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# **SPORTS LAW AND IPR : TWO SIDES OF THE COIN**

*Authors –*

**Ayushi Rai**

Student

MIT WPU, Faculty of Law, Pune

**Pranjali Mehta**

Student

MIT WPU, Faculty of Law, Pune

## **ABSTRACT**

There is practically no game that has stayed unaltered since its commencement; all have seen advancement and development. What has driven this advancement? Generally, IP rights have given the correct motivations to ceaselessly rouse progression in sports. Sports is a collection of various laws because it impacts many branches of law as people play sports both professionally and recreationally. Sports law around the globe has achieved significance but it still lacks uniformity and is still at the developing stage. Generally, sports do not fall under the topic of Intellectual Property Rights but as sports has become an economic activity, financing of its professional branch is more and more dependent on the protection and efficient commercialization of the tools of the IP system. As the marketability of sports is increasing, confidentiality, broadcasting rights and ambush marketing are some of the major IP issues which have created conflicts in Sports. This paper leads us to examining how these IP Rights are used in the Sports Industry, what the role of IPR plays in this sector and the effects when these rights are infringed.

**Keywords:** IPR, Sports, Trademarks, Patent, Broadcasting rights, Copyrights, Ambush Marketing, WIPO.

## **INTRODUCTION**

We live today in a world in which the economic health of nations and the competitiveness of firms is determined largely by the ability to develop, commercialize, and most importantly, to appropriate (or capture) the economic benefits from scientific and technological (S&T) innovations. Intellectual property rights (IPRs), such as patents and copyrights, are an important means used by firms to help protect their investments in innovation. They are legal instruments that have been used by governments for centuries to encourage industrial development and economic growth.<sup>1</sup>

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<sup>1</sup> <https://www.nap.edu/read/2054/chapter/3> .

## **WHAT IS INTELLECTUAL PROPERTY RIGHTS?**

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.<sup>2</sup> It is a product of human intellect which permits their proprietor to totally profit by his/her item which was at first a thought that was initially created and later solidified. It entitles that person to keep others from utilizing, managing or altering their work without their consent. The owner can also lawfully sue and make up for any harm.

IP incorporates items that are the results of the psyche and are particular from the standard thoughts of property such as equipment, land, or buildings. You can see and feel them. You can claim them, sell them, or loan them to other people.

### **Different forms of IP Rights:**

- **Copyright:**

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.<sup>3</sup> Copyright enlistment is one of the foremost broadly utilized IP rights allowed to the creators for their unique, inventive work counting the already distributed and unpublished work.

- **Patent:**

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.<sup>4</sup> It gives the holder a select option to keep others from selling, making and utilizing the protected innovation for a specific period.

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<sup>2</sup> <https://www.wipo.int/about-ip/en/> .

<sup>3</sup> <https://www.wipo.int/copyright/en/> .

<sup>4</sup> <https://www.wipo.int/> .



- **Trademark:**

A trademark is a distinctive sign which is used to distinguish the products or services of one business from others. Trademarks are often closely linked to brands. It is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.<sup>5</sup>

- **Industrial design:**

In a legal sense, an industrial design constitutes the ornamental aspect of an article. An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color.<sup>6</sup> It ensures the protection of outward appearance or style of an item.

- **Trade secrets:**

Trade secrets are secrets that add value to a business. A generally less well-known form of intellectual property right, for many years trade secrets have been in the shadows, but today they are gaining traction as an effective way to protect certain intellectual assets. Any commercially valuable and sensitive information – a business strategy, a new product roadmap, or lists of suppliers and customers – can qualify as a trade secret.<sup>7</sup>

## **WHAT IS SPORTS?**

'Sports' is by and large comprehended to incorporate proactive tasks that go beyond competitive sports. Incorporated into the definition of 'sport' are all forms of physical activity that contribute to physical fitness, mental well-being and social interaction. These include: play; recreation; organized, casual or competitive sport; and indigenous sports or games.<sup>8</sup>

The sports industry is incredibly diverse.<sup>9</sup> Today, sports have become a major business. From product to ticket deals, endorsements to cable channels, the matter of sports is being recognized as an industry that creates a great many dollars. Almost every sport discipline has a certain percentage

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<sup>5</sup> ibid.

<sup>6</sup> <https://www.wipo.int/designs/en/> .

<sup>7</sup> [https://www.wipo.int/wipo\\_magazine/en/2017/06/article\\_0006.html](https://www.wipo.int/wipo_magazine/en/2017/06/article_0006.html) .

<sup>8</sup> United Nations Inter-agency Taskforce on Sport for Development and Peace.

<sup>9</sup> <https://www.torrens.edu.au/en/blog/> .

market share of that \$250 billion of professional sports turnover.<sup>10</sup> This business is comprised of countless assorted, more modest players across unfathomably various business sectors. Some sell outdoor supplies and clothing, while others are club establishments or media wholesalers.

Not, at this point just a game, sports have transformed into full-scale creations with business supports, hosts and news inclusion. Indeed, even beginner competitors have surrendered to the pressing factor of attempting to make the cut as an expert competitor. As a rule, business is alluded to as a game, where the entrepreneur is the business person who discovers achievement. For this situation, the playground is the workplace and the players inside the game are the various organizations that seek clients in the business. So, the competition inside a business is pretty much the same as wild as on a field.

Sports Industry can be broken down into two major sectors:<sup>11</sup>

- Participatory (fitness and recreation centers, community sports, sporting facilities such as local golf clubs, marinas, gyms, personal training, etc.)
- Spectator (clubs and sports teams, event revenue, media rights, sponsorship and merchandising)

This bifurcation was done so as to analyze the growth of sports industry from 2014 to 2018, termed the historic period, and 2018 through 2022, the forecast period. Of these, the participatory sector has the biggest share of the sports market at approximately 56%. Of all the different types of businesses within that sector, fitness and recreation centers dominate, owning approximately 40% of the whole participatory sports sector. The spectator sports sector is expected to be the fastest-growing sector of the two, at a future growth rate of 5.9%. The revenue generated by media rights had the largest share of this sector in 2018 at 23.7%, and the merchandising market is expected to be the fastest growing into the future, at a rate of 7%.<sup>12</sup>

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<sup>10</sup> <http://www.businessmole.com/worlds-profitable-sports/> .

<sup>11</sup> “Sports Global Market Opportunities And Strategies To 2022”- Research And Markets.com

<sup>12</sup> <https://www.businesswire.com/> .

The rise of new business sectors in nations going through fast urbanization and improvement (like China) has been instrumental to the development, and will keep on being so. As indicated by the Business Research Company<sup>13</sup>, the quick development of the worldwide sports industry from 2014 to 2018 can be credited to two primary factors: emerging markets, and fast urbanization. Out of the total market share, the USA is trailed by Western Europe, the Asia-Pacific, followed by different regions and at present, North America is the biggest market for the sports business, representing around 30% of the worldwide market.

On the other hand, China and India are among two of the greatest arising public business sectors, introducing a ton of chances for business development in the sports industry. The Asia-Pacific and the Middle East are relied upon to be the quickest developing business sectors in the following not many years, with development assessed at yearly paces of 9.04% and 6.2% separately. The USA will keep on developing at a pace of 6%, while South America is additionally expected to encounter development at a pace of 5.3%.<sup>14</sup>

The sports business is expected to keep on developing and reaching an estimation of \$614.1 billion by 2022.<sup>15</sup> Specifically, a couple of key patterns are relied upon to drive development forward and present new freedoms to this business like the growth in the popularity of E-sports with VR Technology.

### **WHY DO WE NEED LAWS IN SPORTS?**

The expanding worldwide prominence of sports and the subsequent activity of sporting teams and sports events as huge business ventures have therefore expanded the significance of law inside the game. There are three regions of traditional law that, through their application to various prominent sports-related cases, have gotten relevant to the sports industry setting. These areas are tort, contract, and competition law.

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<sup>13</sup> <https://www.researchandmarkets.com/> .

<sup>14</sup> <https://www.torrens.edu.au> .

<sup>15</sup> Sports Global Market Report 2020-30: COVID-19 Impact and Recovery.

### **Tort Law:**

A tort is viewed as a "common wrong" when one party is considered to have been unreasonably harmed, hurt, or in any case, made misfortune another. For example, an injury caused by the use of defective sports equipment. Nonetheless, in recent applications, tort law could include the injury of one member by another during a competitive sport. The same was held in **Hackbart v. Cincinnati Bengals**,<sup>16</sup> which raised the issue of whether an intentional injury inflicted by one football player on an opposing player can give rise to liability in tort? Consequently, the reviewing court reversed trial court's judgment for defendant and remanded for a new trial holding that where no law prevented the application of tort concepts to football, plaintiff had a right to have his tort claims adjudicated, and evidence of plaintiff's prior football conduct was irrelevant to claims and improperly admitted.<sup>17</sup>

### **Contract Law:**

In law, a contract is the concurred commitment of one party to give goods and services to another. The agreement is one that is deliberately reached. Contract law concerns the requirement of the conditions to be fulfilled or else the compensation is to be paid to the violated party in the event that at least one of the agreement terms is not met.

The reference can be drawn in **Adrian Mutu v/ Chelsea Football Club Limited**<sup>18</sup>

In 2004, Chelsea striker Adrien Mutu was discovered to be in violation of the agreement he endorsed with the club when he tested positive for an illegal drug. Thus, his agreement was ended. Chelsea had paid £14.5 million to Mutu's past club Parma for the player, and with an end goal to recuperate this exchange charge, moved toward football's administering body, FIFA. FIFA's Dispute Resolution Center found in 2008 that Mutu had "breached contract without just cause", and ordered Mutu to remunerate Chelsea for the estimation of the exchange expense.<sup>19</sup>

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<sup>16</sup> Inc. - 601 F.2d 516 (10th Cir. 1979).

<sup>17</sup> <https://www.lexisnexis.com> .

<sup>18</sup> <http://www.centrostudisport.it/> .

<sup>19</sup> <https://www.lawinsport.com/> .

### **Competition Law:**

Competition law concerns the regulation of strategic policies that may be considered taking steps to threaten the market. Specifically, it concerns the avoidance of the maltreatment of market position by prevailing business sector firms and the counteraction of a conspiracy between driving firms.

In 2010, Virgin Media and BT, a contender of the British telecom organization BSkyB, moved toward the business controller Ofcom viewing the acts of BSkyB as a prevailing business sector player – with reference specifically to BSkyB's wholesale pricing of Sky Sports stations. At that point, BSkyB was the primary holder of live Premier League broadcast rights, thus the lone method for contenders showing live games was through the discount acquisition of Sky's channels – especially Sky Sports 1 and Sky Sports 2. Ofcom ruled that BSkyB's estimation of these channels to its rivals established anti-competitive practice, and decided that it should apply limits to the wholesale of its channels to its rivals.<sup>20</sup>

## **LEGAL ISSUES IN SPORTS**

### **Gender Discrimination**

Baron Pierre de Coubertin (e founder of the modern Olympics), said in 1896, “No matter how toughened a sportswoman may be, her organism is not cut out to sustain certain shocks.”<sup>21</sup> The point of view hasn't changed much from that point forward. We can't deny the way that sports in India keep on being male-overwhelmed and ladies have for quite some time been closed out from numerous games, straightforwardly or in a roundabout way. They are as yet seen as the more fragile sex. Indian women have shown excellent outcomes in numerous games and have made India proud. Deepika Kumari, Ashwini Nachappa, Krishna Poonia and Sita Sahu are some of the examples who've made the nation proud and still remain unknown.

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<sup>20</sup> <https://www.theguardian.com/>.

<sup>21</sup> Deshpandey and Vishwas Manohar, "Gender Discrimination in Sports." 545-47 (International Journal of Physical Education, Sports and Health , no. 3, 2016).

In 1990, for the first time in the history of the International Olympic Committee, a woman was elected on to the Executive Board.<sup>22</sup> It was for the first time in 2012 Olympics, that every country sent a least one woman.<sup>23</sup>

Nonetheless, there is still no limit to problems of female athletes. Sexual harassment is something which is faced by a great deal of female athletes. Coaches and authority figures in sport are using power over athletes for sexual purposes.<sup>24</sup>

In 2009, a female athlete had committed suicide because she was being sexually harassed by her coach.<sup>25</sup> Studies show that between 2-8% of minor-age athletes are victims of sexual abuse within the context of sport.<sup>26</sup> An analysis of 159 cases of sexual abuse in sports reported in the print media revealed that the perpetrators of the abuse were coaches, teachers and instructors in 98% of the cases.<sup>27</sup>

In spite of the fact that women's rights have been perceived at the national just as global levels, victimization of female athletes is still rampant in our country. Despite the fact that we have various laws against discrimination in society, and numerous other general laws which give solid devices to disposing of oppression of the athletes, laws with an explicit spotlight on sports are as yet not there. If sports law comes into existence, they could end up being of extraordinary importance and achieve a positive change.

## **Doping**

It is the usage of prohibited performance enhancing substances which aid in the muscle growth of the sports person so as to increase their abilities. Doping is one of the significant difficulties faced in sports law.

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<sup>22</sup> International Olympics Committee, Factsheet: Women in the Olympic Movement (2013).

<sup>23</sup> Gender Equality in Athletics and Sports - Feminist Majority Foundation Feminist.org, available at: <http://www.feminist.org/sports/> (last visited May 3, 2017).

<sup>24</sup> Emily Robert, Gender Relations in Sport (Sense Publishers, edn.1, 2013).

<sup>25</sup> Adrija Bose, 7 times Indian Sportswomen Reported Sexual Harassment but Nothing Changed, HUFFINGTON POST, available at: <http://www.huffingtonpost.in/2016/12/14/7-times-indian-sportswomen-reported-offacing-sexual-harassment/> (last visited December 14, 2016, 11:39 AM)

<sup>26</sup> Sandra L Kirby et al., The Dome of Silence (Fernwood, edn.1, 2000).

<sup>27</sup> Celia H. Brackenridge et al., The Characteristics of Sexual Abuse in Sport: A Multidimensional Scaling Analysis of Events Described in Media Reports, 385-406 (International Journal of Sport and Exercise Psychology, edn.6, 2008).

It was in 1928 when doping was restricted first time by the International Sports Federation (IF). Notwithstanding, the endeavors of the association stayed ineffectual as there was no instrument for checking the execution of the standards. All in all, no tests were directed to confirm if the sportsperson were into doping or not. This brought about the continuation of the utilization of the substances which later expanded because of the introduction of these hormones in the 1950s.<sup>28</sup>

### **Betting and Match Fixing**

Betting, as defined by the Oxford Dictionary, means an act to gambling money in the outcome of a race, game, or other unpredictable event.<sup>29</sup> However, the same dictionary defines match fixing as an act or practice of dishonestly determining the outcome of a match before it is played.<sup>30</sup> Both these activities are recognized based on the results of a match. Betting being unlawful is a disputable issue, be that as it may, match-fixing stays illicit and deceptive from its actual initiation.

In the current situation, it is to be noticed that the 'games of skill' keep on being outside the domain of the Public Gambling Act, 2008. Likewise, distinction in sports have been made by the states regarding the interpretation of 'games of skill'. Legality of horse racing and card games has been discussed by the Supreme Court<sup>31</sup> in various cases.

Concerning match-fixing, it is abnormal to realize that match-fixing has not been portrayed in any of the legal laws in India. Just CBI gives an account of match-fixing charges that generally give some shape to the definition for such wrongdoing.

In the case of **Ahmed v. State of Rajasthan**<sup>32</sup> the court examined match-fixing in regards to IPC and was of the assessment that it isn't clear regarding whether 'dishonest concealment of facts' with an expectation secure illegitimate gains under IPC. Further, regarding the Prevention of Corruption Act, 1988 it's fundamental to characterize players as community workers which again stays hazy. Absence of an appropriately talked about, discussed, and pondered enactment is vital

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<sup>28</sup> Deborah Healey, *Sport and the Law* (UNSW Press, edn. 1, 2009).

<sup>29</sup> Oxford Dictionary, available at: <https://en.oxforddictionaries.com/definition/betting> (last visited May 2, 2017).

<sup>30</sup> Oxford Dictionary, available a at: <https://en.oxforddictionaries.com/definition/matchfixing> (last visited May 2, 2017)

<sup>31</sup> Dr. K.R Lakshmanan v. State of Tamil Nadu, AIR 1996 SC 1153; Andhra Pradesh v. K. Satyanarayana, AIR 1968 SC 825.

<sup>32</sup> 1967 Cri LJ 1053(Raj).

to control match fixing. Not having such enactment is just deficient on the part of the government to recognize the significance of the current issue.

### **IPR Issues**

Every sports team attempts to assemble a solid character that fans relate to, with the assistance of team mascot, colors, and signature theme. Fans wear the team's pullovers to the matches to show their devotion and backing. Copyrights, Patents, Trade Marks, and Design Rights are a portion of the business rights accessible in sports separated from the contractual rights.

More than frequently, teams and affiliations should keep up secrecy with respect to something. Nonetheless, there have been various cases, where the members of the team have released delicate data. Also, there have been some issues such as related to the broadcasting rights or one of the most problematic one as Ambush Marketing.

The National Sports Ethics Commission Bill, 2016 was presented in the Parliament which expects to achieve authoritative change to help improve the trustworthiness of sports in India and yet it has not been passed at this point. As of now, the different demonstrations and shows overseeing general IP issues in our nation, administer that of sports area also which clearly indicates the need of the hour to have a separate legislation for sports law in India.

## **WHY DO WE NEED IP LAWS IN SPORTS?**

### **Commercialization of sports:**

Sports have become embedded in our social culture to the point that they seem to be a normal and necessary part of life. The economics of sports has played a significant role in the development of sports marketing and the legal ramifications of sports commercialization. Sports marketing was still a thing in the 1970s. It is still in its infancy. Sports marketing was seen as another type of marketing by businesses. Advertising, public relations, and sales promotion are all examples of contact. To raise awareness for the marketer's goods and services, special events and sports



celebrities were used. The marketer's products gained immediate credibility and media attention as a result of this.

During the 1980s, television networks were more competitive in their bid for a piece of the sports entertainment pie.<sup>33</sup> Sporting events have been a staple of television programming. Spectator sports appealed to a broad audience, transcending social and economic barriers. Sports became popular with both television audiences and corporate advertisers, allowing broadcasters to boost their ratings and ad revenue. Sports became big business in the late 1980s and early 1990s, thanks to increased media attention. The number of shareholders who were interested in the company increased. People began to see sports as a business opportunity rather than a humanitarian cause.<sup>34</sup>

As we enter the twenty-first century, improved customer loyalty and return on investment will become more important. Sports can no longer be regarded as merely a means of contact. Sports can be regarded as viable companies with greater frequency, businesses that would stand on their profit and loss records.

## **INTERPLAY BETWEEN INTELLECTUAL PROPERTY RIGHTS AND SPORTS**

As sports have become an economic activity, financing of its professional branch is more and more dependent on the protection and efficient commercialization of the tools of the IP system. To broadcast any sports event, money is needed and the funds usually come from sponsorship, merchandising, broadcast rights, etc. therefore the "**exclusivity**" should be protected; otherwise people can unlawfully use other people's idea and no one would sponsor the events when everyone can watch it for free.<sup>35</sup> And to protect the exclusivity, law, and order are necessary, therefore IP

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<sup>33</sup> <http://scholarship.law.marquette.edu/sportslaw/vol7/iss1/4>

<sup>34</sup> *ibid.*

<sup>35</sup> Gordian N. Hasselblatt & David Kipping, India Intellectual Property and Information Technology Laws: News Letter, 2012, <http://www.manupatrafast.in/NewsletterArchives/listing/IP%20IT%20Vaish/2012/Jan-Feb-2012.pdf>

provides the innovator a limited monopoly to exercise certain exclusive rights over the brand so that they could reward themselves for their creativity or innovation.

**There are 2 basic aspects of sports:**

1. **Off-field** includes sports - business model which means broadcasting and media rights, copyrights and broadcast reproduction rights, sponsorships/endorsements, and merchandising trademarks.<sup>36</sup>
2. **On-field** includes equipment and sports technique which a sportsperson uses when playing their sports. It deals with innovation plus a competition.<sup>37</sup>

We need different IP laws to ensure and shield these aspects engaged with the sports sector. Off the field and in the commercial sphere, athletes engage in endorsements and advertisements, whereas sports organizations engage in branding, licensing, merchandising, sponsorship, and other similar activities. Once all of these creative elements have been conceived and commercialized, their protection becomes critical.

And there is no single law that preserves all of this sensitive information and addresses all of the problems that occur as a result of it. To protect the economic interests of those interested in sports, several regulations have been enacted. Intellectual property rules make up a large portion of these laws and are often used to address a variety of legal issues. Intellectual property is a catch-all term for properties created by human intellect, such as patents, trademarks, trade secrets, and designs.<sup>38</sup>

These are some of the most important types of intellectual property rights used in the sports industry to protect assets, generate value, and stimulate growth:

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<sup>36</sup> Intellectual Property and the Business of Sports Management, Sharada Kalamadi, Journal of Intellectual Property Rights, Volume 17, September 2012, 438

<sup>37</sup> Intellectual Property Rights in Sports: Paras Sharma, International Journal of Creative Research Thoughts (IJCRT), Volume 8, Issue 3 March 2020, 2584.

<sup>38</sup> Aswathy Sujith, Sports and Intellectual Property Rights: An Overview on the Indian Standards, 58-65 (JLSR.Edn.2).

## **Copyrights in Sports**

Copyright protects how the unique idea is expressed by the innovator and also helps in the promotion of sports events. Copyrightable subject matter includes the promotion and marketing of championships and sporting events, the artistic designs of sports teams' and competitions' logos, the literature contained in game-day programs sold to fans and supporters, the merchandise, and the software of computer and online games. Copyrights grant every broadcaster an independent and inherent right over a specific sporting event, and they normally spend a lot of money to get that right. Therefore, it is crucial to preserving the vitality of sports, keeping fans engaged and motivated, and increasing their importance.<sup>39</sup>

## **Trademarks in Sports**

Trademark protects one's product from other products which can be similar to each other and also prevents any confusion regarding the source of the product. Trademarks in the sports industry function differently for products and services depending on the commodity or asset being covered, but the common denominator is the mark's distinctiveness. Importantly, trademarks prevent consumers from being confused about the origin of a product. Taglines, slogans, and logos are often used to brand sporting activities nowadays. These taglines, logos, and other items help to create a global brand value for the sporting event. If a brand is created, live broadcasting and advertisement will reap huge profits. Sports teams use trademarks to shield not only their own teams' jerseys during tournaments but also any products that may be affiliated with or bear the trademark or logos. In certain cases, trademarks for the players' names have been filed based on their recognition and brand value. As sports have evolved into a global business, so has the importance of athletes' image rights.<sup>40</sup> Because of their celebrity status, even the names of the players have become trademarks. Businesses associate their products and images with celebrities

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<sup>39</sup> Leveraging Intellectual Property in the Global Sports Economy: Global Innovation Policy Center, 38-39  
[https://www.theglobalipcenter.com/wp-content/uploads/2018/06/023441\\_GIPC\\_Sports\\_Econ\\_Insides\\_03.pdf](https://www.theglobalipcenter.com/wp-content/uploads/2018/06/023441_GIPC_Sports_Econ_Insides_03.pdf).

<sup>40</sup> [http://iipi.org/wp-content/uploads/2010/07/Sporting\\_Events\\_and\\_Intellectual\\_Property.pdf](http://iipi.org/wp-content/uploads/2010/07/Sporting_Events_and_Intellectual_Property.pdf).

and participate in sporting events. As a result, trademarks are important because they are a distinguishing symbol or logo that identifies the source of products or services.<sup>41</sup>

### **Trade Secrets in Sports**

Sports often produce a large number of trade secrets, which are vital for gaining a competitive edge and creating value. A trade secret is any information that is not widely known or accessible to the public and that provides an individual, corporation, or organization with a competitive advantage over its competitors.<sup>42</sup>

In the world of sports, trade secrets can vary from sensitive details and procedures used by individual teams and leagues to tactics and business strategies used by sporting goods and food manufacturers. In sports, knowledge such as gameplays, competitor analysis, statistics, and coaching methods, among other things, offers a strategic advantage over the competition. Further, unknown formulations, materials, and methods are used in sports gear and equipment for which privacy must be preserved.<sup>43</sup> For IP-intensive industries, such as sports apparel and sporting goods, trade secrets are becoming increasingly relevant. New product lines are launched annually or seasonally in these industries, which transform innovations into manufactured goods rapidly. Therefore, strong trade secret security is a nimble and necessary type of protection for these innovators.

### **Patents in Sports**

Patents are also an immense part of IPR and sports and it protects one's innovation from being reproduced by any other person. The patent scheme is a public-private agreement between inventors and the general public. In return for sharing the specifics of how to produce an invention, the government would prohibit anyone from copying it for a set period allowing the manufacturer to recoup the investment by being the only source in the marketplace selling the invention.<sup>44</sup>

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<sup>41</sup> supra note 38.

<sup>42</sup> <https://www.wipo.int/tradesecrets/en/>.

<sup>43</sup> supra note 37 at 2584

<sup>44</sup> supra note 39, at 38-39.

Patents can be used in sports to limit participation in sporting competitions and gain market share by excluding competitors' goods.

Manufacturers of sporting goods equipment also host sporting entertainment activities. These activities are held to advertise the goods of the manufacturers. Athletic events are organized by manufacturers in collaboration with athletic governing bodies and local sports clubs. Manufacturers may decide whatever equipment they want by managing the sporting event. Patent holders' goods will be used if equipment requirements adhere to the nature of proprietary inventions. If the event's organizer or lead sponsor is a sporting goods company, there's a fair chance that only one type of equipment will be licensed. Patents make it more difficult for rivals to duplicate the proprietary product exactly. As a result, patents should be used to cover specific equipment.<sup>45</sup>

So, these aspects of sports completely depend on the IP system because if those rights don't exist then it would perhaps be a struggle to organize events and to pay professional athletes what they expect.

### **CONFLICTS: SPORTS LAW AND IPR**

Sport as an individual activity could only be defined as a "social activity" or "physical activity" which cannot be related to money or gaining profit. It is only because of the business minds that have made it commercial exploitable. Nowadays, all people care about is gaining money out of this social activity in almost all sporting events. Commercialization and marketability are the major reasons for the upliftment of the Sporting Industry which ultimately needs sports law to be in place. So, because of this marketability of sports, all sporting teams try creating a unique identity of their own to increase their fan base, with the help of team mascots, theme songs, and color for their teams. They broadcast these games on different platforms to make them available to people which

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<sup>45</sup>Anne M. Wall, Sports Marketing and the Law: Protecting Proprietary Interests in Sports Entertainment Events, 7 Marq. Sports L. J. 77 (1996).

give eventually rise to Broadcasting, Copyrights, Patents, Trademarks, and Design Rights in sports law apart from contractual rights. Conflicts that arise in sports law due to IPR are:

### **Broadcasting Rights**

Broadcasting and media rights help in generating the revenues needed for broadcasters to invest in the events. Today people can broadcast sports from any part of the world. Broadcasting/ Streaming also becomes a major source of revenue which is used by the sporting organizations to organize/host sports events.<sup>46</sup> Since there is such a high demand for tickets to sporting events, professional teams and athletes naturally claim property rights to their appearances and images, and then allow the use of this "property," albeit for a fee. The costs of these licenses are then passed on to sports fans either directly by subscription fees or indirectly through the selling of ads, usually to consumer goods manufacturers who recoup their advertising costs through raising the price of their products or increasing the sale of the products they make. Another conflict that arises here is, there are broadcasting companies who have these rights to rebroadcast it and if any unauthorized person tries to broadcast it, it would be an infringement of the right of the broadcasters. Although the media has the right to report on the results of sporting events without obtaining permission from those who staged them, that reporting must be limited to truthful summaries, and if the media outlet's reporting approaches the recording, or rebroadcasting, of the event, that conduct is perceived as a copyright infringement.<sup>47</sup>

However, the advancement of emerging technology, especially in the area of live streaming of sporting events over the Internet, has reignited the controversy over whether real-time broadcasts of live sporting events should be subject to copyright laws in the first place.<sup>48</sup> Recognizing and combating piracy of live sports broadcasts is extremely difficult. According to a 2011 report, tens of thousands of websites, peer-to-peer filing file-sharing networks, and unicasts are illegally streaming live sports broadcasts.<sup>49</sup> The widespread availability of illegal sports content, as well as

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<sup>46</sup> <http://www.wipo.int/ip-sport/en/> .

<sup>47</sup>Hylton, J. Gordon, "The Over-Protection of Intellectual Property Rights in Sport in the United States and Elsewhere" (2011). Faculty Publications. Paper 583

<sup>48</sup> [http://www.businessweek.com/technology/content/may2009/tc20090521\\_159692.htm](http://www.businessweek.com/technology/content/may2009/tc20090521_159692.htm)

<sup>49</sup> (WIPO (2011). Update on Digital Piracy of Sporting Events 2011, Compiled by NetResult Solutions, pp. 4- 6, [http://www.wipo.int/export/sites/www/ip-sport/en/pdf/piracy\\_report\\_2011](http://www.wipo.int/export/sites/www/ip-sport/en/pdf/piracy_report_2011)

the growing number of consumers willing to use it, is having a long-term negative impact on legitimate sports broadcasting. Sports broadcasting piracy, which is rampant and unrestrained, has an impact not only on the holders of broadcasting rights but also on the national sports environment as a whole because subscription revenues are reflected in deals on broadcasting rights between leagues and broadcasters, allowing broadcasters to provide increased access to more national and international sporting events. In countries where the intellectual property regime is weak, the national sports environment is losing vital revenue that could be used to develop and promote it further.<sup>50</sup>

### **Ambush Marketing**

Ambush Marketing is another conflict in sports law that involves IPR. It is an attack committed under wraps.<sup>51</sup> It can be said as an attempt by the company to capitalize itself for the events it is not an official sponsor of. Under this marketing, a company associates itself with an event that already has a sponsor.<sup>52</sup> People usually take advantage of the sports event without being sponsoring. To put it simply, ambush marketing involves a company attempting to associate with an event without paying the event owner and is frequently in direct competition with a competitor who is a legitimate and paying sponsor.<sup>53</sup>

**National Hockey League (NHL) v. Pepsi-Cola Ltd**<sup>54</sup> could be cited as the best case for Ambush Marketing. National Hockey Services League (NHSL) is the licensing arm of NHL which came into a contract with Coca-Cola for being the official sponsor of NHL in 1998 and therefore it obtained the rights for being the official promoters of the NHL in Canada and the USA. So, Coca-Cola gained all the rights to use NHL symbols on their products, but it did not have any right to promote during the televised broadcast of the game in Canada. NHL controlled all the televised broadcasts and so it sold these broadcasting rights to Molson Breweries for five years and in turn, Molson Breweries, sold these broadcasting rights to Pepsi-Cola, who was the biggest competitor

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<sup>50</sup> supra note 39.

<sup>51</sup> <http://docs.manupatra.in/>

<sup>52</sup> <https://www.mondaq.com/india/trademark/690204/ambush-marketing-need-for-legislation-in-india>

<sup>53</sup> Meenaghan, Ambush Marketing: Corporate Strategy and Consumer Reaction (1998) 15(4) Psychology and Marketing 314.

<sup>54</sup> 92 DLR 4th 349

of Coca-Cola and eventually Pepsi started with their television advertising campaign, but it did not include any NHL Symbols.

The court, however, gave the decision in the favor of the defendant i.e., Pepsi-Cola Ltd. because they did not commit any unlawful act as they were not in violation of the contract of Coca-Cola as the contract was with NHSL and not NHL. However, the court noted that NHL was in misfortune as the sale of the broadcasting rights did harm to its official sponsor.

This case is the best example of how Ambush Marketing becomes a major conflict in the IPR and Sports Law. On the other hand, this decision supports those who are trying to ambush as it is an open door for ambushers because they don't have any worries relating to trademark and trade name infringement.

Another controversy, **Pepsi and Coca Cola in Pepsi Co., Inc. and Others. v. Hindustan Coca Cola Ltd. and Another**,<sup>55</sup> is the best example of ambush marketing in India. The Division Bench of the Delhi High Court issued a permanent injunction to the defendant by restraining its advertisements from being broadcasted, the issue raised by the plaintiff was that the advertisement depicted a Pepsi product in a 'derogatory and mocking' manner.

### **Trade Secrets**

It is one of the important conflicts as teams and associations are required to maintain confidentiality regarding some information. Teams/Team Members have access to the proprietary information regarding the statistics, a physiological metric of a player, psychological assessments, etc., which is acts as a competitive advantage. <sup>56</sup>One of the best examples for this is that of the footballer Brett Favre. In 2008, he quits his club Green Bay Packers and joined a new club Detroit Lion and what he did was shared some of the schemes of his previous club with the new one which eventually hindered the Trade Secret Law.<sup>57</sup>

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<sup>55</sup> supra note 38, at 58-65.

<sup>56</sup> <https://www.sconline.com/blog/post/2019/07/22/the-untapped-emergence-of-ip-rights-and-sports-faster-stronger-and-higher/>.

<sup>57</sup><https://www.sportscasting.com/>.



## **Patents**

This is another matter of conflict in the sports industry. There are thousands of patents regarding various Sports Equipment which keep evolving with time. Safety measures have been improved with time to reduce the stress and impacts on an athlete's body and also to increase the fitness of athletes and we have several patents regarding the same too.<sup>58</sup>

## **Trademarks and design**

They are equally important IP rights that drive the loyalty of the consumers and sports allegiance because of the branding done by these sporting teams in the form of the logo, sportswear, etc.,. These teams grow globally because of the brand and goodwill created through this branding.<sup>59</sup> Here, trademarks and design rights come into the picture as the other team may copy their branding strategy.

Intellectual Property Rights have not only assisted sports in the production and publicizing sporting events from one place to another but have also assisted in creating employment opportunities and enhancing the performance of sporting activities. So, IP and Sports both believe in fair competition i.e., the relation between human beings has to be fair and IP should assure the value of sports with the liberty of society.

But the issues afflicting the sports industry are various. Because of unauthorized use of IP relating to the use of trademarks, broadcasting, or using the design without permission or license, unlawful use of brands, issues related to copyright, merchandising, etc., eventually arises IP disputes. And that dispute leads to an unfair competition which is opposite to the objective of IPR.

So, to mitigate and prevent any misuse or infringement of IP in sports, various regulating bodies under Alternative Dispute Resolution (ADR) are set up which help in settlement of Sports-IP

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<sup>58</sup><https://cloud.google.com/blog/big-data/2017/10/google-patents-public-datasets-connecting-public-paid-and-private-patent-data> .

<sup>59</sup> <https://www.sconline.com/blog/post/2019/07/22/the-untapped-emergence-of-ip-rights-and-sports-faster-stronger-and-higher/> .

related issues. Settling disputes through mediation under ADR is useful as it makes both the parties to negotiate outside the court and helps to maintain business as well as personal relationships.

The most important bodies under ADR are:

### **Court of Arbitration for Sport (CAS)**

CAS is situated in Lausanne, Switzerland, and also has branches in Australia and the USA. This court hears many sports issues including commercial disputes like marketing and promoting sports events or conflicts relating to merchandising, sponsorship, and contracts of agency, etc., Most of the cases comes in CAS on an ad hoc basis which means it deals with cases of an important matter or purpose and comes without planning/on the spot.

One of the sports-related commercial disputes is The Union of European Football Associations,<sup>60</sup> UEFA is the European Governing Body of Football who had put some restrictions on the ownership of football clubs that competes in their competitions. But the English National Investment Company wanted to acquire other clubs even though they owned several clubs. CAS held that these restrictions were not anti-competitive, could be justified on sporting grounds as a sporting exception.

CAS solves disputes quickly and in a fair manner by keeping it confidential. It is also less expensive and more effective compared to other courts and has a bright and expanding future.

### **World Intellectual Property Organization (WIPO)**

WIPO was created in 1967 to encourage creative activity and to promote the protection of IP throughout the world. Most of the countries in the world are part of one of the 26 treaties that WIPO is administering. There are mainly two services that deal with the conflicts related to IP that can arise in sports.

### **WIPO Arbitration and Mediation Center**

This international, as well as a non-profit center, provides mediation, arbitration and expert determination to parties in disputes. It helps the private parties to settle their conflicts related to IP

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<sup>60</sup> AEK PAE & SK Slavia Praha / UEFA, CAS 98/A/200, ¶ 77–84.

and sports technology out of the court. Through a single procedure only, the dispute is resolved and for that, the parties can choose an expert, mediator, or arbitrator for their case. Therefore, it is time efficient as well as a less expensive procedure.

### **Uniform Domain Name Dispute Resolution Policy (UDRP)**

This policy helps in preventing 'cyber squatting' which means misusing brand names as an internet domain to resell the products to gain profit. So, it provides a legal framework to administer and resolve the domain name disputes outside the court. Most of the cases are decided by independent panelists brought by WIPO. One of the cases related to the domain name is Barcelona FC Case.<sup>61</sup>

In this case, Barcelona FC owned some domain names like <fcbarcelona.es> and <fcbarcelona.com> which are also registered. But a company based in Girona used their domain name in bad faith and wasn't able to prove themselves in front of the court. Therefore, the court held them to be in default.

As the sports industry is growing faster with help of Intellectual Property, disputes between them are also increasing. Therefore, ADR is the best dispute resolution mechanism to mitigate the conflicts because it is speedy, flexible, and relatively inexpensive and out of the court settlement procedure.

## **CONCLUSION**

The primary thought of an Intellectual Property is to offer the capacity to an individual or to any lawful substance to monitor their mental ability for a certain timeframe and the purview of Intellectual Property Rights is massive in the sports as well industry. Intellectual Property describes rules which are created to incentivize and reward people who innovate or create and incase of trademarks, invest, and grow brands. And Sports set up a coordinated arrangement of rules where one can test the limits of human capacities in various habits like strength, speed, how rapidly you think or move, and so forth; it likewise attempts to boost and reward individuals who

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<sup>61</sup> Football Club Barcelona v. GRN Serveis Telemàtics, WIPO Case No. D2006–0183 (Apr. 11, 2006).

are imaginative and inventive. In this way, the two of them have normal objectives and an extreme goal, i.e., to have human advancement.

So, this paper leads us towards the conclusion that sports is not just a physical or athletic activity but also is a social activity and is a source of entertainment that keeps everyone occupied for some time. In the field of sports, a great deal of hard work and endeavors are given by the athletes, the crew, the general public/club associated with the movement of the game, or the coordinators of the games. Sports are no longer just a vocation or a pastime for athletes or sports organizations; they are also viewed as a fantastic business opportunity. Various imaginative and inventive logos and extravagant slogans are created for recognizable proof. So to protect this industry, it is the need of the hour for society. Since sports provide opportunities that help put the best of our species out, forcing us to compete with ourselves and push each other further and further down the road of innovation and creativity; IPR believes in the progress of society and rewards those individuals who put in the effort/creativity and do special things for society.<sup>62</sup>

Though IPR and sports are co-related, there are some issues that at a point in time contradict their laws and with advancement and development come misusing one's rights, which eventually creates disputes and conflicts between sports and intellectual property. But both national and international bodies mitigate IP-sports-related issues and despite these conflicts and various violations of IP rights, sports are dependent on IPR for development. They are like two sides of the coin because IP promotes innovation, creativity and more job opportunities in sports, that will help to secure the economic value of sports and would enhance the athletic performance through the flow of new ways.<sup>63</sup>

Therefore, with proper management and using good strategies, IPR will not only help the sports industry to develop and grow socially but will also lead to the commercialization of sports.

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<sup>62</sup>supra note 39.

<sup>63</sup> ibid.