquely identify and differentiate the goods or services of a particular business or individual from those of others in the commercial marketplace.

Series Mark

A series trademark can be registered under a single registration, encompassing various variations of the trademark. To obtain this registration, it is crucial for all marks in the series to bear a resemblance to their essential elements. Permissible discrepancies between the proposed series trademarks are limited to non-distinctive aspects, such as statements regarding number, size, price, quality, quantity, geographical origin, color, etc. The criterion used to assess these differences is whether the dissimilar features, when considered as individual trademarks, lack distinctiveness and do not significantly alter the overall identity of the trademark.

Example of Series Marks: McDonald's has a range of series marks that include the prefix

"Mc," "" such as McChicken, McCafé, and Mc. Donuts, among others. These series trademarks are registered under a single registration, as they share the common element "Mc," which is a distinctive feature associated with McDonald's brand identity.

Collective Mark

A collective mark is a unique type of trademark that is used by members of an association or collective organization to signify the origin, quality, or other common attributes of goods or services. It represents a

collective body or group of producers who adhere to specific standards or criteria set by the association, which can be registered by associations or organizations representing a group of producers, traders, or service providers. There is an emphasis on the fact that this kind of trademark can be owned by an association of people, not a partnership. It represents their intellectual property, providing commercial rights and a distinctive brand in the market, establishing reputation and goodwill.

Example of Collective Marks: The collective mark of "Handloom India" ""

Handloom Mark is the Government of India's initiative to provide a collective identity to the handloom products in India and can be used not only for popularizing the handwoven products but can also serve as a guarantee for the buyer that the product being purchased is genuinely handwoven from India.

Series Mark Vs. Collective Mark

Characteristics of Series marks:

- The series mark should consist of a group of marks that resemble each other in some way, such as in their essential elements, design, or style.
- The marks in the series should be used or intended to be used in relation to similar or related goods or services.
- The application for a series mark should identify the marks that form the series and their common characteristic.

Characteristics of Collective marks:

- The collective mark should be used by members of a specific organization, association, or group.
- The mark signifies a common origin or quality standard and represents the collective interests of the members using it.
- The application for a collective mark should include the regulations governing the use of the mark by the members of the collective organization.

Conclusion

Trademark protection is vital for businesses to safeguard their brand identity and reputation. In India, both series marks and collective marks offer unique advantages for different scenarios. Series marks are ideal for companies with multiple variations of a mark, providing cost-effective and streamlined protection. On the other hand, collective marks strengthen associations and create trust among consumers for products and services offered by members of a collective organization. Series marks unite related variations under one registration, while collective marks signify a group's origin or adherence to specific quality standards. Both types of marks effectively protect brand identity and IP rights effectively in India. Series marks resemble essential elements, design, or style, while collective marks represent an association's members adhering to specific standards. Both serve the purpose of unique identification and differentiation in the marketplace thereby enabling businesses to establish and maintain their distinct presence amidst competition.

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IP SNIPPETS:

PATENT CASES:

RXPRISM HEALTH SYSTEMS PRIVATE LIMITED & ANR. (Plaintiff) vs CANVA PTY LTD & ORS. (Defendants)

Case Number: CS(COMM) 573/2021 and I.A.14842/2021
Decided on: 18th July, 2023

The present case has been filed by the plaintiff seeking relief against the defendant from infringing the plaintiff's patent "Indian Patent No. 'IN 360726'" and rendition of accounts. The plaintiff has developed a novel and innovative product which is a system and a method for creating and sharing interactive content. The corresponding patent application has been granted in US and have pending application for grant in another jurisdictions. Whereas the defendant filed PCT application from the Australian patent application. The defendant continued to use their product on their own platform and offered the same to their clients, consumers, and subscribers. The Defendant also filed a Post-Grant Opposition to the Plaintiff's patent in which the recommendations of the opposition Board have been published, and the same are stated to be in favour of the plaintiff. However, since the proceedings in the opposition are still pending before the Patent Office, the Hon'ble Delhi High Court refrains from commenting on the conclusions of the Opposition Board.

On observation the Hon'ble Delhi High Court found that, the plaintiff was successful in establishing a *prima facie* for infringement. Hence, the defendants were restrained from using the plaintiff's registered patent. Further, the defendants were directed to deposit a sum of Rs 50 lakhs with the registrar general of the court, as security for the plaintiff claim for past use of their patent, and to pay a sum of Rs 5 lakhs to the plaintiff for using improper language in their plaint against the plaintiffs.

PFIZER INC & ORS. (Appellant) vs WEST-COAST PHARMACEUTICAL WORKS LIMITED (Respondent)

Case Number: CS(COMM) 94/2022 and I.A. 1212/2023
Decided on: 10th July, 2023

The present case was filed by the appellant against the respondent for permanent injunction restraining infringement of the two patented products of the appellant in their different forms. The respondent listed the following products as available on their website and

had filed an affidavit in which Drugs Department provided the product permissions to the respondent after following the due procedure enshrined under the Drugs and Cosmetic Act, 1940. The respondent had never manufactured the product. After the present case was filed, the respondent filed a request on cancellation of product permission before Food & Drugs Department and the respondent also removed the listing of the two products from the website.

Hence, the Hon'ble Delhi Court warned the respondent to be careful in future. The Hon'ble Court concluded the matter ruling in favor of the Appellant and ordered the respondent to pay a sum of Rs 3 lakhs within six weeks as a cost to the appellant.

BAYER HEALTHCARE LLC (Appellant) vs NATCO PHARMA LIMITED (Respondent) BAYER HEALTHCARE LLC (Appellant) vs MSN LABORATORIES PRIVATE LIMITED (Respondent)

Case Number: CS(COMM) 343/2019 & CS(COMM) 660/2022
Decided on: 05th July, 2023

The present case was considered jointly as both the cases were related to the same patent application of the appellant, to an order of interim injunction against the respondents. The appellant's patent is a valid and subsisting patent in India. Whereas the respondent states that, the present patent was already disclosed in IN 215758 (IN '758), the respondent also challenged a lack of novelty and inventive step based on the prior disclosure IN '758 as well as WO 00/42012 (WO '012), which is the parent PCT for IN '758. The Hon'ble Delhi High Court observed that the present patent does not disclose any additional advantage, nor does it solve any technical problems associated with the compounds of WO '012. The Hon'ble Court further stated that "I find that the plaintiff has been unable to make out a prima facie case for grant of an interim injunction in its favour". The Hon'ble Court also observed that the respondent is manufacturing and selling the product in much lower price than that of the appellant, so it will not be appropriate to injunct the respondent from selling the product and the patent IN'758 has expired. The Hon'ble Court thus concluding the said matter, dismissed the appeal and directed the respondent to maintain the account of sales of the product and file statement of account(s), on affidavit(s), on half yearly basis before the Hon'ble Court to maintain the balance of convenience.



TRADEMARK CASES:

HIMALAYA WELLNESS COMPANY & ORS. (Plaintiffs) vs. WIPRO ENTERPRISES PRIVATE LIMITED (Defendant)

Case No.: CS(COMM) 118/2023
Decided On: 12th July, 2023

The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing and passing off the registered marks of the plaintiffs. The plaintiffs have been in the business of manufacturing and distribution of ayurvedic medicaments since 1930 and has been using the mark "EVECARE" since 1998, in class 5, which is an ayurvedic medicine used as a uterine tonic for women, whereas defendants have been using the registered mark "EVECARE" as an intimate hygiene wash for women since August 2021. The Hon'ble Delhi High Court observed that the defendant has been using the mark only for 1.5-2 years whereas the plaintiff has been using the impugned mark for 24 years and has maintained its goodwill. A simple google search by defendant would have made them aware of the Plaintiff's goods, yet they launched their product under same trademark as that of Plaintiff. The products of both the parties, comes under "Women Care", having common trade channels this is likely to cause confusion in the minds of general public. The Hon'ble Court held that plaintiffs having established a *prima facie* case of passing off, the defendants and its representatives are hereby restrained from manufacturing and distribution of any products under "EVECARE" or any other deceptively similar marks.

SPORTA TECHNOLOGIES PVT. LTD. AND ANR (Plaintiffs) vs UNFADING OPC PRIVATE LIMITED (Defendant)

Case Number - CS (COMM) 202/2022
and I.A. 5072/2022
Decided on - 7th July, 2023

The present suit was filed by the plaintiff seeking relief of permanent injunction for passing off and infringement of its trademark against defendant from using the mark "SattaDream11" or any confusingly similar variant thereof as the trademark, trade name, domain name, or in email addresses on social media. The plaintiff claimed defendant used the prefix "Satta" to damage plaintiff's trademark "Dream11", which is a fantasy game with talent-based competition and exploited its goodwill. The plaintiff additionally asserted that the nature of defendant's services made

them illegal in India because they involved betting money and receiving rewards only on whether an event occurred or not, asking absolutely nothing in the manner of experience or skill. The Hon'ble Delhi High Court observed that "Dream11" and "SattaDream11" are similar, making it difficult for consumers to distinguish them, especially on the internet. The Hon'ble Court granted plaintiff's interim injunction, prohibiting defendant from using "SattaDream11" trademark or similar variations for trademark violations until next hearing date.

M/S. SANGEETHA CATERERS AND CONSULTANTS LLP (Plaintiffs) vs. NEW SANGEETHA RESTAURANT (Defendant)

Case No.: C.S.No.302 of 2014
Decided On: 07th July, 2023

The present suit was filed by the Plaintiffs seeking permanent injunction against the defendants from infringing their registered Trademark "Sangeetha". The plaintiffs have the impugned trademark "Sangeetha" registered in class 43 established in the business of restaurants. Whereas the defendant also has a restaurant under the name "New Sangeetha Restaurant", whose registration application in Class 43 was already refused by the Registry. The Hon'ble Madras High Court observed that the defendants after receiving the cease-and-desist notice, replied to Plaintiffs that they would change their name, yet they kept using the disputed name of "New Sangeetha Restaurant". Further, the defense taken by defendants under Section 35 of Trademark Act, 1999 isn't applicable as it doesn't provide for bona fide use of spouse's name. Hence, defendants and their representatives are permanently enjoined from infringing the Plaintiffs Registered trademark.

KAMDHENU LTD (Appellant) vs. THE REGISTRAR OF TRADE MARKS (Respondent)

Case No.: C.A.(COMM.IPD-TM) 66/2021
Decided On: 06th July, 2023

The present appeal was filed by the appellant challenging the impugned order dated 23rd April 2019, which rejected inclusion of appellants' mark "KAMDHENU" in "Well-known List", reason given for it was failure of appellant in providing evidence by way of an affidavit. As per Evidence Act and Trademark Rules, the Hon'ble Delhi High Court held that in order for a determination of well-known status of a trademark, affidavit by way of evidence cannot be held to be a mandatory requirement for grant of well-known status under the Trademark Act and Rules. If the Registrar is of the opinion that any particular documents need to be supported by way of an affidavit, the Registrar can always give an opportunity to the applicant to file such an affidavit rather than rejecting an application. Hence, the appeal is allowed, and the decision of Registrar is set aside.

TV 18 BROADCAST LIMITED (Plaintiff) vs BENNETT, COLEMAN, AND COMPANY LIMITED (Defendant)

Case No.: CS(COMM) 279/2022
Decided On: 4th July, 2023

The present interim application was filed by the Plaintiff seeking interim injunction against the defendant. The plaintiff, a part of the Network18 group, runs television shows under trademark



“BHAIYAJI KAHIN”. The plaintiff claimed that



the defendant, a media conglomerate, launched a show

"Bhaiya Ji Superhit," which infringed upon their trademarks.

The defendant argued that the term "Bhaiyaji" is a generic Hindi word meaning "brother" and is commonly used in various television and radio programs. The Hon'ble Court analyzed the registrations granted to the plaintiff and noted that the registration under class 41 had a disclaimer regarding the use of the term "Bhaiyaji." They concluded that the plaintiff could not restrict the defendant from using the term based on the disclaimer and the generic nature of the word. The Hon'ble Court also considered the format and nature of the shows and found no likelihood of confusion between them. Based on these findings, the Hon'ble Court dismissed the plaintiff's application for interim relief, stating that the plaintiff's failed to establish a prima facie case for grant of interim injunction.

SAP SE (PETITIONER) vs SWISS AUTO PRODUCTS & ANR. (RESPONDANTS)

Case No.: CA(COMM.IPD-TM) 130/2021
Decided On: 3rd July, 2023

The present suit was filed by the petitioner for registration of "SAP" as a trademark in India in 1999. The respondents opposed the impugned registration. Despite attempts at the settlement, the Registrar of Trademarks refused to accept evidence from the petitioner, resulting in an unfavorable order in 2019. The Hon'ble Court, after considering the arguments and the repeal of the 2002 Rules by the 2017 Rules, concluded that the Registrar erred in applying the 2002 Rules to the case. In an absence of saving a clause under 2017 rule, the Hon'ble Court believed the registrar ought to have decided the matter by considering the provision of Rule 46 of 2017 Rules and Rule 51 of the 2002 rules would not be applied. The Hon'ble Court

determined that the 2017 Rules, which introduce changes to procedural aspects, including the filing of evidence, should apply retrospectively to ongoing proceedings initiated under the 2002 Rules.

DHIRAJ KUMAR NANDA (APPELLANT) vs THE REGISTRAR OF TRADEMARK AND ANR & ANR. (RESPONDENTS)

Case No.: C.A. (COMM.IPD-TM) 7/2023
Decided On: 3rd July, 2023

In the present suit, the appellant filed an appeal seeking to set aside the order that treated his trademark application as abandoned. However, the application was opposed by M/s Alticor Inc., and a hearing was scheduled. The appellant claimed that they did not receive any hearing notices and, therefore, could not defend their position. The Hon'ble Court observed that the Registrar is required to give notice of the opposition hearing to the parties. Since the appellant did not receive the hearing notice and the matter proceeded in default, the Hon'ble Court set aside the order abandoning the application. The Hon'ble Court directed the Registrar to communicate a fresh date of hearing to the parties and ordered that the opposition be heard and decided according to the law.

SUN PHARMA LABORATORIES LIMITED (Plaintiff) vs GLENMARK PHARMACEUTICALS LIMITED (Defendant)

Case Number – CS(COMM) 711/2022 & I.A.S. 20492-20493/2022, 1306/2023.
Decided On – 3rd July, 2023.

The present suit was filed by the plaintiff seeking relief of interim injunction for infringement and passing off its trademark against defendant from using the mark "INDAMET" deceptively similar to the plaintiff's mark. The plaintiff claims its mark "ISTAMET" and the impugned mark to be deceptively similar. The defendant submitted that "INDAMET" and "ISTAMET XR CP" do not possess any visual, linguistic, or structural characteristics. The plaintiff cannot assert a monopoly over the suffix "MET". It was argued that several third-party manufacturers have obtained registration and using a suffix 'MET'. The Hon'ble Delhi High Court specified the significance of reviewing pharmaceutical trademarks with care, considering public health risks, and recognizing the unavoidable confusion caused by different packaging. The Hon'ble Delhi High Court held that it was essential that an injunction be given to defend the plaintiff from such irreparable damage and protect the public health. Hence, the Hon'ble Delhi High Court restrained the defendants from producing or marketing medicinal or pharmaceutical preparations with a similar or deceptively similar mark to the plaintiff's registered mark during the pending lawsuit.



DESIGN CASE

**JAYSON INDUSTRIES AND ANR. (PLAINTIFFS)
VS CROWN CRAFT (INDIA) PVT. LTD.
(DEFENDANT)**

Case No.: CS(COMM) 580/2022
Decided On: 3rd July, 2023

The present suit was filed by the Plaintiff contending that defendant has imitated its designs of bucket, mug, and tub, committing piracy of design under Section 22(1) of the Designs Act, 2000. The Hon'ble Court, after considering the prior art presented by the defendant, concluded that the suit designs lacked novelty and originality. The features claimed by the plaintiffs, such as vertical ribs and flanges on the rim, were found to have been used in prior designs. The Hon'ble Court listed several prior published designs that challenged the validity of the suit designs. As a result, the Hon'ble Court held that the defendant had presented a credible challenge to the novelty and originality of the suit designs. Based on the visual appreciation of the designs and considering the prior art, the Hon'ble Court rejected the plaintiffs' prayer for an interlocutory injunction, citing Section 22(3) of the Designs Act, which allows for the rejection of an injunction when there is a credible challenge to the novelty and originality of the designs.



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