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Significance of Intellectual Property in the Sports Sector

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ABSTRACT

The global sports sector is on a rise and is provided various business huge platform for growth. It is not only a leisure activity but has become an opportunity for investments and commercialization. Big businesses and investment houses are growing rapidly due to investments in various sport franchises. The commercialization of sports has led to a need of a proper governance and regulatory mechanism, especially in the field of Intellectual Property and Media. Along with a huge commercial prospect of the sports, a need for their protection cannot be neglected.

I. INTRODUCTION

The sports sector is one of the most widely expanding sectors in the world and provides huge commercial prospect, contributing not only to private growth but also to the growth of the country's economy. Almost every strata of the sports industry have to protected by the Intellectual Property rights to protect them from mala fide misuse by the hands of any party. When an idea is created by labour and hard work, need for its protection automatically arises. Intellectual Property rights form a major crux of any sports related transaction. Since the world of sport is vast and includes many types of indoor and outdoor activities, it is a field with large technological and intellectual innovations and thus it is extremely necessary to always make a patent for any kind of sport related innovations.

Intellectual Property in the sports arena protects the rights of the creator of the brand. For example, a football jersey is protected by a patent, thus protecting the technology in manufacturing the jersey. The design and the distinct look of the jersey is protected under the Designs Act. A sports brand is protected from the malafide misuse by others by giving it a distinct trademark under the Trademarks Act. Thus, these Intellectual Property rights protect the rights and the reputation of the sports entities and protect their brand by giving it a distinct look, preventing their competitors to adopt or operate under their name and acquire profits. A

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sports entity, when protected by Intellectual Property is entitled to get a fair share is royalty or credit when its brand is a subject to fair use by others. Intellectual Property also play a very important role in image rights and sponsorship deals.

II. IMAGE RIGHTS AND ENDORSEMENTS :

Image rights of the entities and individuals is often a disputed topic in the sports sector. The right of publicity, often called personality right, is the right of an individual to control the commercial use of his or her name, image, likeness, or other unique aspects of his identity. There is no hard and fast rule over image rights in India. However, a person's individual right is protected by Article 21 of the Indian Constitution. It is also known as Right to Privacy and Right to Publicity. Image rights are generally between the Individual persons and the sports franchise which they represent. A sports contract between a sportsman the sporting club can have a lengthy deliberations and negotiation over image/personality rights. When a player agrees with the company over his image rights, he basically agrees the company to use his pictures to help sell tickets, shirts or other products or services. Image rights are not only confined towards the players and the clubs which they represent.

Endorsement is a type of a deal where an athlete 'shows support' to a certain brand in the market and gets certain kind of remuneration. An endorsement deal is different from a sponsorship deal. Generally, various businesses use endorsements with a certain player as a form of advertising, in order to reach better audience. A famous football player, known by the entire world and is likely to attract a better audience is thus approached by various businesses as a means of promotion. A top brand like Nike endorses various sports persona such as Rafael Nadal, Maria Sharapova and Serena Williams. Such players are highly marketable and hence many businesses enter into endorsement deals with them. Players like Cristiano Ronaldo, Neymar, Lionel Messi, Roger Federer are highly marketable and hence attract large number of audiences.

- *ICC Development (International) Ltd. vs. Arvee Enterprises, by the Delhi High Court in 2003, it was held that:*

"The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice. etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc".

- *In the case of Gautam Gambhir vs. DAP and Co., the plaintiff, a renowned cricketer filed a plea to the Delhi High Court stating that there was an unauthorized use of his name,*

which was dangerous to his name and goodwill. The plaintiff stated that his name was used as a tagline in a restaurant to attract customers. There was no marketing or endorsement deal between the plaintiff and the defendant. The plaintiff also stated that he had absolutely no connection with the restaurants. The owner of the defendant company, which runs two pubs named Ghungroo and Hawalat was also Gautam Gambhir. The defendant company claimed that the name used in their restaurant taglines was indeed of their owner and they were not, in any way associated with the cricketer. They argued that they were not in any kind of endorsement deal with the cricketer and their taglines were based on a bona fide manner. The plea of the cricketer Gautam Gambhir, to restrain the defendant from using his name was thus rejected by the Delhi High Court.

- *Recently, California State Senator Nancy Skinner passed a very controversial bill allowing college athletes to receive endorsement deals from various top brands. The motive behind passing this was to uplift the youth athletes who were from lower strata. This bill will be beneficial to youth athletes as they can now benefit from their name, image and likeness.*

III. BROADCASTER'S RIGHTS:

The happening of a sporting event needs to be communicated to the world. This can only be possible if there is some kind of a telecast associated with the sport³. A live game of football, in order to be telecasted, there must be a Broadcaster's Agreement, along with the copyright between the Sports Channel and the Sports Leagues. They are worth Billions of Dollars. Broadcasting rights also generate millions of dollars. Broadcasting is also considered to be the biggest source of receiving revenue to the Sports Franchises and the Sports League. In a country like India, cricket is followed by the people of all age groups. For some, cricket is a 'Religion' and hence the BCCI gets a lot of revenue from selling their broadcasting rights.

In 2018, Star Sports India⁴ won the right to broadcast all the games of Indian Cricket Team. The deal was worth 6,100 Crores running until 2023. Star India also acquired the broadcasting rights of Indian Premier League in 2017. The deal was worth 16,347 Crores.

Under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961, broadcasters have exclusive rights for 20 years to authorize rebroadcasting, "fixation" (recording), reproduction and communication to the public of their broadcast. The Broadcasting company, is also entitled to royalties for selling their footages to various other social media pages and news channels. This, however is a subject to

³<https://www.mondaq.com/india/Intellectual-Property/164974/Intellectual-Property-Rights-In-Sports-Indian-Perspective>

⁴<https://www.thedrum.com/news/2018/04/06/star-india-wins-indian-cricket-broadcast-rights-record-944m>

a lot of infringement and misuse. Piracy and mis reproduction of the telecasted material is very much prevalent and hence, a need is felt for Intellectual Property in Telecasting and Broadcasting. An entity is entitled to pay compensation if it is found guilty of using any of the telecasted content without the permission of the broadcaster.

The renowned TV Networks CBS and Turner Sports paid a hefty sum of USD 1 Billion to acquire the broadcasting rights of March Madness Basketball Tournament. This broadcasting agreement shall be valid till March 2023, making these channels as the rightful broadcasters of the tournament.

However, one of the major problems faced by TV broadcasters is Signal Piracy. Signal Piracy occurs when someone gets unauthorized access to the broadcasters signal, gaining access to the television coverage. It reduces the bona fide broadcasting rights acquired by the broadcasters, reduces the revenue value and sales. Options of tackling piracy has been provided by many countries, however the law enforcement regarding signal piracy has been narrow.

The Hero Cup Case⁵ :

In the early 1990s, TV Channel Doordarshan had a monopoly on the Indian Television Market, and had rights to broadcast almost all the major sporting events. The original petitioners, the Bengal Cricket Association (CAB) and the Cricket Control India (BCCI) Board, non-profit sports organizations dedicated to promoting cricket and its ideals, decided to organize the 1993 Hero Cup tournament matches. For this purpose, they entered into a broadcasting agreement with TWI, an international corporation. TWI also wanted an uplink facility to broadcast the matches and for this they sought facilities from government agency Videsh Sanchar Nigam Limited. But, Doordarshan's stance of exclusive rights to uplink facility proved to be a major hindrance. In a suit filed by the CAB, it was held by the Calcutta High Court that the petitioners are allowed to broadcast the event.

In a Special Leave Petition filed by the original defendant, it was held by the Supreme Court that the right to entertain was part of freedom of speech and expression and, in addition, it also included the right to broadcast the case. Thus, the Supreme Court stuck to the judgement of the Calcutta High Court, allowing the events to be telecasted.

IV. LICENCING:

Licensing is a great way to expand a sport franchise's business and generate revenue. Many sport franchise's offer other businesses to exploit their Intellectual Property in the form of

⁵<https://www.indiatoday.in/magazine/society-the-arts/media/story/19950315-by-rejecting-state-monopoly-on-airwaves-supreme-court-opens-door-for-private-broadcasters-806996-1995-03-15>

licencing and franchising. Online games, documentaries, restaurants and café's can enter into an licencing agreement with the franchise⁶.Licensing a sports product gives your business an opportunity to reach a market of sports fans that could be local, national or global, depending on the sports body. Football Clubs like Manchester United, Real Madrid open upon Cafés under their name as a business strategy. The motive behind this is to improve their fanbase and following and to gain popularity. In India, official club cafes and support clubs are on the rise. This has resulted in decent revenue to the sports clubs as well as a passion driven fan following. Globally, people now have access to official club content, merchandise and insiders without having to travel to the location of such clubs due to such global franchising agreements.

- A trademark licence enables the licensee for the merchandising business such are keychains, jerseys, scarves, clothing etc.
- A technology licence generally deals with the sporting equipment, which the licensor is associated with.

Video Games and Fantasy Sports :

Video Games or E-games are emerging among the masses and have a huge scope for growth. Video Games such as FIFA and NBA have huge popularity among the fans. With the growing demand of E-Sports, it is very important that the copyright and patent of such games is protected to avoid unauthorized copying and distribution of such games. Video games can be protected by a copyright. While it is also possible that one may patent the software of the video game. In terms of the sports sector, video game creators such as EA Sports acquire licencing to create videogame simulations of sports leagues. Generally, these creators run under a licencing agreement. In case of football, EA Sports has acquired the licencing rights of FIFA. The current licencing agreement runs till 2022. Under the terms of the licencing agreement, EA Sports holds exclusive rights to FIFA videogames. Thus, any other videogame creator, found in unauthorized design and distribution of FIFA games shall expect a lawsuit from both FIFA as well as EA.

In 2007, a cricket simulation game designed by EA could not get a licence from the International Cricket Council and the National Teams, thus meaning that they could not use the players real names in the game. The names used in the game were generic and the team kits used in the game were different to the real kits.

Logos:

⁶<https://www.mondaq.com/trademark/844288/significance-of-intellectual-property-law-in-sports>

Generally, the logo of a sports team or a franchise gives it a distinct value and enables a customer to recognize it. A logo is protected by registering a trademark under its name. A trademark gives the franchise a distinct look and distinguishes it from its competitors. They help in building a strong relationship with the supports, client base and helps in protection and creation of goodwill. It enhances the value of the sports franchise. Display of trademarks are prestigious sports event also draw attention of lots of fans.

However, trademarks face many risks such as unauthorized use to gain popularity or profits. Trademarks can be diluted by others to make customers believe that they are associated with the sports Franchise or any kind of sporting event. Examples of trademark dilution include creating a similar logo to a pre-existing famous logo to trick others into buying one's products. Trademark diluting is risky because it takes away a consumer's confidence from the authenticity of a product.

- *In 2015, the then reigning Champions League Winners FC Barcelona filed a lawsuit against a Romanian Club Otelul Galati, who had redesigned the logo of FC Barcelona. There was a substantial and material similarity between both the logos. The club was thus advised to change and redesign a new logo.*

- *Roger Federer Case :*

In 2018, Tennis Legend Roger Federer signed an endorsement deal with the Japanese Apparel Brand 'Uniqlo'. This endorsement deal saw his terminate his twenty-year relationship with Nike. The previous endorsement deal between Federer and Nike was such that Nike had designed and evolved the famous logo 'RF' and made it available to the public in the form of various products such as 'RF' Cap, Tennis Shoes and Tennis Rackets. After dissolving their endorsement relationship, Federer claimed the logo rights back, but Nike, wary of Federer using the logo with his newer endorsement, refused to transfer the trademark in his name. Nike had already stopped producing and selling 'RF' marked products but did not want to transfer the logo in Federer's name. This was however argued by Federer that the 'RF' logo is made from his initials and marks his personalized touch to the product. However, since the logo was made and commercialized by Nike, they were still the owners of the trademark⁷.

In March 2018, Nike finally agreed to transfer the logo back to Federer's name citing that it was Federer's personalized mark, which, even though belonged to Nike legally, could not have been designed and developed without endorsing Federer. It was also that Nike had

⁷<https://www.sportspromedia.com/opinion/roger-federer-vs-nike-rf-logo-legal-view>

already stopped producing 'RF' products, eliminating any scope for a revenue. Now he is authorized to commercialize his 'RF' Logo with his new sponsors Uniqlo.

V. CONCLUSION:

The sport sector is not only a widely enjoyed sector, it has also provided rampant growth to various businesses. Various sports franchises are open into exploiting their Intellectual Property to other businesses and undertakings providing them a scope for growth while getting a royalty for this IP Exploitation. Thus, the sports sector is a very dynamic area and its growth largely depends of its Intellectual Property, brand value of the players etc. It is very important to protect, value and nurture one's IP and take adequate measures to avoid unauthorized exploitation. There should also be regular audits for proper and correct valuation of the Intellectual Property.
