

Guarding the Stumps: Preserving Intellectual Property Rights in the Cricketing World

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Abstract

There have been some brilliant inventions and innovations in science, technology, and law. The advent of intellectual property (IP) law has led to legal intervention in the field of innovations and inventions. This has further led to the production and creation of novel products that were previously non-existent. A concept which has come to light, especially in the 21st century, is the relationship between intellectual property rights law and its implications for manufacturing sporting equipment and goods. The notion of trade secrets under IP law has also emerged. By focusing on contemporary illustrations like the IPL Spot Fixing Case 2013, the Cricket World Cup, and the Sacher Torte Case, the article will cater to the complexities that might arise while addressing IPR in cricket. Additionally, the glamorous aspect of cricket is also provided adequate protection under the IPR regime. The various types of IP applicable to cricket media aspects are trademark, copyright, design, and broadcasting rights, the main purpose of which is to protect the IP rights of all concerned stakeholders. Nevertheless, specific issues might arise in addressing these problems, such as the lack of application of copyrights to particular entities, unlike the IP laws of the USA, and the lack of patent rights for non-Indian entities. Additionally, scams, betting in cricketing events, and ambush marketing have created difficulties in preserving IP rights. This article will delve deeper into all these aspects of IPR in cricket and address the existing challenges. While significant strides have been taken in this field, we still need to realize the ultimate objective, i.e., to protect the IP rights of all in the process.

Keywords: Cricket, ICC cricket world cup, intellectual property rights, Sacher-torte, trademark

INTRODUCTION

Since the existence of humankind, there have been drastic changes to various processes performed by people. Perceiving this from an innovation point of view, there have been some brilliant inventions and innovations not only in science and technology but also in law. The advent of intellectual property (IP) law has led to legal intervention in the field of innovations and inventions. This has led to the production and creation of novel products which were previously not part of the market [1]. A product

already in existence cannot be replicated by someone else. That is the basis of IP law which encompasses mainly patents and trademark protection. In this day and age, law is a new and emerging field which has garnered much focus due to its protectionist nature for creators and inventors. In India, the IP Act of 2000 [2] is crucial legislation for adjudicating intellectual law and related cases. One of the significant factors in the emergence of IP law in any country is the fast-moving world and the ideas revolving around it. Every day, there is a new thought by someone which has the potential to develop into a world-class and life-changing invention.

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UNRAVELLING CRICKET EQUIPMENT'S MANUFACTURING

A concept which has come to light, especially in the 21st century, is the relationship between IP rights law and its implications for manufacturing sporting equipment and goods. Sports have come a long way since the first Olympic Games of 1896, held in Greece [3]. The dawn of technology and science has heavily contributed to the development of sporting activities, especially the manufacturing process of sporting equipment. A few areas in which IP has been used in cricket are logos, symbols, broadcasting rights, etc. Copyrights and geographical indication (GI) tags also form part of cricket IP. An illustration of a well-known GI tag is the 'English Willow' bats made from the *Salix alba* var tree [4]. This is an old GI tag specific to the bat's material. The controversial 'Mongoose Bat' used during the 1983 World Cup was scrutinised for its unconventional style.

There are a few laws about protecting manufactured goods and their related processes. The Trademark Act, the Patent Act, and the Copyright Act have provisions dealing with the same. At a global level, the World Intellectual Rights Organization regulates IP laws regarding commercial transactions. The trade-related aspects of intellectual property rights (TRIPS) laws also regulate IP law worldwide. Section 3 (m) of the Patent Act elucidates 'what are not inventions' [5]. Section 13 of the Copyright Act explicates 'works in which copyright subsists' [6]. Section 29(4) of the Trademark Act exclusively expounds on 'infringement of a trademark' [7]. There have also been cases concerning the patenting of sports goods, protecting IP under sports, and recognising performers' rights. One such case is *Diamond v. Chakrabarty* [8], in which the USA court held that 'anything can be patented'. This was a landmark case as it encompassed every entity, including sports which can be patented. The case of *Inner Studies v. Charlotte Anderson* [9] was interesting since it dealt with the copyright of a yoga asana. In this case, the court held that if copyright protection of a yoga asana were permitted, it would lead to anti-competitive practices in sports. The notion of trade secrets is also prevalent in sports-related IP. Trade secrets refer to specific companies' manufacturing processes for producing goods exclusively related to that company. Under general IP law, many corporate companies follow this notion by keeping their clientele lists confidential.

Here is one illustration. MNCs like Google, Coca-Cola, KFC, etc., have followed this practice [10]. Unlike a patent that must be renewed every 20 years, trade secrets do not have a renewal period. When someone exposes a trade secret, there can be a breach of contract, a breach of confidence or commercial espionage. It is entirely the trade secret keeper's decision when he or she wants to make the trade secret public. There have been instances where trade secrets have been made public [11].

The Sacher-Torte is a Viennese chocolate cake invented by Franz Sacher. It is one of the most well-known dishes in Austria. Originally, Sacher was the one responsible for the recipe and the production. A famous Viennese pastry shop, Demel, created the 'Eduard Sacher-Torte' using a similar recipe invented by Franz Sacher. This led to a legal altercation between Sachar, the renowned Viennese hotel chain and Demel. The court ruled in Sachar's favour, but an appeal was made after the Second World War [12]. Finally, it was held that Sachar-Torte is the original version of the Torte. After that, many novel patisseries like Aida made their own version of the Sachar-Torte. These were a few aspects that deal with the protection of the manufacturing process under IP law. Further discussed are the media and broadcasting facets of cricket and IPR.

MEDIA STRIDES IN CRICKET

As is already known, cricket has become much more profitable due to a growth in sophisticated IP rights. These rights can be applied in several areas of media and entertainment relating to cricket, with the most prominent events being the IPL (Indian Premier League) and the ICC Cricket World Cup. IP rights are involved in cricket, particularly in broadcasting, merchandise, etc.

The first and foremost IP right is design. According to Section 2(d) of the Designs Act, 2000, "a design refers to features of shape, configuration, or pattern as applied to a particular product in two-dimensional, three-dimensional, or any other form [13]." Registering a design has been defined

explicitly under Section 5 [14] of the Act. As applied to cricket, special editions of bats launched by the ICC or BCCI during World Cups and IPLs can be registered as a design. Additionally, even National Cricket Team merchandise designs, such as team jerseys, shoes, or cricket kits, can be registered as valid designs [15]. However, the condition is that the design must be new as well as unique in itself. Registration will ensure that no other individual or entity copies the design and earns undue profits.

Another significant intellectual property is the right to broadcast a match. Very recently, in the IPL, while Star Sports had the television broadcasting rights, the digital rights were there with the JioCinema App. An exciting aspect was that the commentators on both of these platforms laid down different and separate terms [16]. Additionally, the camera angles and commentary languages also differed without any overlapping. These rights are primarily under Section 37 of the Copyrights Act, 1957, which lays down the “Broadcasting Reproduction Rights” [17].

Additionally, many IPs can be registered as trademarks in cricket. Section 2 (b) of the Trademarks Act of 1999 states, “A trademark refers to any name or sign to differentiate the product from that of its competitors” [18]. A trademark can be registered for any logo, tournament name, brand values of the different teams, sponsor logos, etc. For example, the title sponsor of the IPL was Tata for the 2023 season, so Tata IPL can essentially be registered as a trademark. Similarly, Vivo, being the IPL sponsor was also registered. Any other brand name should not be deceptively similar. Further, a team’s logo or the style in which the sponsors are written on the jersey can also be trademarked [19]. However, questions might arise in respect of the sponsors on the jersey. Each IPL team or World Cup team has many sponsors, for example, Jio and Marriott Bonvoy for the Mumbai Indians. These sponsors are reflected on their jerseys, and this jersey by itself is based on the placement of these sponsors. While the team logo or brand can be trademarked, each jersey obtains its design through the logo. Hence, regardless of whether a jersey is registered as a trademark or a design, this will ensure that no other entity exactly copies it and that exclusivity is maintained. A significant question arises regarding the first copy of the original jerseys and whether they are in violation of an already existing trademark or design. Under the Trademarks Act of 1999, this amounts to a clear trademark violation. In the case of *New Balance Athletics v. Ashok Kumar Trading* [20], the court explicitly held that it is illegal to sell first-copy shoes via a website and that it not only violates the trademark rights of the plaintiff in the present case but also causes an irreparable loss to the customers.

Lastly, and probably the most critical aspect of IPR in cricket, is a copyright. As per Section 14 of the Copyrights Act of 1957, “a copyright shall include any artistic, musical, or literary work either in a spoken or a written form [21].” This is of great significance in cricket because plenty of artistic performances or events are associated with it. An example is the musical tune and the note pattern of the official IPL songs every year. Further, even in the 2015 and 2019 Cricket World Cup, the songs Bob’s Beat and Stand By had been registered as copyrights. In case of international events, the copyright is owned by the ICC (International Cricket Council), whereas for the IPL, the same is held by BCCI (Board of Control for Cricket in India) [22]. However, a sporting event such as a cricket match cannot be copyrighted while it is being telecast. In the case of *Samir Kasal v. Prashant Mehta and Ors* [23], the Delhi High Court very clearly held that the game of cricket cannot be copyrighted. The primary reason behind the same is that in a live game of cricket, the format, number of players, maximum limit of overs, etc., remains the same, so the game generally does not become unique. However, each match’s highlights are unique in itself, so they can be copyrighted, and ICC or the broadcaster can hold rights over them.

Hence, these are some of the IP rights that are directly applicable regarding cricket media, broadcasting, logo, merchandise, etc. However, certain lacunae still arise while addressing the IP rights of different stakeholders, which is the need of the hour.

WAY FORWARD

The purpose of any law made by the legislature is to clarify misconceptions about that subject. There are a plethora of IP laws already made at national as well as international forums. Since the advent of IP law in India, the government has amended the IP Act and related acts like the Copyright Act, Trademark Act, etc. A significant distinction between the Indian IP laws and those of the USA is that the Indian IP laws have yet to recognize the concept of copyright concerning all products and entities. This is a lacuna in sports IP laws too. Including all the products in the market does not exist under Indian IP law. To further elucidate, if an entity is not a part of the Indian IP law or its related law, it cannot be patented. This leads to a setback for the producer since he or she is not assured of their creation and the original idea surrounding it.

While IPL and World Cup have gained huge profits due to IPR law, there has been, at the same time, a humongous increase in betting and scams in these games. During the 2013 IPL, Raj Kundra (Co-Owner, Rajasthan Royals) and Gurunath Meiyappan (Think tank behind CSK) were involved in a match-fixing scandal leading to the ban of Chennai Super Kings and Rajasthan Royals for two years [24]. Even though no such incident was reported after this scandal, illegal activities are still on the rise, unfortunately, by the team owners themselves [25]. This calls for a stringent set of anti-corruption and spot-fixing guidelines for preserving the very essence of cricket as a sport. Additionally, the players need to be made more aware of how to report any approaches by spot fixers, thereby ensuring their safety and protecting the IP of BCCI and the team sponsors, owners, etc.

Another significant issue is that the products are replicated by local traders, who then sell them at a lower price. For this, the law of 'passing off' exists, which states that no trader shall misrepresent the goods of a person or entity as those of another [26]. However, the execution part of this law is still questionable, and action must be taken to address it. Ambush marketing is another issue associated with IPL and World Cup, where a company promotes its products in an event without having sponsoring rights [27]. The laws preventing these have many loopholes, which several companies have taken advantage of by incorporating these events into their marketing strategies.

Hence, more effective laws are needed to fill in these gaps and address these issues to effectively move towards protecting IP rights in cricket.

CONCLUSION

The scope of IP rights in cricket has been exquisite, which is the least to say. From the manufacturing process of cricket equipment to all the media-related aspects involved, IPR has the potential to cover every single process. This brings to light the very fact that the interests of a large number of stakeholders are involved in the game, such as team owners, sponsors, tournament organizers, and even the boards of different cricketing nations, and IP rights aim to protect each and every one of them. However, in this dynamic cricket and IPR landscape, there is a need to constantly address the issues and complexities to protect the interests of all. While significant strides have been made in the field of IPR and sports in the past two decades, we are still far from realizing the overall objectives, and it remains to be seen how we affirmatively move in that direction.

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