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ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE SPORTS INDUSTRY

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ABSTRACT

Intellectual property rights are of great importance in modern world as it enables the creator or developer to get financial credits for their discovery and technological advancements that are originated from their brain and intellect, The IPRs incentivizes such creators and developers to create and develop more it not only good for them but it also enables the whole societal development, IPR exists in all fields of the world include medicine, technology, and sports etc.

This study exclusively focuses on IPR in sports industry, global sports market has reached \$488.5 billion in market value, in 2018, this is very economically intense field and most of the income in this industry is generated from the intellectual property rights, in terms of broadcasting rights, sponsorship, sports instrument designs and instrument technology etc.

This study also talks about the IPR of the sports clubs/teams over their team members and over their likeness and also the team member's rights over their own likeness image that excludes their personality as the member of the team/club.

Keywords: IPR in sports industry, NIKE ambush marketing, income sources in Sports industry

GENERAL INTRODUCTION TO IPR

IPR are those legal rights to property that are a result of intellectual activity in science, industry, art or literature.

There are various reasons to protect intellectual property rights, such as, to give the creator the legal right to their creation, to show the intention of the state to promote the creative work of the people and implementation of its result as well as promote fair trading, facilitate economic and social development. Intellectual Property laws not only protect the creation but also gave them a limited right to decide how their creation will be used.

According to the World Intellectual Property Organization, intellectual property includes rights pertaining to:

Science, art, literature, broadcasts, performances by performance artists, phonograms, industrial designs, inventions in any field of human endeavour, protection against unfair competition, commercial names, trademarks, service marks, all other rights that come from intellectual activity in the literary, artistic, or scientific fields.

All the IPRs are backed by the force of law. It means any breach of IPR can lead to the legal actions against the wrongdoer and such trade practice will be considered as unfair trade practice.

Types Of Intellectual Property Rights

- PATENTS
- COPYRIGHTS
- TRADE SECRETS
- TRADEMARKS
- GEOGRAPHICAL INDICATION

INTELLECTUAL PROPERTY RIGHTS IN SPORTS INDUSTRY

As IPR has huge economic value, IPR is adopted by every industry in today's world and sports industry is not an exception. In the sports industry, the instrumental and broadcasting developments has huge commercial value as change is constant and these developments are economically very essential which makes the IPR an inseparable part of the sports industry.

The global sports market has reached a value of nearly \$488.5 billion in 2018, having grown at a compound annual growth rate (CAGR) of 4.3% since 2014, and is expected to grow at a CAGR of 5.9% to nearly \$614.1 billion by 2022.

- The market size of the sports industry across India was over 77 billion Indian rupees in 2018. The majority of the media consumption in the sports industry is carried out by the Indian Premier League. Recently, however, other domestic leagues like Pro Kabaddi and the Indian Super League have increased in popularity (ResearchAndMarkets.com, 2019).

As we can see the sports industry is very capital intensive, both on the global and Indian level. The majority of revenue is earned through the intellectual property so it becomes very important to

protect intellectual property rights in the sports industry. The intellectual property rights are related to the sports industry in various aspects, for example, broadcasting rights, instrument technology patents, brand trademarks etc. (Mitchell, 2014).

EVOLUTION AND NEED OF IPR IN SPORTS INDUSTRY

The history of the relation between IPR and sports starts from the time when there were no regulations present as to protect intellectual property; there was no concept of intellectual property, as such only tangible properties were considered to be property and ideas were not safe. However, things started changing as sports began to require advanced equipment for better performance and safety of the athletes. The research was being done and things started improving but the persons working on these improvements were not well compensated for their hard work. Once new equipment was revealed to the world, it could be copied and they would not receive proper credit. This resulted in a slowdown in improvements as it demotivated the researchers to work on improving things, and it created a need for protection to those inventions and their intellectual property. When IPR was introduced in sports industry researchers started working again and created various revolutionary developments in the sports industry. For example, there have been some revolutionary developments in the field of sport wear shoes for enhanced safety and performance of the athlete. This would have not been possible without protecting these intellectual properties, and now the intellectual property has become the backbone of commercialisation in the sports industry.

IPR AND SPORTS EQUIPMENTS

Every sport can be protected by several IP rights such as design protect for the look of that equipment which makes it look different from pre-existing similar equipment, trademarks to protect its unique identity or belongingness from a certain brand and to protect the reputation of the brand, copyrights to protect any artistic work associated with that equipment or any kind of audio-visual used to advertise the specific equipment, and patents to protect any technology incorporated in that equipment.

Let's understand with help of an example: - ADIDAS ULTRABOOST is a running shoe created by the brand Adidas for enhancing both the comfort and performance of the athlete and is also

considered one of the best running shoes ever made. In this case, shoe's IPR can be protected in the following manner: the design protect to protect overall looking of the shoes and appearance of the shoe that makes it look different from other shoes in the market and it has its own trademark ULTRABOOST to maintain its unique identity and also to protect brand reputation. This means you can predict the quality of the product just by seeing the trademark. Copyright to protect the artistic work done on a product has great commercial value in the modern market as there are different model of the same shoes with different looks and artworks on it. The commercial use for the promotion of the shoe is also protected as IPR under copyrights. Patent protection can be used to protect the technology used in the shoe that represents the ownership of the technology of the specific company, in this case, it is BOOST and Prime knit owner by ADIDAS.

IPR AND SPORTS BROADCASTING

In sports, broadcasting is a major component to earn revenue out of sports. It becomes necessary to protect the right of broadcasting to the person or the organisation who owns it. The right of broadcasting is covered as copyrights.

The person who owns the copyright of the event can only broadcast or permit another to broadcast it to the public to create revenues. For example, broadcasting rights of IPS matches or events related to IPL belongs to the IPL authority and they can assign this right to any third party to create revenues, such as IPL2020 Hotstar.

In India broadcasting sports is dealt under Sports **Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act 2007**. Protection of broadcasting rights becomes very important because if it is not protected anyone one can broadcast the event and the organisers will lose the ownership of their intellectual property as well as their revenues. Any breach of this property can lead to legal actions against the person who is responsible for that breach (Keelery, 2020).

PERSONALITY RIGHTS

This right is an individual right given to a sportsman or a celebrity, to control the commercial exploitation of one's name, image and likeness or any other aspects of one's identity. Personality right of a sportsperson is very important to create a brand value of a sportsperson as an individual and as a member of a team. Celebrity status creates an image, brand endorsements and creates

revenue using fame. In the modern world of IPR, the sportspersons have started registering their name, image and likeness under trademarks because of its commercial value. For example, DAVID BECKHAM AS DAVID BACKHEM, VIRAT KOHLI as ONE8, MESSI as NEMEZIS incorporated with other brands. In India, it is dealt under the Trademark act, 1990. It protects the commercial exploitation of one's name and image. If anyone or any brand uses the name or image of such sportsman without their permission or without paying a royalty fee to them it is considered to be unfair trade practice as it can harm the goodwill or reputation of the sportsman, and the person who has achieved undue gains by using such proactive is liable to pay all the damages to that sportsman.

CHARACTER MERCHANDISING (IMAGE RIGHT)

Character merchandising is one of the emerging major sources of revenue in the sports industry. It is the phenomenon of marketing of a name or image of a celebrity or a public image for making revenue. In today's world, we can see character marketing in almost every field of the modern market and also in the sports industry. For example, Michele Jordan being associated with Nike, Messi being associated with Adidas and Virat Kohli being associated with Puma. These brands market their products using the image or face of that famous sportsman. It is a contract bases intellectual property; no other brand can use the face of that sportsman other than the rightful one and in some cases, few sportsmen have their own merchandising brands, such as Sachin Tendulkar. Yet there is another dimension to it where sport clubs come up with merchandising with the players of their teams. In these situations, it becomes necessary for sports association to get involved to protect the image right of a sportsman and establish a clear distinction between sportsman as a club player and as an individual. The sports association have rights over his popularity of his personality as a team member in the team jersey. This image cannot be used just because he is a member of that team. For example, Leonel Messi is a team member of Football Club Barcelona. Their jersey is from Nike but as an individual Messi is associated with Adidas. This is where Nike/Barcelona has right over him as a team player but not as an individual.

LICENSES AND AMBUSH MARKETING IN SPORTS

By acquiring IPR the owner protects the earning potential of his intellectual property. The owner of such intellectual property can license it to someone else without transferring the ownership in

return of payment. The license grants the right to use the intellectual property to earn benefits but doesn't give ownership over it. This is widely used in the sports industry in various forms.

- **Trademark license** - It especially deals with merchandising programs. It shows the relationship of owner of the trademark who is also the licensor of the trademark and the producer of the goods (licensee) or any services which carry the trademark. Even though the licensor has no direct involvement in production but to maintain their reputation they must ensure that the produced goods with the trademarks do maintain the quality that the trademark represents.
- **Technology license** - Similar to trademark licensing, technology licensing also has a lot of strategic potential for both the licensor and the licensee. In sports, the owner of the technology can license it to another person who can produce similar equipment using that technology for marketing and to earn profits out of it. A certain amount has to be paid to the licensor in the form of license cost or royalty fees.
- **Licensing and merchandising** –
 - i. allow fans to show their passion and participating in a sporting event
 - ii. enable fans to support the event and their teams or players
 - iii. offer fans authentic official licensed products that give them the feel of belongingness from a specific club or team

CONCLUSION

The sports industry has great importance in terms of the national and global economy, and most of the transactions that take place in commercialising the sports are based on intellectual property rights. For example, broadcasting rights, merchandising rights and technology patents. The intellectual property rights in any industry are a powerful tool to protect one's uniqueness and the will to innovate in future and especially in sports industry where development is persistent and finance oriented, IPR becomes fundamental part of the same. IPR doesn't only secure the intellectual property, innovation also provides means of reward to the inventor. In today's world intellectual property has much more value than physical property as its scope is very wide and economically vital to any country as it brings in a large percentage of foreign investment, so it

becomes necessary to make better rules and regulations to protect intellectual property rights in various fields including sports industry.

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