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Agatha Christie vs Registrar of Trademarks: An Analysis

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ABSTRACT

In the ever-evolving tapestry of global commerce, the TRIPS Agreement serves as the orchestral score, harmonizing the symphony of intellectual property rights. This article embarks on a profound analysis of trademark protection, threading through the intricate dance of legal obligations, from the inception of India's Trade and Merchandise Marks Act, 1958, to the refined notes of the Trade Marks Act, 1999.

As we traverse this intellectual landscape, the narrative unfurls the tale of Agatha Christie, the maestro of mystery, and her timeless work, "And Then There Were None." The High Court drama unfolds, spotlighting Agatha Christie Limited's quest for trademark registration, a saga infused with the essence of distinction and legacy.

The judicial ballet, led by the astute Justice Hari Shankar, examines the rejection of the trademark with a lens that transcends mere legalities. A whimsical inquiry arises – can a phrase like "AND THEN THERE WERE NONE" be a trademark, a beacon of identity? The Judge, much like an innovative visionary, dissects the case through legal lenses, unravelling the fabric of Sections 9, 11, and 13.

In the brilliant illumination of the judgment, the article contemplates the nuanced dance between literary brilliance and trademark protection. It questions whether the fame of literary titles, akin to Agatha Christie's masterpiece, warrants a distinct category in the symphony of trademarks. The analysis traverses the evolving trends in trademarks, pondering if iconic book titles deserve a realm of their own.

I. INTRODUCTION

Under the TRIPS Agreement, India's obligations for trademark protection include, among other things, protection for 'distinguishing marks, recognition of service marks, indefinite periodical renewal of registration, elimination of compulsory licencing of trademarks, and so on'. With globalization trademarks have become extremely valuable necessitating unified minimum standards of protection and effective enforcement procedures as recognised by TRIPS. In light of this, the previous Indian 'Trade and Merchandise Marks Act, 1958', was thoroughly

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reviewed and repealed, and the new Trade Marks Act, 1999, was enacted. The aforementioned Act of 1999, as amended, conforms to TRIPS and is in accordance with international systems and procedures.

Generally a trademark is a distinct symbol capable of identifying and distinguishing one products or services from those of others and that helps a common consumer identify a brand. The Act defines trademarks similarly, that “it is a ‘mark’ that can be ‘graphically’ represented and differentiates one person’s goods/services from the others”. This would include the “shape, colours, combinations of colours, packaging,” etc.³ The Act goes ahead and lays down what includes a mark – “a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof”⁴. A trademark is valid for ten years and can be renewed from time to time if prescribed fees are paid.⁵

II. THE “QUEEN OF CRIME”

Agatha Christie, who was born in Torquay in 1890, became and continues to be the ‘best-selling novelist’ of all time. She has written a total of 66 mystery novels and 14 collections of short stories. Her works have sold over a billion copies in English and billions more in translation. One of them was ‘And then there were none’. The story that made her the ‘best-selling novelist’ of all time, with over ‘50 million’ copies sold worldwide was set in 1939. Europe is on the verge of war. ‘Ten strangers are invited to Soldier Island’, a remote rock off the coast of Devon. They are separated from the mainland, and their generous hosts, ‘Mr. and Mrs. U.N. Owen’, are mysteriously missing. ‘They are each accused of a terrible crime’. When one of the party members dies unexpectedly, they suddenly realise ‘they may be harbouring a murderer among them’. The tension rises as they all eventually realise that the killer isn’t just hiding among them, but also planning to strike again.⁶

III. AGATHA CHRISTIE VS. THE REGISTRAR OF TRADEMARKS BEFORE THE HIGH COURT OF DELHI⁷

(A) FACTS

Funnily, Justice Hari Shankar stated that at the beginning of the proceeding the first thing he asked the counsel for the Respondents that if he objected to the fact that he admired Agatha

³ The Trademarks Act §2(zb) (1999)

⁴ The Trademarks Act §2(m) (1999)

⁵ The Trademarks Act §25 (1999)

⁶ The Editor, ‘And Then there were none’, The Home of Agatha Christie (March 14, 2023 7:23 PM) <https://www.agathachristie.com/en/stories/and-then-there-were-none>

⁷ Agatha Christie Vs. The Registrar of Trademarks 2021 SCC OnLine Del 5331

Christie and presided as a judge over this case. In this case, the appellant is Agatha Christie Limited, which was founded in 1995 by Agatha Christie herself. Mr James Prichard, her great grandson, is in charge of running the business. In 2017, the appellant applied for the ‘registration of the trademark’ for the title “AND THEN THERE WERE NONE”, for it is her most famous work. They sought registration under Classes 9, 16, and 41 of the Trademark Rules, 2017. The order rejecting the application was issued on 14.01.2021. Dissatisfied with the impugned Order, the Appellant filed this case before the Hon’ble Delhi High Court, requesting that it be quashed and the trademark be registered.

(B) ISSUE AT HAND

The issue at hand was that the order that rejected the registration of the trademark laid down only one ground that it was not distinctive – that there is no substantive evidence that such a mark has never been used before. There was no further explanation provided. The registrar noted that there would be a need to educate public that its not just any phrase but a title that holds such significance.

(C) HELD

The points that the Judge relied to arrive at the judgement were backed by facts and law as opposed to the order of the Registrar.

- This trademark does not suffer from any objections under the sections of the Act.

Section 9

It provides for absolute grounds for when a trademark has to be refused. These include;

- When the mark lacks distinctive character that it does distinguish the said good or service from another.
- The mark indicates its attributes such as its quality, quantity, geographical origin, intended use, etc.
- That it consists of a mark of bonafide established trade practices or used in the customary current language.
- When it does not protect public interest, i.e., it tries to deceives the public and cause confusion.
- That it hurts religious sentiments.
- That it is obscene and scandalous.

- That it only is descriptive of the shape of the said goods.⁸

Section 11

This section provides for relative grounds for refusal of registration of a trademark, them being;

- It being similar and identical to an already existing trademark causing a likelihood of confusion among the public that they would associate the said mark with the previous one.
- That the mark is identical or similar to an earlier trademark, but is to be registered into goods or services which are not similar to the goods or services for which the earlier trademark is registered and thus if the earlier trademark is a well-known trademark in India within the meaning of the Act, and the use of the mark of which registration is sought would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trademark.
- The said trademark's use in India is to be prevented by any law in existence, specifically the law of passing off that protects an unregistered trademark used in the course of trade or by even copyright law.⁹

Section 13

This section prohibits registration of trademarks if;

- It is a name of a commonly accepted single element/chemical compound with regards to a preparation of a chemical substance.
 - That the mark is declared as a non-proprietary name declared by the WHO or is deceptively similar to one that is already granted such a tag.¹⁰
- That this trademark falls within the definition of 'trademark' and 'mark' under Section 2(zb) and Section 2(m) respectively, wherein it can also be represented graphically and is distinguishable.
 - It being one of Agatha Christie's best work it clearly creates an association between the name Agatha Christie and thus the company established by her.

⁸ The Trademarks Act §9 (1999)

⁹ The Trademarks Act §11 (1999)

¹⁰ The Trademarks Act §13 (1999)

- The trademark can be used in the context of the services that her company provides for or intends to in the future.
- The application to trademark “AND THERE WERE NONE” can be registered under the Classes, 9, 16 and 41. (as highlighted below)

“CLASS 9: Scientific, electric, photographic, measuring, apparatus for recording, transmission or reproduction of sound or images; data processing equipment and computers;”

“CLASS 16: Paper, cardboard and goods made from these materials; printed matter; stationery; brushes; typewriters and office requisites; plastic materials for packaging;”

“CLASS 41: Education; providing of training; entertainment; sporting and cultural activities.”

- The law does not cast an obligation on anybody to be registering their trademarks compulsorily but however the established Act established for trademarks intends to provide transparency in trade wherein there is an avenue to distinguish ones goods and services from another’s.
- If the mark does not suffer from any barrier put down by the Act for its registration, then its registration becomes a “matter of right”. The said order passed by the Registrar denies the Appellant the same.
- • That ‘the right to register a mark’ under which one wants to offer goods or services is an important one that embodies the spirit of article 19(1)(g) of the Indian Constitution.
- The said order thus should be set aside as it does not provide sufficient reasons.

IV. ANALYSIS

The judgement time and again emphasised that the Act, “confers, as a matter of right, the right to register a trademark which does not suffer from any of the infirmities which the Act contemplates”. The sections refusing trademarks are exhaustive and yet the said mark “AND THEN THERE WERE NONE” did not come under the purview of the section. The mark is very well within the principle that intends to distinguish one’s good from another promoting fair trade practices. And since the appellant’s trademarks did not fall short of the requirements that was needed by the act and hence was entitled to the trademark registration under the Act. The judgement also reinforces that such trademark registrations cannot be rejected without reasons and should be backed up by the sections of the Act that highlight such objections. The

court here seems to have viewed the mark in entirety and in this combination of words or so to be called a ‘coined term’ that is distinct and is not just a book but also an extremely famous work that was adapted into movie, Tv shows, etc. Thus such a mark being used by anyone else other than the House of Agatha Christie itself, in order to capitalize on such popularity would be unfair to the legacy that she built. There can be a view taken that it is not a necessary presumption that the Registrar in this case was aware of her work hence there needs to be a strong nexus between the trademark and the classes that is sought to be registered. The appellant’s in this case had substantiated the fact that they have sufficiently used this mark.

Recent trends in trademarks have extended protection to sounds, smells, designs, etc. This has happened so because of the ability to strongly associate them with a brand or a name or a good. Could this be extended to exceptionally famous literary titles like Agatha Christie’s “AND THEN THERE WERE NONE”? Can special book titles have a separate category for themselves?

The case at hand can also be deemed as a special one book titles are descriptive and that does not give them a distinctive character and two because granting trademarks to literary titles comes with a threshold, immediate protection is not granted to it just because it is a famous work by a famous person. Literary names are protected under trademark and unfair competition laws and does not come under the purview of copyright laws. The Court distinguished between two categories of titles:

Titles of Series of Literary Works: Titles of series of books, magazines, or newspapers serve as a trademark to show that each edition is published by the same publisher as the others, and such titles can be registered as trademarks; and

Single Literary Work Titles: Titles of a single literary work for which it is necessary to show that: (a) the title has acquired secondary meaning; and (b) there is a likelihood of confusion of source, affiliation, sponsorship, or connection of potential buyers/audience/viewers to gain trademark protection.¹¹

V. CONCLUSION

Every trademark’s main goal is to assure the buyer of the provenance and identity of the goods or services. A trademark needs to be able to set itself apart from competitors’ products and services in order to serve its intended function. With disputes regarding the registration and claims regarding trademarks on are on the rise it is important to remind why trademarks are

¹¹ Kanungo Media (P) Ltd. vs. RGV Film Factory and Ors. [138(2007)DLT312]

significant. Few of these considerations include increasing brand value to increase the asset's value, protecting the brand, giving the said brand this sense of identity, easy recognition hence easy communication, and so on. There will still be people who will attempt to imitate a unique idea or concept or development for monetary profit. Therefore, it is essential to safeguard IP properties against unauthorised third-party infringement. IP security can be established for businesses of all shapes and sizes. So, a person should decide which Intellectual Property Rights (trademark, copyright, or patent registration) should be utilised to cover various sections of its IP after examining the market needs and scenarios. The law's way of encouraging and keeping the IPR regime ever flourishing is by providing protection for them as an incentive.
