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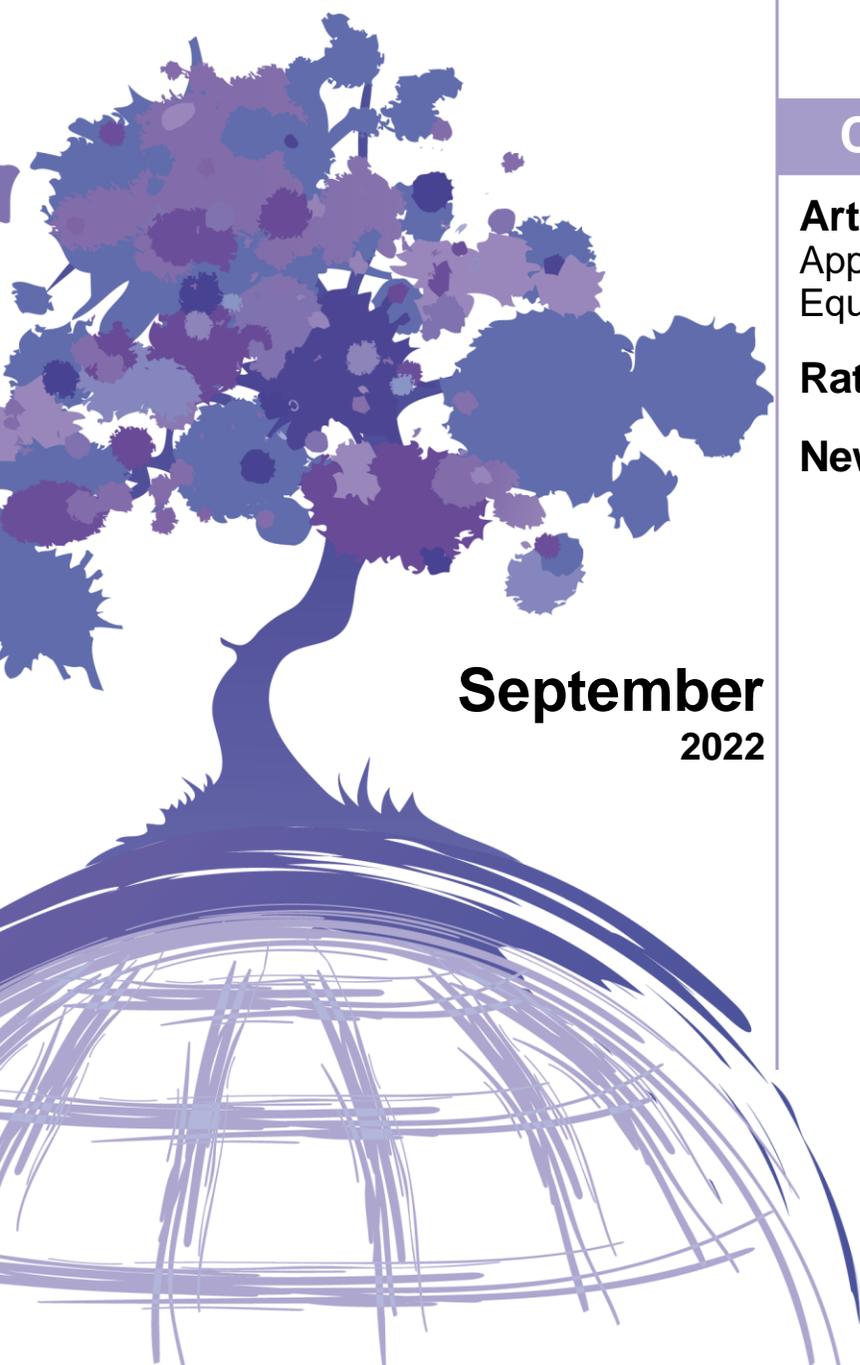
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Article

Applicability of the Doctrine of Equivalents in the Indian context

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With the passage of time, new technology is emerging day by day and this has resulted in a greater number of patent related disputes than ever. One of the key elements surrounding a patent dispute is the construction of the claim language, or claim construction, to determine their scope and extent of coverage. Claim construction or claim interpretation serves as the seminal step towards determination of infringement of the claim by an alleged infringer. As a rule of thumb, the claims must be construed objectively from the perspective of a person skilled in that particular art based on the language used in the claims.

The patent specification, i.e., the written description of the invention along with the accompanying drawings, remains only a fall-back option to interpret a term or terms used in the claims for which the meaning is not otherwise unambiguously derivable. However, there may often be a situation that the exact feature of the claims may not be found in the alleged infringing product or process. In other words, a literal infringement of the claims may not be a common occurrence.

Conversely, a literal assessment of claims against the alleged infringement may allow an infringer to find an easy workaround to the benefits otherwise accrued upon the original inventor and the rightful holder of patent rights. To avoid such a travesty from befalling the patentee, the Courts may and have devised tools where even if the literal language of the claim is not infringed, the rights of the inventor may be

safeguarded. One such tool is the Doctrine of Equivalents and this article seeks to navigate through and analyse the jurisprudence surrounding the application of Doctrine of Equivalents in India.

The violation of the exclusive rights of the patentee without their authorization amounts to patent infringement. A literal infringement is the patentee's most obvious choice of attack on an alleged infringer where the patentee is able to establish that the infringing product or process, as the case may be, maps to each element in the claim of the patent and the infringing product or process is commercially marketed without the permission of the patentee. However, when the infringer makes minor non-essential changes to circumvent the literal language of the claim and avoid infringement, the infringement may have to be subjected to a closer scrutiny by *inter alia* applying the Doctrine of Equivalents.

The Doctrine of Equivalents, essentially, provides for expanding the claim scope to a certain extent but in an equitable manner, and has evolved from various US judicial precedents. In its present form, the Doctrine is used to determine whether two devices (the one that is claimed and the other being alleged for infringement) operate in substantially the same way, and accomplish substantially the same result, and if so, they may be the same, even though they differ in name, form, or shape. Thus, even if the allegedly infringing product or process differs from the literal language of the claims, infringement may be established by the

application of the Doctrine of Equivalents if the product/process in question performs the same function in the same way to obtain the same result as the claimed product/process. The factors to be borne in mind when adjudging the substantiality of the differences are as follows:

- i. Whether a person skilled in art would actually know of the equivalence of the two inventions in question.
- ii. Whether a person skilled in art would have known of the equivalence of the two inventions in question.
- iii. Whether the alleged infringer intended to copy or design around the invention to arrive at the same result.

Following in the footsteps of the US judicial decisions, the Indian courts have made several attempts to recognize and apply the Doctrine of Equivalence in India. The following discussion of various judgements in India provides an insight into the evolution of the nature and scope of the applicability of the Doctrine of Equivalents in India.

In *Raj Prakash v. Mangat Ram Chowdhry & Ors.*, ILR (1977) 2 Del 412, decided on March 25, 1977, the Indian courts for the first time acknowledged non-literal infringement, though not purely by way of the Doctrine of Equivalents. The Plaintiff had a patent over a toy called a viewer that used a 35 mm. medially cut positive film on which were printed one or more pictures. The pictures were viewed through a lens fitted in a viewer specially adapted for use with such medially cut strips of 35 mm. positive films so as to get a virtual image of the same size as the virtual image of a normal frame in a 35 mm. film. The toy could be used to view interesting and educational pictures by children and even grown-ups. The Defendant was manufacturing and selling in the open market, film strip viewers utilizing a medially cut 35 mm. cinematograph

film in viewers in a manner which was identical to and a copy of the viewers which were being manufactured and marketed by the Plaintiff. The Defendant contended that the Plaintiffs did not claim any patent for the whole film strip viewer combined. The Division Bench of the Delhi High Court held that the specifications and the claims have to be read from the point of view of the persons in the trade manufacturing film strip viewers. It was held that *“It is the pith and marrow of the invention claimed that has to be looked into and not get bogged down or involved in the detailed specifications and claims made by the parties who claim to be patentee or alleged violaters”*. The Court held that the Defendants had just made unessential variations to the product and, in view of that, the product amounted to the same as the Plaintiff’s claimed product. It was further held that *‘To find out whether the patent has been infringed, the patented article or process has to be compared with the infringing articles or process and unessential features in the infringing article or process are of no account and if the infringing goods are made with the same object in view which is attained by the patented article, then the minor variation does not mean that there is no piracy and a person is guilty of infringement if he makes what is in substance the equivalent of the patented article and some trifling and unessential variations has to be ignored’*. Therefore, the Court held that there was non-literal infringement of the Plaintiff’s patent in view of the essential features of the claim being present in the product.

In *Ravi Kamal Bali v. Kala Tech & Ors.* (2008) 38 PTC 435, decided on 3 June 2008, the Court deviated from the doctrine of pith and marrow as applied in *Raj Prakash v. Mangat Ram Chowdhry & Ors* and, instead, preferred the applicability of the Doctrine of Equivalents. In this case, the Plaintiff (Ravi Kamal Bali) sought an

injunction to restrain the Defendants from infringing his patent for a tamper proof seal for locking containers sold by the Plaintiff under the trademark 'TECH LOCK'. The Plaintiff contended that the differences between his invention and the alleged infringing product of the Defendant were minor and inconsequential, superficial and cosmetic and were, therefore, of no consequence as the Defendant's product performed the same function in substantially the same way and accomplished substantially the same result constituting an infringement of his patent. It was submitted by the Plaintiff that while considering the question of infringement of patents, the Court ought to apply the Doctrine of Equivalents and assess a device/process to be infringing a claim if it performs substantially the same function in substantially the same way to obtain the same result and it was not necessary that the infringing goods must be identical in every respect to the patented goods. The Defendants contended that even if their device *performed* the same function to obtain the same result, it did not *perform the function in substantially the same way* as the Plaintiff's device. The assessment came down to the material used in one of the components, i.e., a steel spring. The Single Judge of the Bombay High Court held that the usage or the purpose of the material produced by the Defendant was the same as that of the Plaintiff and the nature of the material was substantially the same and that marginal difference in the quality of steel accounted for no difference from the patented invention. The Court also accepted the Plaintiff's claim that the two products functioned on the same principle and mere cosmetic or superficial difference would have no bearing on the invention as such. In view of the same constructional and functional aspects of the product as that of the patented invention, infringement of the Plaintiff's patent by the Defendant was established.

Further, in the case of *Bajaj Auto Ltd. v. TVS Motor Company*, MIPR 2008 (1) 0217, decided on 16 February 2008, the Court again relied on the doctrine of equivalents to assess infringement of the patent claims by the alleged product. Bajaj Auto Ltd. had a patent granted for a four-stroke internal combustion engine that used two spark plugs for efficient combustion of the air-fuel mixture, particularly, in small bore engines with sizes ranging between 45mm to 70mm. On the other hand, TVS Motor Co. had launched two-wheelers powered by a lean burn internal combustion engine of 125CC capacity and a bore size of 54.5mm that also used a twin spark plug configuration. The Court held that except the use of three valves, TVS' product was *prima facie* similar to the Applicant's patent claims. The Court held that '*a person is guilty of infringement if he makes what is in substance the equivalent of the patented article. Some trifling or unessential variation has to be ignored.*' Therefore, it was held that Bajaj Auto Ltd. had made out a *prima facie* case for infringement against TVS Motor Co. and an ad-interim injunction in favour of Bajaj Auto Ltd. was granted.

In the most recent case of *Sotefin SA v. Indraprastha Cancer Society and Research Centre & Ors.*, CS(COMM) 327/2021, decided on 17 February 2022, the Court used a combination of the doctrine of pith and marrow as well as the Doctrine of Equivalents. The Plaintiff alleged infringement of its patent for a carriage for the horizontal transfer of motor vehicles in an automatic mechanical car parking. In the present case, the Court observed that all the elements of the claim of the Plaintiff's patent did not entirely correspond with the Defendant's product. Specifically, based on an analysis done by scientific advisors appointed by the Court, the Court concluded that 17 sub-elements out of 19 elements of claim 1 of the suit patent were present in the Defendant's product and only 2

elements were absent. It was, in fact, in the assessment of whether the Defendant's product with the 2 elements in-absentia still infringed the Plaintiff's patent or not that the Court resorted to the doctrines of non-literal infringement.

The first element that was found to be absent from the Defendant's product were *hinges* which the configuration installed at the Defendants' premises did not use. However, the Court concluded that although the Defendant's product did not include the hinge which emulated the movement of an elbow joint, the Defendant's product did have a structure which behaved as a shoulder joint and provided for a multi-directional movement. It was found that despite the elbow-jointed hinge in the claimed invention and the shoulder joint in the Defendant's product, *prima facie*, the claimed invention and the Defendant's product did not substantially differ in functionality and achieved substantially the same result in substantially the same way. It was also concluded that the *hinge* was a non-essential part of the claimed invention and even in the absence of such a hinge, the Defendant's product did not substantially differ from the claimed invention in its operation.

Regarding the second element, i.e., immobilization of rear wheels, it was found that the claimed invention involved immobilization of the wheels at the front as well as the back of whereas the Defendant's product had means to immobilize the wheels only at one end. The Court while applying the doctrine of pith and marrow held that this difference between the claimed invention and Defendant's product did not have any material effect on the working of the invention. The Court held that this indicated that the variation between the two was insignificant and the Defendant's product did not have enhanced functionality in view of the differences

with respect to the claimed invention. In light of these findings, the Court held that the Defendant's product was insignificantly different from the patented invention and that that the Plaintiff had successfully established a strong *prima facie* case of infringement against the Defendant.

From the above, it can be concluded that, in certain cases, the judiciary has recognized the Doctrine of Equivalents when deciding patent infringement cases, while in certain other cases, the Courts have also recognized the doctrine of pith and marrow. The doctrine of pith and marrow, as discussed above, emphasizes on the substance of invention as a whole and where even if there is a difference between an invention and an alleged infringing product or process, if that difference is insignificant, infringement may be established. In the case of Doctrine of Equivalents, it is essential to prove that every element of the patented invention or its substantial equivalent is present in the alleged infringing product or process, in conjunction with the triple identity test, i.e., performing the same function, in the same way and achieving the same result. However, especially in the *Sotefin SA v. Indraprastha Cancer Society and Research Centre & Ors*, it seems that the Court has brought about a realization that both the doctrines may, in the end, achieve substantially the same outcome. Therefore, as the Courts attempt to furnish sound reasoning as to the applicability of the different doctrines or their combination, it will be interesting to witness the direction in which the jurisprudence surrounding the application of non-literal infringement evolves.

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Ratio decidendi

No protection under Designs Act even if trademark registration cancelled subsequently – Prior publication by own use

In a case where the Plaintiff had made a simultaneous claim in the shape of its product as a design as also as a trademark, the Delhi High Court has agreed with the defence of the Defendant that the design of the Plaintiff was incapable of being registered. The Court in this regard noted that the statute (Section 2(d) of the Designs Act, 2000) provided that the 'design' would not include any 'trademark' as defined in Section 2(1)(v) of the Trade and Merchandise Marks Act, 1958, which now relates to Section 2(1)(m) read with Section 2(1)(zb) of the Trade Marks Act, 1999.

Setting aside the *ex parte ad interim order*, the Court held that the fact of filing of the application seeking registration in the shape of the product as a trademark simultaneously with the application for registration of the same as a design, would render the registration of the design suspect and disentitle the Plaintiff to an *ad interim* relief. It further added that filing for cancellation of the registration as a trademark subsequently will be insufficient to wipe out the disability of such shape being registered as a design.

The Court further found *prima facie* merit in the submission by the Defendant that the Plaintiff itself being an importer of the products, cannot claim to be a proprietor of the said design. It also noted that since the Plaintiff itself claimed user of the design since date prior to the date of application seeking registration under the Designs Act, it must be held as being prior published and no longer being 'new or original'

on the date of the application, which was a mandatory requirement as the Act. The High Court in this regard was of the view that the prohibition is complete and applies where, even for inadvertent reason, the design is disclosed to the public by publication in a tangible form or by use prior to the date of the filing of the application. [*GM Modular Pvt. Ltd. v. Syska LED Lights Pvt. Ltd.* – Decision dated 22 August 2022 in CS(COMM) 329/2021, Delhi High Court]

Trademark 'LETROZ' is not similar to word 'LETERO', both used for medicine having same API

In a case where both the Plaintiff (using mark 'LETROZ') and the Defendant (using mark 'LETERO') were selling the same generic drug derived from the same active ingredient with international non-proprietary name (INN) 'LETROZOLE', the Division Bench of the Delhi High Court held that *prima facie*, there is little possibility of confusion or deception in the mind of the purchaser of the drug. Noting that the mark adopted and registered by the Plaintiff was nothing but the first six letters of the said INN, the Court held that the question whether the trademarks are similar must be considered bearing the aforesaid in mind. Section 13 of the Trade Marks Act, 1999 was also cited by the Court for this purpose.

Upholding the view of the Commercial Court, the Court here also observed that the Appellant/Plaintiff cannot be allowed to monopolize the INN and that the mark, 'LETROZ', is not similar to the trademark 'LETERO' merely because both the parties have adopted the initial letters of the INN. The Court in this regard noted that there was marked difference in the price of the products sold by

both the parties. It also noted that the packaging and the manner in which the trademarks of Appellant and the Respondent were depicted, were distinctly different, with the colour scheme of the packaging and get up not being similar.

The Court further held that an oncologist, who is an expert and who prescribes these medicines is not likely to get confused because the two drugs are being sold with a mark containing the same first three letters, that are, 'LET', more so when the same drug is being sold by many other companies, a majority of which selling the said drug contain the same first three letters 'LET'. Appellant [*Sun Pharmaceutical Laboratories Ltd. v. Hetero Healthcare Ltd.* – Judgement dated 26 August 2022 in FAO (COMM) 96/2022, Delhi High Court]

Exemption from mandatory pre-litigation mediation – Availability in case of urgent interim relief

In a dispute involving trademark passing off and infringement of copyrights, the Delhi High Court has allowed an application seeking exemption from instituting pre-litigation mediation in accordance with Section 12A of the Commercial Courts Act, 2015. The High Court in this regard though noted the recent Supreme Court decision in *Patil Automation Private Limited v. Rakheja Engineers Private Limited* [Decision dated 17 August 2022], which had held that pre-litigation mediation under Section 12A is mandatory, it observed that the Apex Court had held that the suits therein did not contemplate urgent interim reliefs.

Delving into the concept of 'urgent interim relief', the High Court observed that in intellectual property cases, the relief of interim injunction, including at the *ex-parte* stage and *ad-interim* stage, is extremely important as these do not merely involve the interest of the contesting parties but also involve customers/consumers of

the products and services in question. It was of the view that the ambit of urgent interim relief that may be required to be granted is extremely varied and depends on the facts of each case and that such reliefs are usually granted by Courts not merely for protection of statutory and common law rights, but also in order to avoid confusion, deception, unfair and fraudulent practices, etc., in the marketplace.

Further, observing that the consumers and mobile users could download the Plaintiff's mobile application, as also, the Defendants' mobile application (which was using identical mark 'BOLT' in an identical colour scheme), almost on a minute-to-minute basis, the Court held that the Plaintiff would be entitled to seek urgent interim relief. Also, observing that Plaintiff had attempted an amicable resolution which was clearly refuted, rejected and condemned by the Defendants, the High Court held that the requirement of Section 12A stood duly satisfied. The preliminary objection raised by the Defendants was thus rejected along with payment of costs. [*Bolt Technology OU v. Ujoy Technology Private Limited* – Decision dated 29 August 2022 in CS (COMM) 582/2022, Delhi High Court]

Automatic stay of infringement suit if rectification proceedings pending before Registrar prior to institution of suit

Observing that rectification proceedings filed by the Plaintiff were already pending adjudication before the Registrar of Trade Marks prior to the institution of the present infringement suit, the Delhi High Court has held that therefore, there is no occasion for the High Court to consider the *prima facie* tenability of such rectification proceedings and/or frame an issue in this regard. According to the Court, the stay of the suit is automatic in such cases and by the application of

Section 124(1)(b)(i) of the Trade Marks Act, 1999.

Relying upon para 31 of the Supreme Court decision in the case of *Patel Field Marshal Agencies*, the Plaintiff contended that even though the rectification petition was filed prior to the institution of the present suit, the High Court would consider *prima facie* tenability of the challenge to the registration of the Defendants' trademark and frame an issue thereon before staying the suit. The High Court however distinguished the Supreme Court decision while observing that the issue considered by the Supreme Court was specifically confined to a

case where such rectification petition is not pending as on the date of the institution of the suit.

Disposing the application, the Court directed the stay of the suit as far as the relief of infringement of the trademark of the Plaintiff was concerned. In respect of passing off, however, it noted that Section 124 of the Trade Marks Act cannot be put in service to seek a stay of the further proceedings in the suit with respect to the plea of passing off. [*Perfetti Van Melle S.P.A. v. Suresh Nanik Lilaram Hingorani* – Decision dated 1 September 2022 in CS(COMM) 363/2017, Delhi High Court]



News Nuggets

Patents – Finding of lack of inventive step – Some discussion required

The Delhi High Court has reiterated that for the Controller to find lack of inventive step, some discussion is required as to how the prior arts render the subject invention obvious to a person skilled in the art. Allowing the appeal against the decision of the Controller, the Court noted that though in the First Examination Report, prior arts D1 and D2 and the manner in which they support the lack of inventive step were slightly elaborated, only prior art D3 was considered in the impugned order. It also observed that while arriving at the conclusion that there was a lack of inventive step, there was no elaboration or reasons given by the Controller for the said finding. Court's decision in the case of *Agriboard*

International LLC. v. Deputy Controller of Patents & Designs [Decision dated 31 March 2022] was relied by the Court here in the case of *Gogoro Inc. v. Controller of Patents and Designs* [Decision dated 24 August 2022].

Trademarks – Transfer of cancellation petitions, pending before Registrar, to IP Division of Delhi High Court

The Delhi High Court has wished to hear further submissions on the issue as to whether cancellation petitions pending before the Registrar of Trademarks ought to be transferred to the IP Division of the High Court. Considering that this is a legal issue that may affect other disputes, the Court also permitted any other counsels who wish to assist the Court

to make submissions on the next date i.e. on 28 November 2022. In this case, both the parties had filed cancellation petitions against each other along with the present infringement action. The parties in *Jumeirah Beach Resort Llc v. Designarch Consultants Pvt. Ltd.* [Order dated 29 August 2022] had submitted that the proceedings before the Registrar of Trademarks seeking cancellation be transferred to this Court under Rule 26 of the Delhi High Court Intellectual Property Rights Division Rules, 2021.

Patents – Divisional applications – Test of therapeutic efficacy not applicable

Observing that a divisional application traces its origin to the parent application, the Delhi High Court has held that the test of therapeutic efficacy under Section 3(d) of the Patents Act, 1970 would not apply while judging as to whether the compound claimed in the divisional application is a valid claim in a divisional application or not. The Patent Office had raised an objection that the replacement of benzofuran of the parent compound by indazole moiety in claim 1 of the divisional application did not bring about any increase in therapeutic efficacy and showed same therapeutic behaviour. The High Court in *Novartis AG v. Controller of Patents and Designs* [Judgement dated 23 August 2022] was of the view that the question of therapeutic efficacy would arise only if the application in question is an independent application and did not originate from a parent application.

Filing of additional documents – Rigours of showing reasonable cause for non-disclosure when not applicable

Relying upon a Supreme Court decision in the case of *Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B.* [2021 SCC OnLine SC 734], the Delhi High Court has reiterated that in respect of additional documents which were not in power and possession of the Defendants at the time of filing the written statement and came into existence only subsequent thereto, the rigours of showing reasonable cause for non-disclosure as envisaged in Rule 1(10) of Order XI of the Civil Procedure Code, will not apply. The High Court in *PhonePe Private Limited v. EZY Services* [Judgement dated 29 August 2022] was of the view that the binding dicta of the Supreme Court on Order XI Rule 1(4) and Order XI Rule 1(5) (for Plaintiff) would equally apply to the case under Order XI Rule 1(10) (for Defendant). The Court also noted that at the stage of admission of additional documents the Court is not required to determine the authenticity, admissibility or relevancy of the documents and that is required to be adjudicated at the stage of trial and final arguments.

Time limit within which evidence is to be filed in opposition proceedings

In a case involving question of time limit within which evidence is to be filed in opposition proceedings before the Trademark Registry, the Delhi High Court has directed the Registrar of Trademarks to proceed with the hearing of opposition on merits and pass the order. It noted that though the evidence was filed within

time before the Trademark Registry, the lapse was only in the delay in service to the Counsel for the Applicant. The Court observed that under Rule 50(3) of the Trademarks Rules, 2002, *prima facie*, one month extension could have been granted by the Registrar, however, the application for extension of time was rejected as the extension of time was sought by the Opponent only after the hearing was held. The High Court in *Sun Pharma Laboratories Ltd. v. Dabur India Ltd.* [Order dated 8 August 2022] also asked the Counsels to assist the Court on the next date on the interpretation of Rules in this regard.

Liability of intermediary in trademark/copyright disputes – Safe harbour available even in case of criminal prosecution

The Delhi High Court has held that when compliance with the ‘due diligence’ requirement under Rule 3 of the Information Technology (Intermediary Guidelines) Rules, 2011 is evident, *ex facie*, the exclusion of liability under Section 79 of the Information Technology Act, 2000 would include exclusion from criminal prosecution also. The Court was of the view that when the intermediaries (marketplace e-commerce platform in the present dispute) have been granted the ‘safe harbour’ *qua* civil liability, and when a higher standard of culpability is required for a criminal prosecution, such ‘safe harbour’ should be available even in respect of criminal prosecution. It however stated that unless an active role is disclosed in the commission of the offences complained, the intermediary would be entitled to claim protection under Section 79.

The Court in *Flipkart Internet Private Ltd. v. State of NCT of Delhi* [Judgement dated 17 August 2022] also held that the information provided by the complainant would not suffice

to obligate the e-commerce platform to take down the allegedly offending information/sites/products. It noted that the intermediaries are not situated to determine the correctness of a claim by a complainant to a trademark or copyright.

Trademarks ‘RAMU’ and ‘RAMAA’ when are deceptively similar

Applying the test of an unwary consumer with imperfect recollection, the Delhi High Court has held that the words ‘RAMU’ and ‘RAMAA’, which are the predominant part of the two label marks, closely resemble each other – both structurally as also phonetically, and thus are deceptively similar to each other. The High Court in this regard noted that the class of purchasers were those who would not pay much attention to the dissimilarities in the two labels but go by their imperfect recollection of the marks, and that the goods (dry fruits) were sold over the counter and through e-commerce websites, therefore, having the same selling point. The Court in *Dhani Aggarwal v. Mahesh Yadav* [Decision dated 22 August 2022] also held that non-filing of any opposition when the Defendant’s mark was advertised for registration in the Journal of Trade Marks, is not significant when the suit is filed immediately on coming to know of the use of the mark by the Defendants in the suit. The packaging of the products of the Appellant and the Respondents was also found to be deceptively similar to each other in this dispute.

Royal Stag v. Royal Champ – Delhi HC notes intention to deceive the unwary consumer and to ride on the reputation and goodwill of former

The Delhi High Court has granted permanent injunction restraining the Defendants dealing in alcoholic beverages under the label ‘ROYAL CHAMP’, holding it a colourable and slavish

imitation of the label 'ROYAL STAG' (registered mark of Plaintiff) and amounting to copyright infringement under Section 51 read with Section 55 of the Copyright Act, 1957. Observing that 'CHAMP' instead of 'STAG' was not sufficient to distinguish the two marks, especially when combined with the overall get-up of the label, the Court noted that the goods are sold over the counter and an unwary consumer is likely to confuse one for the other. Accordingly, the Court held that the adoption by the Defendant, of the trademark 'ROYAL CHAMP' and the deceptively similar logo to the SEAGRAM logo of the Plaintiff, was intended to also ride on the reputation and goodwill of the Plaintiff. The Court here in *Austin Nichols & Co Inc v. Gwalior Distilleries Private Ltd* [Judgment dated 18 August 2022] also noted that the goods were identical, that is whiskey, and the marks were deceptively similar.

Trademarks – Ownership in word 'APNA'

The Delhi High Court has permanently restrained the Defendants from using the mark

'APNA', with or without any prefix or suffix, or any other mark identical or deceptively similar. The Plaintiff had claimed to be the owner and proprietor of the mark 'APNA' used in respect of a mobile and web-based portal, namely 'APNA JOB SEARCH' which was a networking platform that connected job seeking individuals with potential employers. The case of the Plaintiffs in *Apnetime Tech Pvt. Ltd. v. TMP Technologies Pvt. Ltd.* [Decision dated 30 August 2022] was that the mark 'APNA' formed a key and essential feature of the corporate name of the Plaintiffs, as well as the name of the Plaintiffs' mobile application 'APNA JOB SEARCH App', as also, the primary business domain name being 'www.apna.co'. A Single-Judge Bench had in 2021, while granting interim injunction, noted that the word 'APNA' was used and promoted on a large scale by the Plaintiff and hence use of the mark 'APNA SHARE' by the Defendant would constitute passing off the Defendants' business as that of the Plaintiffs' business.

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