

**DuxLegis**<sup>®</sup>  
Attorneys



**IPAY ATTENTION**

Gateway to IP World

Newsletter | Issue 10 | October 2023



## In This Issue

- Protection Of NFTs: A Legal Dilemma In India
- Recognition
- DuxLegis Attorneys Visited T-works On The Invitation From Government Of Telangana
- IP Snippets

## PROTECTION OF NFTs: A LEGAL DILEMMA IN INDIA



Adv. Sphurti Dalodria

### Introduction:

Non-Fungible tokens (NFTs) are cryptographic tokens recorded on a blockchain, and they are not interchangeable. In simple terms, the NFTs are a type of cryptocurrency. The NFTs generally act as a digital identifier that verifies the ownership and authenticates tangible or non-tangible assets. The NFTs provide a public certificate of authenticity or ownership of the assets. The technical definition of the NFTs defined in blockchain ecosystem refers to cryptographic assets which are unique in nature and cannot be exchanged. However, the legal definition of the NFTs is not clear as there is no law in India which defines NFTs. The NFTs contain multiple digital files in the form of images, audios, or videos. It does not provide any grant over Intellectual Property Rights or other legal rights. The NFTs do not restrict accessing or creation of the tokens of the reference digital files.

The main benefit of using the NFTs is to remove intermediaries. Sellers can directly connect with their targeted audiences without adding a middle person by using the NFTs. The NFTs can be transferred digitally and gained significant popularity in the virtually realm.

### Are NFTs safe?

Technically, NFTs are safe in virtual environments, as they work in a blockchain ecosystem. In other words, the ownership of the NFTs is secured by the blockchain ecosystem. However, security threats are a main issue on the blockchain, and sellers and buyers need to consider these security threats. These security threats include phishing attacks and malware functions. The legal rights on the NFTs are uncertain. As there is no law in India which defines NFTs, and therefore, there is no law which fully covers the perpetrators.

### Legal Position of NFTs in India:

India has seen an increased interest in cryptocurrencies and NFTs. As stated previously, there is no law in India which defines NFTs. However, there are some guidelines and regulations issued by the government agencies which prohibit cryptocurrency in India.

However, prohibition of cryptocurrency is not a solution for protection. Technology is increasing day by day and other countries are also working on assets that can help in protecting from frauds. In India, many organizations also initiate working on development NFT based resources which are related to cryptocurrency. Recently, an Indian gaming company (Guardianlink) launched an NFT cricket game, which is completely based on non-fungible tokens without the obligations of Pay-to-Play or Play-to-Earn models. The gaming company supported by an open source blockchain protocol would enable the players to have digital wallets to trade their cards with other players through an inbuilt store in the game without requiring any other cryptocurrency. Also, entertainment industries use NFTs to make profit for creators. However, there is no legal remedy in India which protects the owners from consequences of NFTs. There is no direct law which provides clear provisions for NFTs. Some of the regulations and Acts which cover the concept of NFTs are described below.

### Cryptocurrency and Regulation of Official Digital Currency Bill, 2021

The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 was introduced in Lok Sabha (Lok Sabha is the lower house of the Parliament of India). The Bill seeks “to create a facilitative framework for creation of the official digital currency to be issued by the Reserve Bank of India” and “to prohibit all private cryptocurrencies in India”. However, it allows for certain exceptions to promote the underlying technology of cryptocurrency and its uses. However, this proposed bill was not passed as per the order of the Supreme Court of India dated March 04, 2020, in a case Internet and Mobile Association of India V. Reserve Bank of India (Citation: 2020 SCC online SC 275). The Supreme Court of India stated that the right to trade is a basic right under Article 19(1)(f) of the Constitution.

### Draft Banning of Cryptocurrency & Regulation of Official Digital Currency Bill, 2019

The Draft Banning of Cryptocurrency & Regulation of

Official Digital Currency Bill, 2019 was also drawn up. The Bill seeks to prohibit mining, holding, selling, trade, issuance, disposal, or use of cryptocurrency in India. The Bill specifically prohibits the use of cryptocurrency for use as a medium of exchange; a store of value; and/or a unit of account. The Bill also prohibits the use of cryptocurrency for various activities, such as use as a payment system, buy or sell or store cryptocurrency, provide cryptocurrency related services to consumers or investors which includes registering, trading, settling, clearing or other services; trade cryptocurrency with Indian currency or any other foreign currency; issue cryptocurrency related financial products; as a basis of credit; issue cryptocurrency as a means of raising funds; and/or as a means for investment.

#### The Copyright Act, 1957

The NFTs are generally associated and minted with artworks. The artworks may be in various forms such as images, videos, audios, and the like. Generally, buyers can buy NFTs or create their own NFTs and mint their NFTs with artwork created by others. In this case, the owner of the NFTs becomes the buyer. Now, the question arises whether the nature of the artwork is intellectual and who will be the author of the artwork. It also prompts inquiries about who is entitled to protection over the artwork associated with an NFT.

There is no direct provision under the Copyright Act which solves the mystery. It is very difficult to manage and protect the NFTs legally. However, Section 2(d) of the Copyright Act defines the term “author”. Specifically, Section 2(d)(vi) of the Copyright Act defines an author which can be a person in relation to any literary, dramatic, musical, or artistic work which is computer-generated and the person who causes the work to be created. That means, the artwork on which the NFT gets minted may have copyright protection. The author of the artwork having NFT may be considered as exclusive owner unless the created artwork gets shared by the other person or co-author. The ownership of the copyright provides exclusive rights to the owner as specified under Section 14 of the Copyright Act. Section 14 indirectly refers to the right to mint the NFT of the work. It should be noted that the ownership of the artwork based on which the NFTs are created is different from the ownership of the NFTs. So, the owner of NFTs is a person who creates the NFT or mints the NFT on the artwork. Therefore, the owner of the NFT will not be the author of the artwork. Further, the buyers of NFTs cannot file a suit for copyright infringement, as the buyers are only the exclusive owner of the NFTs and not the owner of the artwork. If the buyer can make a smart contract with the seller or author of the artwork, then the buyer can be a limited owner of the artwork subject to the agreement between both parties. Section 51 of the Copyright Act deals with infringement of copyright. Section 51 restricts a person to have full ownership of the artwork with NFTs.

#### **Case Law:**

**DIGITAL COLLECTIBLES PTE LTD AND ORS. Vs. GALACTUS FUNWARE TECHNOLOGY PRIVATE LIMITED AND ANR. (CS(COMM) 108/2023; Decision Date: 26th April 2023)**

In this case, the Delhi High Court stated that the plaintiffs cannot claim to have an exclusive right over the use of NFT technology. NFT is a technology that is freely available. The defendants used the NFT technology to ensure security and authenticity as a means of proof of ownership of its cards and to keep a record of transactions on a blockchain. The Hon'ble Court also stated that the use of the name and/or the image of a celebrity along with data with regard to his on-field performances by OFS platforms is protected by the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. It is a settled position of law that protection under Article 19(1)(a) extends to commercial speech as well. Therefore, even if the defendants are using players' names, images, and statistics for commercial gain, this would be protected under Article 19(1)(a) of the Constitution of India. The Court noted that this technology was freely available to anyone, and no person could claim to have an exclusive right over the use of NFTs.

#### The Foreign Exchange Management Act, 2000

The Foreign Exchange Management Act (FEMA) considers NFTs in the form of foreign exchange or digital assets, and transactions involving them may be subject to certain regulations. The FEMA regulates foreign exchange transactions in India. Any transaction involving the exchange of Indian currency for foreign assets, including NFTs, is subject to FEMA regulations.

#### The Income Tax Act, 1961

The Income Tax Act, 1961 has been amended to include NFTs under the definition of virtual digital assets. The virtual digital assets defined as:

*(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;*

*(b) a non-fungible token or any other token of similar nature, by whatever name called;*

*(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify.*

Further, earnings from using the NFTs is taxable at 30%.

### Conclusion:

An essential aspect of Non-Fungible Tokens (NFTs) lies in their perpetual requirement for authenticity and distinctiveness. NFTs are a crucial component in the market. However, the Indian Government has not initiated a review of its existing laws, leaving a conspicuous gap in the regulatory landscape. Furthermore, the absence of a regulatory framework for cryptocurrencies poses potential risks to the market. Given the increasing popularity of crypto assets in a blockchain ecosystem, it is very important to develop a legal framework that provides protection over 360 degrees.

## Recognition

### DUXLEGIS CELEBRATE DIVYENDU'S APPOINTMENT TO THE INTA DESIGNS COMMITTEE FOR 2024-25



We are delighted to announce that Divyendu Verma, Managing Partner, has been appointed as a member of the International Trademark Association (INTA) Designs Committee for the term 2024-2025.

The Designs Committee of INTA plays a crucial role in addressing matters related to industrial designs, which are a form of intellectual property that protect the ornamental or aesthetic aspects of a product. The committee's primary focus is on design rights and the legal and practical issues associated with protecting designs on a global scale. Members of the INTA Designs Committee work together to champion and safeguard design rights, promote knowledge sharing, and advocate for policies that strengthen the design community. These endeavors are in harmony with INTA's broader mission of advancing trademark and intellectual property protection on a global scale.

## DUXLEGIS ATTORNEYS VISITED T-WORKS ON THE INVITATION FROM GOVERNMENT OF TELANGANA

With a bright vision of working towards creating a better future, K T Ramarao (KTR), the IT minister of Telangana has developed the best innovation and incubation center named “T-WORKS” with the help of the Telangana government. The center is renowned as India's largest prototyping center. T-WORKS aims to support innovations and startups by motivating and educating the innovators and entrepreneurs by conducting various events, workshops, skill development sessions and providing required machinery for prototyping and work as per the required department like electrical, mechanical, and ceramic and many more. T-WORKS further facilitates cost-effective prototype development, enabling innovators and learners to grasp design concepts visually and pursue patenting for their innovations.



DuxLegis team recently visited T-WORKS and was deeply impressed by the vision of K T Ramarao (KTR), who has developed an exceptional innovation and incubation center equipped with numerous facilities for emerging innovators and entrepreneurs. Pramod Chunchuwar, Chief Editor of DuxLegis's monthly newsletter, conducted interviews with several innovators at T-WORKS. The T-WORKS team introduced various machines designed for prototyping, which can also serve as models before implementing them on injection molding or other large-scale machinery used in industries or factories. They showcased machines such as a 3D printing machine, SLC machine, CNC machine, laser cutting machine, Li-ion battery spot welder, and presented several finished products resulting from these machines, including 3D printed jewelry and robots, among others.



The T-WORKS team also discussed their work process in a ceramic studio, including various molding techniques. They explained how they initially craft their products by hand or on a wheel, followed by a drying period and subsequent firing in a Cone Art kiln at the required temperature. Finally, they finish their products by applying a gloss layer or matte paint as needed. The T-WORKS team offered a tour of their already crafted ceramic products, which were delightful to behold.

T-WORKS has played a pivotal role in the development of numerous products and brands. One notable example involves the conversion of floral waste into essence sticks using advanced techniques. They have also contributed to the creation of brands such as Bongram, Aestus, Formula E, Memora, and many more.

Overall, DuxLegis tour of T-WORKS was highly informative and showcased the Telangana government's commendable initiative in shaping a better future.



## IP SNIPPETS:

### PATENT CASES:

#### **MICROSOFT TECHNOLOGY LICENSING, LLC (Appellant) vs THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS (Respondent)**

Case Number: C.A.(COMM.IPD-PAT) 358/2022  
Decided on: August 11, 2023

The current appeal has been filed by the appellant for the rejection of their patent application on the ground of Sections 16(1), 16(3) and 3(k) of the Patents Act, 1970. The appellant had filed the divisional application for an invention titled “System for Advanced Bi-directional Predictive Coding of Interlaced Video “which was derived from the Parent application.

The Hon'ble Delhi High Court observed the following matter and stated that the respondent had wrongfully objected to amendments of method claim 1-29 to system claim 1-29 under section 16 of the act. The Hon'ble Court also stated that the divisional application requires a delineation from its parent application. The objections under Section 16 of Patents Act, were therefore not sustainable. There was no discussion on the requirements under Section 3(k) of the Patents Act and the matter has been remanded to the respondent for re-examination. Hence, the Hon'ble Court concluded stating to reconsider the matter afresh with granting a clear hearing notice to the appellant and to decide on the issue of Section 3(k) of the Patents Act, within four months from the date of release of this judgement. The Hon'ble Court has further ordered that *“the Appellant's divisional application shall be decided in light of the law discussed in the judgments of this Court in Ferid Allani v. Union of India and Ors. and Microsoft Corporation v. The Assistant Controller of Patents and Designs”*.

#### **SAURAV CHAUDHARY (Petitioner) vs UNION OF INDIA & ANR. (Respondents)**

Case Number: W.P.(C)-IPD 9/2023  
Decided on: September 01, 2023

The present writ petition has been filed by the petitioner for restoring the abandoned patent applicant titled “Blind-Stitch Sewing Machine and Method of Blind Stitching.” The petitioner had filed patent application through the respondent who was a partner and a patent agent at a respective firm dealing with the present patent application. The petitioner alleged that they filed for patent application on 3rd August 2019 and a request for

examination was filed on 21st February 2022. Following to which First examination report (FER) was issued on 29th April, 2022 to which the reply should be filed within 6 months, Even after repeated follow-ups, petitioner did not receive any updates regarding the same by the respondent and so the application was abandoned. Therefore, the petitioner filed a request for restoring their patent application.

The Hon'ble Court observed that there is no supervisory or regulatory authority over trademark and patent agents which appears to be the need of the hour. There are repeated cases wherein litigants have raised allegations against such Trademarks Agents and Patent Agents and apart from reprimand from Courts, there are no other consequences that visit them.

The Hon'ble Court after listening to both parties issued a notice to the respondent to file an affidavit explaining the reason leading to the abandonment of the petitioner's patent application with other relevant information against the same and to file the affidavit within 2-4 weeks. The Hon'ble Court instructed, the learned Central Government Standing Counsel, to seek guidance from the Office of the Controller General of Patents, Designs, and Trademarks (CGPDTM) regarding the apposite manner of regulating such agents and submit them in the next hearing.

#### **W R GRACE AND CO CONN (Appellant) vs THE CONTROLLER OF PATENTS (Respondent)**

Case Number: C.A.(COMM.IPD-PAT) 5/2022 and I.A. 17000/2023  
Decided on: September 04, 2023

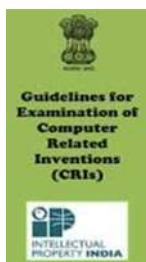
In the present case, the appellant has filed an appeal at Delhi High Court against the respondent for refusing the patent related to a “CRYSTALLINE FORM OF NICOTINAMIDE RIBOSIDE” along with the method of preparing such crystalline form II of “NICOTINAMIDE RIBOSIDE CHLORIDE.” The respondent refused the patent on the ground of “Lack of inventive step under section 2 (1) (ja), Non patentable under section 3(d) and. section 3(e) of the Patents Act, 1970”.

The appellant further on amended the claims restricting the scope of claims to the method aspect of preparing a Crystalline Form II of nicotinamide riboside chloride. The respondent rejected the amended claims stating that the amended claims are not patentable under section 3(d). The Hon'ble Court observing the following issue and stated that “refusal to grant subject patent application in the impugned order primarily is in respect of the product claims. The deletion of the product claims would completely change the nature of the patent application itself”. After having perused the amended claims, the Hon'ble Court was of the view that the amended claims appeared to be within the overall scope of the patent application filed and therefore the amended claims shall now be re-examined by the patent office. Hence, the Hon'ble Court concluded the matter and ordered the Indian Patent office to reconsider the matter afresh with the amended claims.

## RAYTHEON COMPANY (Appellant) vs CONTROLLER GENERAL OF PATENTS AND DESIGNS (Respondent)

Case Number : C.A.(COMM.IPD-PAT) 121/2022  
Decided on: September 15, 2023

The present appeal has been filed by the appellant challenging the refusal order of the appellant's application for grant of a patent passed by the respondent. The appellant's patent application is related to scheduling in high performance computing system, which is used by scientists and engineers for modelling, simulating, and analyzing complex physical or algorithmic phenomena. The respondent refused the patent application on the grounds of lacks inventive step and non-patentability u/s 3(k) of the Patents Act. In this case, the respondent has followed the outdated Computer Related Invention Guidelines (CRI) Guidelines of 2016 instead of the updated CRI Guidelines of 2017. The Hon'ble Delhi High Court stated that "insofar as the novel hardware requirement is concerned, it is now well-settled that the said requirement is not to be insisted upon in applications relating to inventions of computer programs. The manner in which such applications are to be examined and the interpretation of Section 3(k) is now settled by this Court in Ferid Allani (supra) and Microsoft (supra)." The Hon'ble Court instructs the Patent Office to reexamine the said application and check if there is a technical contribution or as to what is the technical effect generated by the invention as claimed. Also, it should be examined that whether the system sought to be patented reduces the time period in scheduling job execution in HPC system. The requirement of novel hardware is a higher standard which lacks any basis in law. The subject of the patent application of the Appellant shall now be examined afresh without insisting upon the novel hardware requirement.



The defendant has filed an Interlocutory application for grant of leave to defendant to file a rectification petition challenging the registration of plaintiff's "For The Bold" trade mark. It is alleged that plaintiff's product which, instead, employ taglines such as "FOR MORE BOLD EXPERIENCES", "SNACK BOLDLY", "BOLD CRUNCH", "BOLD FLAVOUR" and "DO YOU SNACK BOLD". The Hon'ble Delhi High Court addressed the subject of a tenable challenge to a registered trademark's validity in relation to the defendant's application under Section 124 of the Trademarks Act. The Hon'ble Court concluded that there is no prima facie case or balance of convenience in favor of the plaintiff to warrant an interim order restraining defendant from using the 'For the bold' tagline. And the court also noted that plaintiff would not suffer irreparable loss if the defendant continued to use the tagline and therefore declined to issue an interim order in plaintiff's favor.

## APPOLO BURN HOSPITAL (Petitioner) vs APOLLO HOSPITALS ENTERPRISES LTD. (Respondent)

Case Number : A.Nos. 2890 & 2892 of 2023 & O.A. Nos. 183 & 184 of 2023 in C.S. (Comm Div). No. 54 of 2023  
Decided on: September 07, 2023

The present application was filed by the petitioner to vacate order of injunction. The original suit was filed by the respondent seeking interim injunction restraining the petitioner from passing off and/or enabling others to pass off / infringing the registered trademarks of the plaintiff's trademarks APOLLO, APOLLO HOSPITALS, APOLLO DIAGNOSTICS, and APOLLO CLINIC, and its variants by using the Appollo Burn Hospital and/or any other mark identical and/or deceptively similar mark. The respondent asserted that the petitioner had registered various trademarks and all containing the term "Apollo". These registrations occurred over the period from 2007 to 2020 with the petitioner claiming to have used the mark since as early as 1979. According to the Court's analysis, the question arises as to when the relevant date for determining trademark infringement and passing off claims should be. The Court stated that the beginning of the Petitioner's operations in the market should be considered the relevant date. The Court observed that there is no similarity in the adoption of the name APPOLO by the petitioner and rejected the allegation of passing off. To establish passing off, the respondent must verify that, when the petitioner set up their hospital. The respondent failed to provide sufficient evidence of their widespread recognition and goodwill in this case. Therefore, the Court dismissed the passing-off claim and application filed by petitioner are allowed.



## TRADEMARK CASES:

### PEPSICO INC. & ANR. (Plaintiffs) vs PARLE AGRO PRIVATE LIMITED (Defendant)

Case Number : – CS(COMM) 268/2021, I.A. 7170/2021 & I.A. 9591/2021  
Decided on: September 18, 2023

The present suit was filed by the plaintiffs against the defendant for seeking a permanent injunction for using the tagline "For The Bold" in relation to its products.

**PROMOSHIRT SM SA (Appellant) vs ARMASSUISSE AND ANOTHER (Respondents)**

Case Number : LPA 136/2023 and CM APPL. 8810/2023(Stay) and CM APPL. 8811/2023 (Summoning of Complete Record) and CM APPL. 8813/2023(Addl. Document) and CM APPL. 14104/2023 (Addl. Document) And LPA 137/2023 and CM APPL. 8825/2023(Stay)  
Decided on: September 06, 2023

The present appeal was filed by the appellant assailing judgement dated 4 January 2023 handed down by the learned Single Judge. The jurisdiction of the learned Single Judge was invoked in terms of Section 91 of the Trademark Act, which contemplates an appeal being preferred to the High Court against an order or decision of the Registrar made under the Act. The respondents have taken a preliminary objection to the maintainability of the instant LPAs asserting that the same would not be maintainable considering Section 100-A of the Code of Civil Procedure, 1908. The Hon'ble Court observed that a Letters Patent Appeal against a decision rendered by a Single Judge arising under a special statute would be barred by Section 100-A of the Code and further it was observed that the non-obstante clause as embodied in Section 100-A of the Code was a clear indication of the intent of the legislature to completely bar an LPA which may be preferred against a judgment rendered by a Single Judge in an appeal arising from an original or appellate decree or order. The Hon'ble Delhi High Court rejected the argument that Section 100A would be confined to matters arising out of the Code and that the exclusion would not apply to other enactments.

**POLICYBAZAAR INSURANCE WEB AGGREGATOR & ANR (Plaintiffs) vs COVERFOX INSURANCE BROKING PVT. LTD. & ORS. (Defendant) AND POLICYBAZAAR INSURANCE WEB AGGREGATOR & ANR. (Plaintiffs) Vs ACKO GENERAL INSURANCE LTD. & ORS (Defendants)**

Case Number : CS(COMM) 259/2019 and CS(COMM) 260/2019  
Decided on: September 06, 2023

The present suit has been filed by the plaintiffs seeking to restrain the defendants from allotting and using the trade name, terms, and phrases as keywords on the defendant's AdWords Program that are identical to or deceptively similar to the plaintiffs' trademarks Policy Bazaar, PolicyBazaar, and



Policy Bazaar in any manner, form, variation, and/or combination. The plaintiff alleged that the defendants are using key words identical to its registered trademarks with the intent of diverting business from its website by causing confusion. The Hon'ble Delhi High Court observed that, prima facie, there is no clear evidence of infringement or passing off of their trademarks by the defendants. The Hon'ble Court further held that the plaintiff itself is admittedly using the registered trademarks of one of the defendants as key words and has therefore accepted this as a fair and honest commercial practice. The Hon'ble Court clarified that its views are "merely prima facie in nature and should not be read as a conclusive and binding opinion". Hence, the Hon'ble Court ruled in the defendant's favor and dismissed all the applications filed by the plaintiff.

**DR. REDDYS LABORATORIES LIMITED (Petitioner) vs FAST CURE PHARMA AND ANR. (Respondents) AND CENTRE CONSORTIUM, LLC (Petitioner) vs KRUNAL HARJIBHAI SARDHARA & ANR. (Respondents)**

Case Number : C.O. (COMM.IPD-TM) 8/2023 and C.O. (COMM.IPD-TM) 97/2023 & I.A. 11985/2023  
Decided on: September 04, 2023

The present suit has been filed by the petitioner seeking a permanent injunction restraining the respondent from using the mark RAZOFAST or any other mark identical or deceptively similar to the petitioner's mark RAZO. The products of the respondent and the petitioner were the same, i.e., rabeprazole. The Hon'ble Delhi High Court noted that the use of RAZO as a prefix indicates the intention of the respondent to ride on the goodwill and reputation of the petitioner and pass off its product as that of the petitioner. The Hon'ble Court decreed the suit in favour of the petitioner after concluding that there was a clear case of infringement and passing off. The Hon'ble Court further held that a petition for the rectification or cancellation of a trademark would be maintainable not only before the High Courts whose jurisdiction the offices of the Trademark Registry, which granted the impugned registrations, are situated, but also before the High Courts whose jurisdiction the dynamic effect of the impugned registration is felt by the petitioner.



**MONSTER ENERGY COMPANY (Plaintiff)  
vs VINEET DESHWAL TRADING AS RADHA  
KRISHNA ENTERPRISES (Defendant)**

Case Number : CS(COMM) 118/2022 & I.A. 16998/2023  
Decided on: September 04, 2023

The present suit has been filed by the plaintiff for seeking permanent injunction restraining the defendant from using the mark **MONSTER**, either as a wordmark or as device mark with lettering and style similar to that of the plaintiff. The plaintiff is aggrieved by the defendant's use of the mark **MONSTER**, which is identical to the plaintiff's logo along with a deceptively similar device mark, whereby the defendant has been selling sports wears and sports apparels and associated products. The Hon'ble Delhi High Court opined that the mere insertion of the figure above the word in the defendant's mark did not mitigate the fact of infringement or that the defendant consciously sought to pass off its products as those of the plaintiff. The word clearly constituted the prominent and dominant feature of the impugned mark. A customer of average intelligence and imperfect recollection, who knows of the plaintiff's mark and later encounters the defendant's mark is bound to regard both as belonging to the same person, with a mere figure of a monster added over the word as an embellishment. Therefore, The Hon'ble Court decreed the suit in favour of the Plaintiff.



met. The defendant's application was dismissed, and the proceedings continued without adjournment.

**CHRISTIAN LOUBOUTIN SAS & ANR. (Plaintiffs)  
vs M/S THE SHOE BOUTIQUE – SHUTIQ (Defendant)**

Case Number: CS(COMM) 583/2023 and I.A.  
15884/2023-15889/2023  
Decided On: August 22, 2023

The present suit has been filed by plaintiffs against the defendant for manufacturing an identical copy of the shoes. It is the case of the plaintiff's comparison of the shoes proves that the defendant has identically imitated the design of the shoes.



The plaintiffs argued that their reputation can be evaluated through a chat GPT query, and two questions were asked, and responses presented in court. The plaintiff further submitted the date of the first use of each of the designs and the first sale made in India. The defendant stated that it will not use the plaintiff's designs or imitate, copy, manufacture, or sell shoes imitating the plaintiff's design in the future.

After reviewing the responses created by chat GPT, the Hon'ble Delhi High Court concluded that *“Accuracy and reliability of AI generated data is still in the grey area. There is no doubt in the mind of the Court that, at the present stage of technological development, AI cannot substitute either the human intelligence or the humane element in the adjudicatory process. At best the tool could be utilised for a preliminary understanding or for preliminary research and nothing more.”* The Hon'ble Court ordered the defendant to pay Rs. two lakhs as cost to the plaintiffs within four weeks for passing off its own goods as plaintiffs' goods.

**CENTRAL PARK ESTATES PVT. LTD. &  
OTHERS (Plaintiffs) Vs PROVIDENT HOUSING  
LIMITED (Defendant)**

Case Number : CS(COMM) 194/2019  
Decided On: August 29, 2023

In the present suit, the application has been filed by the defendant praying adjournment of the present suit to file rectification petition seeking cancellation of mark



registered in favour of plaintiff. The defendant's assertion in the application stating that it had consistently argued the invalidity of the plaintiff's trademark was

noted. However, the Court found a significant deficiency – there was no prior pleading in the defendant's submissions asserting the invalidity of the plaintiff's trademark. Section 124(1)(a) purely requires the defendant to plead that the plaintiff's trademark is invalid. However, the Court determined that this essential plea was clearly missing from the defendant's pleadings i.e., written statement, prior to the application under Section 124(1)(ii). The Court ruled that the conditions for invoking Section 124(1) (ii) had not been



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



Content Editor  
Ajeet Singh

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 4th October, 2023.