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- [INTRODUCTION](#)
- [INFOSYS](#)
- [PONNI RICE](#)
- [SUPERMAN](#)
- [SATYAM](#)
- [DCGI'S NEW SUGGESTION](#)
- [J. K. ROWLING VS. RDR BOOKS](#)
- [GROWTH IN PCT APPLICATIONS](#)
- [LAUNCHING OF ECO PATENT COMMONS](#)

Introduction

Latest addition to our series - 6 Suggestions For...

Watch out for Next

"Effective Use of a Trademark"

Infosys

Bangalore based, Infosys Technologies, recently made headlines, as they have been prohibited from carrying on their business in France under their trade name "INFOSYS". A civil court in Boligny, France ruled that, the usage of the name 'Infosys' by the Indian Company constituted infringement of the trademark and corporate name of another Company "Infosys France". Infosys Technologies has sought a stay order on the Civil Court's decision and are planning on appealing against the ruling.

Several companies fail to realize how important it is for them to secure their intellectual property (IP), particularly their trade mark and more importantly their house mark in contemporary times. Expansion of market/services also means enhancement of goodwill and trade reputation. After the lifting of trade barriers, domestic companies have forayed into the international market in large numbers. Indian Companies, especially, the ones in the IT sector, capitalizing on the changed atmosphere, further fueled by liberalization of the Indian economy, have opened their business operations in various countries. But in that, what the companies have lost sight of is, securing their Intellectual Property Rights.

The aforesaid event is just an eye opener. What happened today to Infosys Technologies may happen to any Indian Company tomorrow. Trade Marks are distinctive signs or indicators as to the origin of the

products/services of Companies. Unscrupulous individuals hijack well known trade marks and pass off their goods as that of the original owner. To prevent this from happening, owners of a trademark have to secure it by registration.

There is now a paradigm shift in trade. Indian Companies, as is the case with other global companies, are striving hard to enter into the international business areas or alternatively to safe guard their international businesses. Off late, big corporate houses of India, like the Tata, Reliance, and Videocon, to name a few, are in the process of consolidating and increasing their holdings through numerous global acquisitions and merger. In such a scenario, protection of Intellectual Property is of a great significance.

From the abovementioned debacle of Infosys, we expect that, the other Indian entrepreneurs would take the required measures, in securing their IP and avoid various unpleasant situations like the one being faced by the soft ware giant.

Ponni Rice

In South India, there exists a form of non - basmati rice known as "Ponni". Ponni is the ancient name for the river Kaveri, which is the most important river of South India. The name Ponnu, meaning gold, is itself derived from the Cauvery delta and refers solely to the richly fertile soil of the region and its rains and the entirety of its climate that is invested in each grain of the Ponni rice . A Malaysian company, Syarikat Faiza Sdn. Bhd., has registered the word "Ponni" at the Malaysian Trade Mark office. The abovementioned company has issued notices to Indian importers of rice in Malaysia, calling upon them to discontinue using the name "Ponni" for rice.

Ponni rice is a hybrid variety of rice, which is a cross between Taichung 65 and Myang Ebos 6080/2 varieties. The Tamil Nadu National Agricultural University (TNAU) had released this variety of rice from its University in the year 1986 and gave it the name "Ponni". The TNAU slipped-up by not registering the name Ponni as a trademark.

The Indian exporters, at the earliest, should apply for cancellation of the Trade Mark in Malaysia on the basis of their first adoption and prior user of the word "Ponni" in Malaysia.

Superman

Creators Jerry Siegel and Joe Shuster sold their rights to "Superman", to Detective Comics (DC Comics) in the year 1938 for \$130 under the work for hire doctrine. Amendments brought to the Copyright Act, 1971 that opened the possibility for heirs and estates or original creators to reclaim their rights at the time when the copyright came up for renewal.

The creators had brought out an issue of Superman in Action Comics # 1 before they sold the rights to DC Comics. In such a scenario, the Siegel's would own half of the copyright to everything introduced in the first issue like the identity of Clark Kent, Lois Lane character, super strength, red, yellow and blue costume with the red "S", red cape etc. DC comics own the trademarks for the same and have also introduced characters like Jimmy Olsen, Lex Luthor and many more.

Could this be the beginning of the end for Superman? It will be, if an out of court deal isn't struck between the Siegel's and DC Comics. One cannot coexist without the other.

Satyam

The Indian IT company, Satyam, lost a case related to jurisdiction of a matter involving patent infringement and forgery which was filed by Upaid systems. Upaid is a British Virgin Islands company engaged in mobile payment services.

In the year 1996, Upaid developed the idea of converting the telephone into a pay phone by using pre-paid account and caller personal identification number. Software development for the same was outsourced to Satyam in 1997. After the software was developed, Satyam turned it over along with the Intellectual Property to Upaid. Two employees of Satyam, who were the inventors of the software, left soon after. Satyam, it seems, forged their signatures on the patent assignment documents as the abovementioned inventors denied signing the same.

Upaid filed for patent protection but were denied. Upaid alleged that Satyam had deliberately and systematically misled Upaid about the turning over of all the Intellectual Property. Satyam in turn, filed a petition at London, contending that the jurisdiction lay there. The courts in London ruled that the court in Texas could carry on hearing the matter and as they had jurisdiction for the same. The Hearings are likely to begin in the year 2009.

The lesson to be learnt in relation to the above, by Corporates, is that that signature of the inventors must be taken on all patent related documentation, such as declaration and assignment deeds, at the earliest possible opportunity especially due to the fact that the attrition rate is very high in this sector.

DCGI's New Suggestion

The DCGI, Dr. Surinder Singh, made a statement to the effect that there are plans in the pipeline to link the regulatory authority's office with that of the Patent Office. This would in effect mean that an indigenous drug manufacturer would have to disclose all the patents involved in making of that drug before he can get the

approval of the DCGI to manufacture the same. This approval would be only given if the drug was a totally new one and not based upon any earlier patent.

In U.S.A, all generic pharma companies have to get approval from the FDA before manufacturing and marketing patented drugs. Innovator drug applicants must include in new drug application (NDA) information about patents that claim the drug product that is the subject of the NDA. FDA publishes this patent information as part of the Approved Drug Products with Therapeutic Equivalence Evaluations, which is generally known as the Orange Book.

An ANDA applicant must include in the ANDA a patent certification described in section 505(j)(2)(A)(vii) of the U.S. Act. An ANDA must contain a certification regarding each patent listed in the Orange Book covering a referenced NDA. One of four such certifications are made:

- " Paragraph I Certification" – certifying that patent information has not been filed in connection with an NDA. The FDA may approve immediately an ANDA making this certification.
- " Paragraph II Certification" – certifying that a patent covering an NDA has expired. Again, the FDA may approve immediately an ANDA making this certification.
- " Paragraph III Certification" – certifying that ANDA approval is sought after a listed patent expires. The FDA may approve the ANDA only after such patent expiration.
- " Paragraph IV Certification" – certifying that a listed patent is either invalid or will not be infringed by the generic drug for which the ANDA applicant seeks approval.

J. K. Rowling Vs. RDR Books

A suit was filed by J. K. Rowling (author of Harry Potter series) and Times Warner against RDR Books for infringement of their Intellectual Property Rights. A website called Harry Potter Lexicon was created by Steven Jan Vander Ark, who is a librarian by profession. The lexicon lists characters, places, creatures, spells, potions and even a time line. The website is a very popular one among Harry Potter fans and Rowling had even given it an award as the best fan site. Mr. Vander Ark with the help of RDR Books decided to make a hard copy of the contents of the website. This induced Rowling along with Times Warner, who own the trade marks and copyright for Harry Potter file a case against RDR Books claiming that such a publication would hurt and infringe upon Rowling's own copyright as she wanted to publish a lexicon of the same order in the near future.

The principle in law which is in question is the fair use doctrine, which allows the limited use of copyrighted material without requiring permission from the right holders. Has Mr. Vander Ark infringed upon the rights of Rowling? In the coming months the decision of the court will be a landmark one deciding as to what constitutes fair.

The author does have rights over his/ her works. Numerous works exist which are based upon the work of original authors. Vander Ark too had put in his skill and hard labor in collecting information, assembling them and ensuring that they are updated regularly. His publication of an encyclopedia of sorts on Harry Potter would not act as an impediment to Rowling, herself making an encyclopedia. The former's copy would act as a competitor against hers and it would not in any way infringe upon her copyright to the Harry Potter series of books.

Growth in PCT Applications

In the year 2007, there has been an immense growth in the number of Applications (156,100 Applications). The countries of the northeast Asia, which includes Korea, Japan, China, are the ones who have contributed greatly to this number, accounting for a quarter of all international applications.

Launching of Eco Patent Commons

The World Business Council for Sustainable Development (WBCSD), a group based in Geneva, has launched a technology sharing initiative known as Eco Patent Commons. Companies are encouraged to donate patents for inventions which provide environmental benefits. They are published on a website and can be used by anyone, free of charge. IBM and Nokia were the first companies to donate patents to the abovementioned initiative.