

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 2
2025

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Fictional Characters under Trademark Law

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ABSTRACT

This academic paper examines protecting fictional characters using trademark law as a means to determine the viabilities of preventing their unique aspects and traits. The research focuses on the viability of conditions requiring a character's recognition as a trademark, character trademarks benefit, and constraints of protecting one's identity via trademarks. It further addresses the worldwide approach towards protecting fictional characters' trademarks, and it specifically examines the United States, European Union, and India. The author contends that though trademark law is capable of safeguarding fictional characters, there exist limitations and nuances involved, especially in protecting their personality characteristics and moral qualities. The study concludes that a balanced approach has to be made in addressing the interests of creators, owners, and consumers in the case of fictional character protection.

Keywords: *Fictional characters, Trademark law, Character merchandising, Intellectual property, Personality rights, Brand protection.*

I. INTRODUCTION

It may be feasible to protect fictitious characters in some other manner with some other form of protection, trademark protection as well as copyright protection. A trademark would protect the persona's design. The individuality of the character cannot be theoretically protected, however. That is, the physical appearance and features of the character are trademark-protected, but not so the immaterial qualities of this character. However, it may be asked if a Character's traits would be protected by trademark protection. Issues may also arise during trademark registration. The protection of fictional characters by the doctrine of a trademark is one which is fairly new and has emerged due to the increasing commercial value of fictional people. Applying trademark law in protecting fictional work is effective avoiding unauthorized usage and commercial exploitation of characters by third parties.

If a character is used to identify the source of products or services, the character can possibly be trademarked. An example is Disney holding trademarks on both the name and image of "DONALD DUCK." Corporation.³ If a character's name and image are trademarked,

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³ Michael D. Murray. "Character Merchandising and the Law," Fordham Intellectual Property, Media &

competitors are not allowed to use them to advertise or market competing goods or services to them.

The trademarking process of a character is no different from that of a logo or name. The picture or name of the protagonist has to meet the same criteria as any other trademark in is a requirement. Also, to qualify as a trademark, the symbol needs to be utilized in trade in order to register; with the provision of trademark security. The character has to be memorable, which is a requirement. Also, to qualify as trademark, the symbol has to be utilized in trade.

(A) Conditions for Recognizing a Character as a Trademark

A character qualifies for trademark protection if two things are met: First, a character must be used to signify the company in order for it to be trademarked goods or services. That will be a strong argument if it shows how your persona is used as a brand good argument for trademark security. Second, a character must be "distinctive" to be trademarked".⁴

The character should be unique and not excessively close to another character with a registered trademark. If it provides evidence that the character has these qualifications, there will be a solid argument for trademark protection.

II. WHAT ADVANTAGES CAN CHARACTER TRADEMARKS OFFER?

Character trademarks are sometimes helpful tools in brand promotion. Because they are valuable, and worthy of protection. The trademarking of a character has many benefits.

The first advantage of trademarking a character is that it keeps competitors in your industry from registering or using it and force you to change characters. A character trademark can be held by only one company in an industry, and most often, the first to register a trademark does so.⁵

Secondly, when a character is registered, you receive the exclusive right to use it again, generally, a character trademark may only be used by one firm, usually the firm which originally trademarks it. Thirdly, by trademarking a character, it makes them keep on being special and recognizable to your customers. Fourthly, using the symbol ® is okay once a character is trademarked. This may dissuade potential Copies of your trademarked character from imitators. Sixth, registering a character as a trademark confers significant legal presumptions and rights

Entertainment Law Journal, vol. 4, no. 2 (1993), p. 546

⁴ "Gallini, Nancy T., "Trademarks in Literary and Artistic Works: The Search for Useful Standards," Virginia Law Review, vol. 81, no. 4 (May 1995), pp. 677-678.

⁵ James R. Kalyvas and A. Christina Gagnier, "Trademark Protection of Fictional Characters: Can the Characters Come Out and Play?" The Journal of Business, Entrepreneurship & the Law, vol. 4, no. 2 (2010), p. 366

that constitute less money is spent upholding your ownership rights. You are safeguarding the right to exclusively use a fictional character when you trademark that person that character in connection with your goods or services. This means that other companies in your field will not be able to use or trademark the same character without your approval your consent. Because of these reasons, trademarking a character can provide a great deal of legal protection and peace of mind.

The Top Six Motives to Brand a Character are:

1. Exclusivity- You can't use your character until you trademark it. In an industry, only one company can usually use a character, and that company is typically which registers first.

2. Legal Possession- No other person in your industry can register a character that you trademark and steal from you. Again, only one firm can typically own a character in an industry, and usually, they are the ones who register the trademark of the character first.

3. Distinctiveness- A trademark of your personality helps make your products unique and services, thereby creating a stream of customer loyalty for your high-end products. Cost savings in the long run. Significant legal rights and obligations are attached with trademarking your persona, presumptions that decrease the cost of defending your right of ownership in case someone else wishes to leverage your persona without your permission.

4. Deterrence- When you trademark your character, you can use the ® symbol with it. This can discourage rivals from attempting to copy your character trademark.

5. Value- It may be easier to license or sell your character if they possess a registered trademark since potential licensees or customers will know that they can use the character if you license it without fear of infringing others' rights. Now, we will discuss the protectability of fictional characters under trademark laws. We will also discuss some of the relevant legal precedents on this score.

The topic of safeguarding fictitious characters with trademark law is complex and varies from country to country. Whether fictitious personalities are employed commercially in order to talk about the origin of goods or services, they will be protected under trademark law in US law.

The protection is for the likeness and other distinctive features of the character as well as the character name.

While they are used in business to identify the source of services or goods, fictional characters also have protection under trademark law in the European Union. Appearance copy of characters or other distinguishing marks are not entitled to the protection which is limited to the name

characteristics of the character.

III. GLOBAL TRADEMARK PROTECTION FOR FICTIONAL CHARACTERS

(A) Trademark Internationally

Trademark law can protect imaginary characters used in commerce to indicate that goods or services originated in Japan.

The likeness of the character or other distinguishing features are not within the protection, which is only for the name of the character. If fictional characters are used to identify and distinguish goods or services in the United States, they can be registered as trademarks. The character should be unique and possess a secondary meaning that specifies the origin of the goods or services in order to be registered. It can be registered with the US. Stronger protection, such as exclusive rights throughout the nation, will be guaranteed by the Patent and Trademark Office. Federal trademark registration has numerous benefits.

(B) Is a Fictional Character a Trademarkable Object?

A trademark may comprise a character's name and image. The best approach to protect a character for your business is to register a trademark over it. A character is locked up for your exclusive use if it is trademarked. Applications for trademarking a character as a character trademark are received by the U.S. Patent and Trademark Office (USPTO).

(C) Can a Character be a Trademark?

The likeness and name of a fictional character can be trademarked if you apply it to brand your products or services. Placing merchandise through the credit card may make this usage apply a character's likeness or utilize the persona in your advertising. Provided that same character is also serving as your company's symbol or brand name, you qualify to file for a character trademark.

Mickey Mouse is a famous example of a character trademark.⁶ For use in a range of goods and services, including toys, arcade games, computer programs and software, frozen foods, and cosmetics. The Trademark Mickey Mouse has been registered by the Walt Disney Corporation. James 007, Godzilla, The Pillsbury Doughboy, and other fictional characters are trademarked. The Cat in the Hat, as well. But not all characters can be trademarked. To be a character if a character is trademarked, they can't be too close to existing trademarked characters that already exist should be used to brand goods and services. When a character meets these standards, a

⁶ Michael Spence and Jane C, Ginsburg, "Initial Interest Confusion: Standing at the Crossroads of Trademark Law," *The Trademark Reporter*, vol. 95, no. 4 (July-Aug. 2005), p. 1014.

trademark application can be filed by the owner.

(D) Where Can One Get a Character Trademark?

The United States awards character trademarks, the United States Patent and Trademark Office (USPTO) through an to trademark a character, file an application with the USPTO and undergo an examination procedure for the persona. Character trademarks are awarded by the USPTO.

(E) How to Register a Character as a Mark

Legal procedures have to be performed in order to trademark character, and there are guidelines that need to be observed trademark a persona. Determining if the character is unique enough to a trademark to be eligible for protection. The next step is to file a trademark application with the United States. Office of Patents and Trademarks (USPTO). A description of the must be made in the application. Character along with a list of the goods and/or services it will be used with and when an application is made, an examiner will review it to ensure it meets all relevant laws. Requirements for registering a trademark. Once the application has been approved, the character Federal law protects trademarks that are registered for use. The following is a step-by-step guide on how to trademark a persona.

IV. TRADEMARK PROTECTION FOR FICTIONAL CHARACTERS IN INDIA

In India, even before the enactment of statutory trademark law in 1940, common law principles were recognized, and parties primarily relied on the remedy of passing off to protect their trademarks and business reputation. Under Section 54⁷ of the act was utilized to resolve several issues of trademark infringement, and the Indian Registration Act of 1908 was utilized to determine registration. For resolving these issues, the Indian Trademark Law was enacted in 1940. Trade and commerce experienced considerable growth after the trademark law came into force, which increased demand protection of trademark.

The function of the Trademark Act was assumed by the Trademark and Merchandise Act 1958, which offered greater protection to trademarks and stopped unauthorized or fraudulent use of marks upon goods. The act granted trademark registration, entitling the owner with exclusive legal rights to use the mark. But to meet the TRIPS obligation suggested by the World Trade Organization, the Indian government substituted the previous act with the Trademark Act of 1999.⁸ The new act seeks to protect trademark users, set guidelines for property use, and offer legal remedies for enforcing trademark rights.⁹

⁷ Specific Relief Act, 1877

⁸ World Trade Organization, https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm

⁹ Report on the Official Insignia of Native American Tribes September 30, 1999, <https://www.uspto.gov/sites/de>

To meet the TRIPS (Trade-Related Aspects of Intellectual Property Rights) obligation suggested by the World Trade Organization, the government of India replaced this earlier Act with the Trademark Act, 1999.¹⁰

The aim of the Trademark Act is to safeguard the users of trademarks, establish parameters for the use of property, and provide judicial relief for the enforcement of trademark rights.

The Trademarks Act, 1999 regulates trademark protection of fictional characters in India. In case of trademark infringement, the police are empowered to arrest under the 1999 Trademark Act.¹¹ The frequently used term "infringement" is defined comprehensively in the Act. The Trademark Act imposes penalties and punishment on the offenders".¹² Also, it extends the process of registration as well as the process of registering a non-conventional trademark.

As per this Act, a trademark can be registered if it can distinguish one person's goods or services from others. The Act does not mention protection for fictional characters, but they are protected under the law of trademarks if they are used in business to denote the source of goods or services.

Any unauthorised use of a trademark is regarded as trademark infringement since the owner of the mark has the sole right to use it. If a brand is not registered, its owner may assert a passing-off claim in accordance with common law. In order to keep others from using the character or any sign that implies to customers any form of connection between the products and the character, the owners of a character often register a trademark or file a remedy under passing off. When a celebrity attaches their fame to a product, the product acquires the celebrity's fame and facilitates people to connect with it easily. The Trademark act is the most common statute applied in India for resolving character merchandising cases.

The Trademarks Act requirements have a wide scope, which allows it to easily be applied to character merchandising challenges. Offence of Sections 102¹³ and Section 103¹⁴ of the act is "misusing any trademark fraudulently or falsely affixing any brand to any goods or services

fault/files/web/offices/com/sol/notices/insgstdy.pdf

¹⁰ World Trade Organization, Overview: the TRIPS Agreement, https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

¹¹ Katja Weckstrom Liability for Trademark Infringement for Internet service Providers, 16 Intellectual Property L. Rev. 1 (2012), <http://scholarship.law.marquette.edu/iplr/vol16/iss1/3>

¹² Ashutosh Singh, AI you need to know about copyright and trademark offences, August 27, 2021 <https://blog.ipleaders.in/need-know-copyright-trademark-offences/> Ashutosh Singh, AI you need to know about copyright and trademark offences, August 27, 2021 <https://blog.ipleaders.in/need-know-copyright-trademark-offences/>

¹³ Trademark Act, 1999

¹⁴ Ibid

without the owner of the relevant trademark's authorization¹⁵ and can incur both imprisonment and a fine. An individual has to take permission from the owner of the mark and be registered as the user of the mark prior to its usage.

The owner can file an application to the Trademark Office for the registration of their character or any aspect, and then sell their character under an assignment or licence agreement to explore the commercial markets by producing goods or services merchandised.

In India, law in relation to protection of fictitious characters through trademarks is evolving at present. There are very few cases which have dealt with this issue. *Super Cassettes Industries Ltd. v. Nirvana Films Pvt.*¹⁶ is one such case. Ltd., where the Bombay High Court held that the term "Munnabhai" was a well-known trademark and deserved legal protection.

The Viacom 18 Media Pvt. is another example. The Delhi High Court held in *Viacom 18 Media Pvt. Ltd. v. Cable News Network (CNN)*¹⁷ that "SpongeBob Square Pants" was not a trademark in the sense it did not meet the requirements because it was never used in business to identify goods or services' source.

1. Air Pirates v. Walt Disney Studios¹⁸

Walt Disney Studios sued the Air Pirates, a group of underground cartoonists, for trademark dilution and copyright infringement. Several Disney characters, such as Mickey Mouse and Donald Duck, were spoofed in a comic book by the Air Pirates called "Air Pirates Funnies."

2. DC Comics v. Towle¹⁹

The court held that by the unauthorized use of the characters, the Air Pirates diluted Disney's trademarks and invaded Disney's copyright. The court held that the characters were eligible for protection under the Copyright Act and that their use by the Air Pirates constituted infringement. The characters were held to be distinctive and famous by the court, and their use by the Air Pirates caused their trademarks to be diluted by Disney.

DC Comics brought suit against Mark Towle in this matter for copyright infringement and trademark dilution. Towle had made and sold replicas of the Batmobile, the legendary car Batman operates in comic books and films. Towle's replicas were declared by the court to be instances of copyright infringement since the Batmobile was a character eligible for protection. The court also held that Towle's reproductions of DC Comics' trademarks were dilution because

¹⁵ Trademark Act, 1999; Section 102 & Section 103

¹⁶ *Super Cassettes Industries Ltd. v. Nirvana Films Pvt. Ltd.*, (2009) 10 SCC 437.

¹⁷ *Viacom 18 Media Pvt. Ltd. v Union of India*, (2013] SCC OnLine Del 3188 (India Delhi High Court)

¹⁸ *Air Pirates v Walt Disney Studios*, 581 F.2d 751 (9th Cir 1978)

¹⁹ *DC Comics v Towle*, 802 F. 3d 1012 9th Cir 2015)

the Batmobile was a recognizable and famous trademark.

3. Arbaaz Khan v. North Star Entertainment Pvt. Ltd.²⁰ (2016), a matter where the Bombay High Court judged whether a copyright would be invoked over one "Chulbul Pandey" of the Dhabang franchise, held that "As to the general principal that the character is unique and the portrayal of that character, as well as the "writing up" of that character in an underlying literary work is capable of protection."

4. In the recent case **WWE v. Savio Fernandes**²¹ (2016), the Delhi High Court granted a permanent injunction to the plaintiffs upon holding that the defendant had infringed upon the WWE trademark and employed the likenesses of the wrestler in their goods. The defendant was held liable for passing off by the court. The court found that the goods were bound to cause confusion in the minds of the public. The court stated: "The defendants are holding out their products as the products of the plaintiff. The defendants' misrepresentation is made in such a form that, with reasonable probability, any visitor to the defendant's web site or shops will be led to infer that the defendants have a direct connection or relation with the plaintiff; and/or the plaintiff has licensed its trademark "WWE" to the defendants.". The wrestlers' identities, comparable in some ways to fictional characters, were specifically recognized by the court as being protected by copyright.

7... All of the plaintiff's wrestling matches feature professional wrestlers with unique personalities and names that evoke the same image as the characters are attempting to portray, which has the effect of making a lasting impression on the audience. For instance, there are wrestlers whose names are JOHN CENA, RANDY ORTON, THE ROCK, CM PUNK, UNDERTAKER, SHAWN MICHAELS, and so on.

*8.... (Words deleted) The plaintiff has also trademarked some of the fictitious names of the wrestlers in the USA and India for use in relation to different commodities of different classifications.*²²

In the case of considering a situation where the defendants were producing and selling Noddy wear when Chorion had the world copyright to the name and character, **Chorion Rights Ltd v. Ishan Apparel**²³ (2010). The defendants refuted using the mark prior to the defendant and claimed that they had used it for a longer period. The court noted that, despite the existence of the copyright, there was no documentation to substantiate the plaintiff's allegations of earlier

²⁰ Arbaaz Khan v North Star Entertainment Pvt Ltd, [2017] SCC OnLine Bom 7839 (India Bombay High Court)

²¹ World Wrestling Entertainment v. Savio Fernandes is 2013 SCC OnLine Bom 2734

²² World Wrestling Entertainment v, Savio Fernandes is 2013 SCC OnLine Bom 2734

²³ Chorion Rights Ltd v Ishan Apparel, [2010] 2 SCC 326

use.

The plaintiff has also failed to submit any proof of prior use in India and is not even the prior registered proprietor of the aforementioned trademark, based on established Indian law that stipulates where opposing parties possess trademark registrations, their rights shall be decided based on principles used for passing off. In this instance, the defendant has not merely proven prior use in India, but has also proven prior. This option is used to highlight one of the factors creators ought to bear in mind while undertaking a passing-off action.

V. FUTURE DIRECTIONS IN TRADEMARK AND CHARACTER PROTECTION

These recent instances of character merchandising are a litmus test for the extent of protection one can expect where one is faced with the issue of unauthorised third-party use. The normal rules and conditions of a normal action of passing off are what constrain these options even if they illustrate the presence of protection. Owing to technical circumstances, these strict rules are prone to not being satisfied, as illustrated by the above example. The author opines that the right of publicity, a separate form of intellectual property, holds the key.

It is suggested that literary figures have become famous in a very real way. The owners of those characters should be granted the same level of protections as are provided to celebrities, according to this argument, which has particular relevance in a world where “The Avengers” and its cast of characters are not only one of the most popular movies of all time but also enjoy an unprecedented level of popularity.

VI. CHALLENGES IN USING TRADEMARKS TO SAFEGUARD PERSONAL IDENTITY

The debate concerning safeguarding personality by way of trademarks remains in large part theoretical in India. A principal query is whether Section 2(zb) of the Trade Marks Act, 1999²⁴ that defines a “trademark” to include any mark which can be graphically depicted and can identify the goods or services of one individual from those of others can be interpreted broadly enough to include personality traits or aspects of an individual's identity. Although Indian trademark law does not directly acknowledge personality rights in this section, there have been instances where courts have sometimes accepted the necessity of such protection. In *Titan Industries Ltd. v. Ramkumar Jewellers*²⁵, the Delhi High Court has noted that unauthorized reference to celebrity names or faces had the possibility of confusing the public and constituting passing off, thus implying overlap of personality rights and trademark protection. However, the

²⁴ Trademark Act, 1999

²⁵ <https://dhccaseinfo.nic.in/jsearch/qrcode.php?nc=2012%3ADHC%3A2845&ctype=S&cno=2662&cyr=2011>

statute is silent as to whether or not these qualities may exist on their own as trademarks, and accordingly the matter remains open to judicial construction and further development. There can only be trademark protection in relation to products and services. However, a fictional character is one that possesses both personality and physical appearance. The external appearance is protected by trademark protection. How would you describe the character? A moral quality is one's personality. It shouldn't be granted trademark protection in the first place. Generally speaking, it doesn't seem to be an issue to use trademark law to protect merely a fictitious character's appearance rather than personality. Yet, a fictional character could be thought of as a single element. As personality is a personal concern, one would wonder if a trademark law issue would arise if a third party used a particular fictitious character's personality for their own purposes. Considering whether trademark law can also safeguard a fictional character's personality is simply fascinating. While not required, it is an interesting subject to study. There are a number of approaches to employing trademark protection to defend the personality of the character. To consider the imaginary character as a familiar trademark could prove sufficient. As a consequence, protection against dilution, free riding, and tarnishment could be beneficial. The second and third hypothesis are concerned with brand image. It would be possible to protect the moral aspects of the character by preserving these images. Still, one can ask whether this would not be pushing things too far and beyond the basic aims of a trademark. In the European Union, personality rights are usually protected by trademark law when an individual's name, face, or other traits become distinctive and commercially valuable. Though the Court of Justice of the European Union (CJEU) has delineated in tremendous detail the circumstances under which protection must be given, the point for India to grasp is that the EU recognizes that elements of personal identity used in business and which can communicate origin are deserving of trademark protection. This approach upholds the argument that trademarks are not necessarily limited to the traditional symbols or logos, but may also include personality aspects as long as they function as identifiers of the source. While Indian law has not yet evolved similarly, the EU experience offers strong applicability in making the broader acceptance of personality-based trademarks in Indian law.

Trademarks enjoying a level of consumer recognition is accorded special protection against dilution under the EU. Actually, such a level of recognition is held to have been achieved when *"a substantial section of the public interested in the goods or services to which that trademark relates knows of the former mark"*.²⁶ The test is qualitative rather than quantitative. That is, it is not required that the mark gain a certain degree of status, richness, or even just being really

²⁶ European Union Intellectual Property Office v, Cactus SA, C-501/15 P, EU:C:2017:111, paragraph 41.

good. The CJEU applies the criteria established in the General Motors ruling to ascertain whether a trademark is well-known. The CJEU held that, here, “*in particular, the market share covered by the trademark, the strength, geographical scope and length of use, and the size of the investment made by the undertaking in its promotion*”²⁷ are factors to consider in the test. But it is not an exhaustive list because EU courts also have some flexibility to consider other factors. This test and that used to ascertain whether a sign has acquired distinctiveness are significantly similar. Tribunals have even employed the analysis of acquired distinctiveness to affirm or deny the reputation of the brand. A fictional character is thus considered to be well-known when a considerable segment of the general public is concerned with the goods or services. It can obtain protection from free-riding, dilution, and tarnishment upon establishing that the fictional character is famous. Once a mark is held to be famous, the test of likelihood of confusion is no longer required. Both the terms “tarnishment” and “free-riding” refer to the reputation of the brand and its ethics.²⁸ A value refers to moral and philosophical values. Therefore, it would be possible to protect some moral attributes of the fictional character by protecting the trademark against free-riding and tarnishment. Thus, it would be possible to extend the ambit of trademark protection, which typically only protects the appearance and possessions of the character. Therefore, these values are trademarked if the owner of a protected fictitious character has communicated a value through it, which is a distinguishing mark. Character traits such as morals and personality that communicate specific values can be protected. However, wouldn't the very purpose of the trademark be undermined if the values and thus some intellectual attributes of the character were protected by trademarks? Does it not conflict with the very purpose of a trademark to maintain some moral characteristics of the fictional character by virtue of a trademark? The basic function of a trademark is to differentiate one company's products and services from those of others. “*Trademarks are safeguarded during their commercial life or in respect of the registered products and services*”.²⁹ But when a well-known trademark is concerned, it does not matter if the issue with the trademark occurs in business or relates to products and services. The trademark is actually protected.

This poses a question of whether the author or the fictional character is being protected by these methods of protection through dilution. It's important to note that authors continue to possess all moral rights pertaining to copyright. However, in the case of trademarks, the author is not necessarily the trademark owner. Since the interest of the owner is not necessarily aligned with

²⁷ L'Oreal SA and Others v, Bellure NV and Others, C-487/07, [2010] ECR I-0000, paragraph 43.

²⁸ Lucasfilm Ltd. V. Ainsworth, [2011] UKSC 39, [2012] 1 A.C. 208, paragraph 47.

²⁹ W.R. Carnish, Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights, 7th ed. (Sweet & Maxwell, 2010), p. 590.

the author of the fictional character, care needs to be exercised when using these dilution strategies. In certain situations, like the use of a fictional character in an adult movie, it may be. The trademark would get tarnished in the process. While it is not necessarily always so, the interests of the owner need to align with those of the author so that the trademark can effectively protect itself. While while the trademark does have a huge legal right to do so, it is questionable whether or not it is moral that it be protecting the intellectual properties of a fictional character. Application of the dilution mechanisms of trademark law to protect the personality of the character may, in principle, succeed. In practice, it is not particularly useful. In fact, since it is not the central purpose of trademark law, interest in protecting only a character's personality may be brought into question. The sole advantage could be the continuous and renewable protection of personality. However, it is rare to criticize a character solely based on their personality without regard to their looks.

VII. CONCLUSION

Therefore, in conclusion, protection of fictional characters against trademark law is a complicated and developing problem. Trademark law can offer protection of a fictional character's appearance and name, but not necessarily the personality or moral characteristics of the character. The application of trademark law for the protection of personal identity is still in a theoretical stage in India, and the courts are yet to define the limits of this concept to its fullest potential. Yet, international jurisprudence, like that in the European Union, indicates that personality rights can be secured under the law of trademark when a person's name, face, or other characteristics are distinctive and become commercially significant. In the end, the protection of fictional characters will have to be done on a case-by-case basis, balancing the interests of creators, owners, and consumers. As the law continues to develop, we can expect to see new and creative means of protecting these special and valuable intellectual properties.
