

Newsletter December 2010

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Copyright Bill, 2010

The Year 2010 was a year for great discussion and deliberation for the proposed amendments to the Copyright Act. Though it looked at the beginning of the year that we would have the honour to read the Copyright Act, 2010 it appears that it is just in the chrysalis stage. We hope that it shall transform into an Act this coming year 2011.

We had earlier this year reported on the copyright bill and the proposed . Recently, the Parliamentary Standing Committee which has been asked to review the bill, hold discussions with stake holders and comment on the proposed amendments, has come out with a report which was presented before the Rajya Sabha and Lok Sabha on the 23rd of November 2010 suggesting changes to be made to the bill.

Following are some of the key changes suggested by the report:

- Principal Director as joint author: The Committee found that the proposal in the bill, to include the 'Principal Director' as a joint author of the film along with the producer, is unfair and should be rejected. The reasons cited by the committee in its report for this were inter alia as follows: "Committee's opinion rests on the premise that there is a system existing presently whereunder producers and directors are free to negotiate on their own terms and conditions. Under these negotiations/contracts, directors are not only paid their negotiated salary/fee but also certain rights in perpetuity relating to the script. Further, as per the existing system, the principal director is not taking any equity risk in the production/performance of a film and it is the producer alone who runs the risk of his investment not being recovered."

- Definition of the term 'Communication to the Public': The committee rejected the reservations of the stake holders to the proposed amendment to include the performances in addition to work in the definition of communication to the public. The proposed amendment is as follows: "making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work or performance regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available."

The proposed amendment in the definition of the term 'communication to the public' has not found favour with the stake holders i.e. the music companies represented by the South India Music Companies Association, the RPG Enterprises Saregama, Indian Music Industry and also the Association of Radio Operators for India. Attention of the committee was drawn to the following factors having an adverse impact on the music industry and radio operators:

- subscription to caller tunes and authorized websites permitting streaming/downloading of copies etc. will be considered "communication to the public" in spite of it being a sale of the copy;
- no rationale in exclusion of only physical copies from the purview of "communication to the public" in an age where commercialization and sale of music is taking place extensively through the medium of internet and transfer of files through computers/blue tooth;
- creation of a transient electronic copy in the course of or for the purpose of "communication to public" under current law is treated as an infringement. While such act by a legitimate TV/Radio station would be lawful, the section will be misused by unauthorized websites treating it as an activity during the course of "communication to the public".
- free radio broadcast which is a service to the public and is also in the interest of artists as it promotes their compositions will be brought under the definition. Therefore, the word 'performance' should be excluded from the provision.
- proposed amendment will be misinterpreted by certain quarters when even issuing "digital" copies would amount to 'communication to public'. It would be wrong to consider digital sales such as iTunes as "communication to the public" In reality, it is only a sale, but on a different medium.

The committee was however of the opinion that "..... the reservations of the Stakeholders are unfounded. Issuing physical copies or legitimate digital downloading music or video recording by payment cannot be considered a communication to the public. The Department has justified the proposed amendment for exploitation of digital mediums. As the amendment is in tune with the technological advancement, the Committee accepts the amendment. The Committee is also of the view that the copyright societies can play a proactive role in resolving problems, if any, arising due to the proposed changes in the definition."

- Definition of the term 'Infringing copy': The bill seeks to address the situation of parallel imports. The proposed amendment adds a proviso to the definition of Infringing Copy which is as follows

"Provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy".

The committee stated that it was in favour of such amendment and added that it would be beneficial to student in being able to acquire latest editions of books at low prices.

- Assignment of copyright: The committee has accepted the amendments proposed in section 18. In clause 18 the following proviso was sought to be introduced "Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work." "Provided also that the author of the literary or musical work included in a cinematograph film or sound recording shall not assign the right to receive royalties from the utilization of such work in any form other than as part of the cinematograph film or sound recording except to the legal heirs or to a copyright society for collection and distribution and any agreement to the contrary shall be void".

The committee stated inter alia that "the proposed amendments in section 18 will protect interests of authors in the event of exploitation of their work by restricting assignments in unforeseen new mediums and henceforth author of works in films will have right to receive royalties from the utilization of such work in any other form except to the legal heirs or to a copyright society and any other contract to the contrary shall be void"

- Mode of Assignment: The committee proposed amendments that would ensure better protection of the rights authors of the work particularly authors of songs whose works are included in films or sound recordings. One of the proposals included the author of a song i.e. the composer or lyricist receiving 50% of all royalties from the exploitation of the work as a part of the cinematograph work itself.
- Certain acts not to be infringement of copyright. And Compulsory licence for benefit of disabled: The committee stated "The Committee is of the firm opinion that all physically challenged need to be benefited by the proposed amendments. It would be very discriminating if envisaged benefit remains restricted to only visually impaired, leaving out persons affected by cerebral palsy, dyslexia and low vision. The Committee takes note of fact that even regular Braille users complement Braille with other accessible formats like audio, reading material with large fonts and electronic texts. The Committee also observes that the modern day Braille production is dependent on the material being first converted into mainstream electronic formats such as MS Word because Braille translation software requires inputs in such formats. The Committee hopes that the request of organizations for extending access of works to all accessible formats instead of special formats presently under consideration of the Department will result in a positive outcome. The other request for widening the scope of compulsory licence to allow other entities working for disabled in case it is not possible to withdraw section 31 B also merits a sympathetic consideration by the Department."

Travelling Cyber Squatters

In a recent suit for permanent injunction before the Delhi High Court, the Hon'ble court granted an injunction against the cyber squatters "indiatimestravel.com" who were trying to pass off their services as that of the Plaintiff's.

The facts are as follows:

The Plaintiff- TIMES INTERNET LTD is the owner of the portal _____ and is also the owner of the mark "travel.indiatimes.com". The plaintiff registered the trade mark with effect from 7th June 2000. One of the Defendants, Belize Domain Whois Service Ltd. registered the domain name "indiatimestravel.com" in 2005. The Defendants' domain did not provide any services other than sponsored links on their website, links which if clicked would earn revenue for the Defendants.

The High Court drew a parallel between a domain name and a trade mark as was done by the Supreme Court in a 2004 case of Satyam Infoway Ltd. vs. Sifynet Solutions Pvt. Ltd. In his the well reasoned judgment, the Hon'ble Justice V.K. Jain quoted the Supreme Court's decision in the 2004 case in which the SC stated - "The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar website which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off.

As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off "

The Hon'ble High Court found in favour of the Plaintiffs and ordered the Defendants to transfer the domain "Indiatimestravel.com" to the Plaintiffs.

Schering Corporation Vs. United Biotech (P.) Ltd. and Oscar Remedies Pvt. Ltd.

Bombay High Court in October 2010 dismissed an appeal brought before it by the US pharmaceutical company Schering Corporation and others, against an order passed by a Single judge of the Bombay High Court dismissing a notice of motion. The Notice of motion was one for grant of temporary injunction and had been filed by Schering Corporation and others in order to restrain the Defendants-Respondents from

infringing the Plaintiff's registered trade mark NETROMYCIN and from passing off the Defendant's goods by using the trade mark NETMICIN.

The Single judge before whom the Notice of Motion lay found in favour of the Defendants on the grounds that:

- The Plaintiffs- Appellants failed to prove distinctiveness of their mark or packaging;
- The Two marks viz. NETROMYCIN and NETMICIN are not deceptively similar;
- There is no possibility of any confusion as the Respondents- Defendants goods were purchased in bulk by the hospitals and that the same were not sold over the counter, whereas the Plaintiffs- Appellants goods were sold over the counter and that the purchasers of the Respondents- Defendants goods have requisite knowledge and technical expertise in dealing with the drugs;
- The essential features of the Plaintiff's- Appellant's mark are different from that of the Respondent's- Defendant's;
- There would not be any adverse effect on the consumer since the chemicals used in both the products are common; and
- There were many medicines and pharmaceutical products being manufactured and traded in the market ending with the letters Mycin, Micin and Cin.

In the Appeal, after hearing Counsels appearing on behalf of both sides the Hon'ble Division Bench, inter alia, held:

"The Appellants have adopted their trade mark NETROMYCIN from the generic drug name Netilmicin. When a trade mark is found from the common generic name, no single proprietor can claim absolute monopoly in such name or trade mark. When a proprietor adopts a trade mark on the basis of name of generic drug or ingredient, it will be safe to assume that he is aware that the other proprietors are also likely to adopt and use similar marks in case their product is based on the same generic drug or ingredient. In such a case, the first user cannot claim exclusivity in his trade mark or in the name which is derived from the generic drug. At the most such proprietor can claim exclusivity in those added features which differentiates his trade mark from the name of the generic drug or ingredient. When two trade marks are coined from the same generic drug or ingredient, there are bound to be similarities between the two and in such a case, even if the differences between the two trade marks are minor or small, then also at least at the prima facie stage no injunction can be granted."

The Hon'ble court further held "Since there is commonality in origin, ingredient, composition and purpose, even if one drug is consumed for the other, there cannot be disastrous consequences..... In our opinion, the manner in which the drug is administered and that the product of the Respondents is used only in the hospitals by the Doctors after carrying out sensitivity culture test, is enough to rule out any possibility of any confusion as the chemical used in both the products is same. Even if by mistake one is used for the other, no injury is likely to be suffered by the consumer or patient. In our opinion, therefore, this circumstance coupled with the circumstance that both the trade marks are registered and that from the year 2003 the

Respondents have been using its trade mark uninterruptedly disentitles the Plaintiffs-Appellants to interim injunction restraining the Defendants-Respondents from using its trade mark.”

Knock Out not a knock off... or is it?

This year saw a controversy regarding the release of the movie ‘Knock Out’ starring Sanjay Dutt and Irfaan Khan. A suit was filed by 20th Century Fox (the owner’s of the copyright in the movie ‘Phone Booth’ starring Colin Farrell) against the makers of the movie Knock Out.

The Counsel for the 20th Century Fox (Plaintiff) alleged that the film Knock Out was copied by the producers, from the English movie Phone Booth. The Counsel on behalf of the Defendant SEMPL argued that the Plaintiff 20th Century Fox was claiming copyright over the ‘idea’ of a hostage in a phone booth, and hence no cause of action arose.

Justice Roshan Dalvi passed a stay order on the release of the movie Knock out after watching both the movies in the video conferencing room.

The order passed by Justice Roshan Dalvi was appealed by AAP Entertainment Ltd. (One of the defendants). The Division bench before which the appeal lay held that “.....we are inclined to grant interim stay during the pendency of the appeal. However, in the facts and circumstances of the case, we are inclined to impose a condition that the appellant must deposit a sum of Rs. 1.50 crores with the Prothonotary & Senior Master of this Court with a further condition that the appellant shall maintain accounts and place the same on record of this appeal.”

The point of contention is whether the movie Knock Out infringes the copyright in the movie Phone Booth or whether the movie just borrows an ‘idea’ from the movie? And this question remains to be answered finally by a court of law.

The law relating to copyrights lays down that one cannot claim a Copyright in an Idea/thought. Thus one cannot claim copyright in the theme of a movie but the entire script and the story will have to be considered to decide whether or not there is a Copyright Infringement or not.

This case promises to be an interesting one and we look forward to seeing the final decision.

Estee Lauder loses trademark case against Gufic Biosciences

The Supreme Court in November 2010 rejected the appeal brought by Estee Lauder contesting a judgment passed by a Division bench of the Delhi High Court. The Judgement by the Division bench had the effect of dismissing the claims of Estee Lauder that, Gufic Bioscience’s use of the word ‘cliniq’ as part of its product ‘Skincliniq Stretch Nil’, amounted to an infringement of Estee’s registered trade mark ‘Clinique’.

The Hon'ble Supreme Court upheld the judgment of the Division Bench of the Delhi High Court allowing Gufic to continue using the word 'cliniq' in its product.

The judgment of the division bench of Delhi High Court vacated an earlier injunction passed by a decision of a Single Judge of the same High Court. The judgment passed by the Division Bench of the Delhi HC held inter alia, that: "the test of deceptive similarity in the case of infringement is the same as in a passing off action, where the marks are not identical; the question has to be approached from the point of view of a man with average intelligence and imperfect recollection. Further, in comparing the marks, it is the overall structural and phonetic similarity of the two marks that is to be seen and not by splitting them into their component parts."

"In comparing "CLINIQUE" with "SKINCLINIQ", what has to be borne in mind is the overall structural and phonetic similarity of the two marks and the marks cannot be separated into their components. Consequently, we have to take the mark "SKINCLINIQ" as a whole in comparison with the respondents' registered mark "CLINIQUE". When we do that, we do not find any overall structural or phonetic similarity."

Clarity on Date of Grant of Patents

This year saw a heartening judgment being passed Delhi High Court. The Judgment was passed by Hon'ble Justice S. Muralidhar of the Delhi High Court and it dealt with 8 writ petitions. We had earlier on this Judgment being passed.

This judgment inter alia laid down that:

- On the date the Controller gives its decision to grant the patent, is the date on which the Patent is said to be granted;
- One cannot file a pre-grant opposition after the patent is granted
- final order granting patent has to be applied with a digital signature of the controller or the assistant controller and has to be "placed on the website of the Controller on the very same day without any unnecessary delay."
- The High Court further directed the controller to start the practice of "publishing a 'cause list' of such cases under the heading 'for pronouncement of orders' the previous evening both on the website as well the notice Board of the Office of the Controller, just as it happens in the Courts.

TVS vs. Bajaj

The case that the IP and automotive world followed closely since 2009 still continues..... And it has not reached very far. The highpoint of the case in the year 2010, was that a Division Bench of the Madras High Court decided that TVS may start producing evidence first. A quick recap of the case is in order:

- In 2007 TVS Motor Company Ltd. instituted a suit against Bajaj Auto Ltd. in the Madras High Court. In the suit TVS inter alia, prayed that Bajaj be restrained from making groundless

threats of prosecution for alleged infringement of one of Bajaj's patents and also that the Court declare that TVS's motorcycle branded 'Flame' did not infringe the impugned patent; TVS Simultaneously filed an application for the revocation of Bajaj's patent before the Indian Patents Appellate Board.

- Bajaj filed a suit against TVS in 2007 and prayed for inter alia, permanent injunction against TVS restraining TVS from infringing the patent of Bajaj by selling, marketing and producing Flame; Bajaj also prayed for accounts of profits, payment of damages and delivery up of infringing material; 3. In February 2008 the single judge granted an injunction against TVS in the case brought against TVS.
- TVS appealed the decision of the Single Judge before the division bench of the Madras High Court.
- The appeal was allowed by the Division Bench of the Madras High Court.
- Bajaj being aggrieved by the decision of the Division Bench of the Madras High Court filed an appeal before the Supreme Court in 2009.
- The Supreme Court in its decision stated that "It is evident that the suit is still pending before the learned Single Judge of the Madras High Court. We are unhappy that the matter has been pending in the High Court at the interlocutory stage for such a long time as the suit was filed in December, 2007 and yet even written statement has not been filed" the court in its succinct order the Hon'ble Supreme court stated ".....experience has shown that in our country, suits relating to the matters of patents, trademarks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. This is a very unsatisfactory state of affairs..." the Court thus directed "....Respondent-defendant to file written statement in the suit, if not already filed, on or before the last date for closing of the Madras High Court for Dussehra holidays. We would request the learned Single Judge who is trying the suit to commence the hearing of the suit on the re-opening of the Madras High Court after Dussehra holidays and then carry it on a day to day basis. No adjournment whatsoever ordinarily will be granted and the suit shall be finally disposed of on or before 30th November, 2009"
- The Learned Single Judge of the Madras High Court, framed issues in both the suits as per order dated 24 November 2009.
- The Learned Single Judge took up the preliminary issue as to who should let in evidence first. After hearing both the parties, the learned Single Judge opined that the infringement being the central theme in both the suits and even though the first suit proceeds on the validity of patent, to arrive at a proper decision, defendant (i.e. Bajaj) has to start with letting in of the evidence. Feeling aggrieved by this decision, the Bajaj filed two appeals;
- The Division Bench of the Madras High Court, before whom the appeals lay decided that TVS should first prove their case i.e. that their motorcycle or rather the engine of the motorcycle does not infringe the patent of Bajaj.

News from the Office of the Controller General Patents, Designs and Trademarks (CGPDTM)

The year 2010 saw many positive changes being implemented at the office of CGPDTM which are expected to ultimately lead to the advancement of the IPR registration system.

Trade Marks classes increased from 42 to 45

To bring it in line with the current NICE classification the number of trade mark classes was increased from 42 – 45 on the 20th of May 2010 vide Notification No. G.S.R. 48 (E) in the Gazette of India Extraordinary. The abovementioned Notification had the effect of dividing the Services previously existing in class 42 alone, into classes 42, 43, 44 and 45.

In order to implement the above Notification, the IPO issued a Public Notice in the Trade marks journal No. 1143. However this public notice caused a lot of confusion and after conferring with stake holders, advocates and trade mark attorneys the controller general issued Public Notice dated 23rd of August 2010 bearing number CG/F/PG-II/IPAA/2010/218 suppressing the Public Notice featured in the Trade marks journal No. 1143 .

The Public Notice dated 23rd of August 2010 inter alia lays down that:

- With regard to trade marks already registered under class 42:
- The registration will continue to be validly made under class 42 even though as per the new classification the services fall under a different class i.e. 43/ 44/ 45;
- In spite of the registration being valid the registered proprietor may, if he desires, apply to the registry to have his registration converted to the appropriate class;
- Renewal of such registered trade mark (if change is not applied for by the proprietor) will continue to be made in class 42 only;
- Remedies would be provided under the Act as if the registration/ renewal was made in the corresponding class/ classes
- The trade marks which have already been published in the TM Journal under class 42 shall be treated for the purposes of registration, classification and renewal as if they were registered trademarks and the abovementioned provisions shall apply.
- For pending application awaiting examination, the examiner shall intimate the applicant, the particular class/es in which the services mentioned in the application fall and that the examiner will require the applicant to either restrict the services falling in a particular class for which the application has been made or to file a request in the prescribed manner along with the requisite fee for division in one or more classes as the case may be. In case of such division the priority date of the application shall be maintained;
- In cases where the application has been examined and objected and has been responded to acceptably, the application will be re examined and the examiner shall intimate the applicant, the particular class/es in which the that the services mentioned in the application fall and that the examiner will require the applicant to either restrict the services falling in a particular class for which the application has been made or to file a request in the prescribed manner along with the requisite fee for division in one or more classes as the case may be.

- New applications for Class 43 to 45 with effect from 1st July, 2010 would be accepted by the Registry in accordance with the new specification of services.
- While examining new trade mark applications under class 43, 44 and 45, the Examiner will search Class 42 also.

Official Search Reports to be Discontinued

The CGPDTM on the 24 of December 2009 issued a Public Notice calling for all patentees and licensees to furnish information regarding working of patents. The deadline given by the Public notice was 31st March 2010.

If the patent has not been worked in India any person interested may make an application for grant of compulsory license to such patent. The application for compulsory license may be made any time after the expiration of three years from the date of the grant of a patent. The calling for information regarding working of patents will lead to transparency as persons interested may apply for grant of compulsory license if they find that the patent has not been worked in India.

If the patentee or the Licensee fails to disclose furnish information regarding working of patents he shall be punishable with fine which may extend to ten lakh rupees and if he furnishes information or statement which is false and which he either knows or has reason to believe to be false or does not believe to be true, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Patent Filing Trends in India

It was curious and heartening to note that till the month of November 2010 the patent office in Mumbai actually saw more domestic applications being filed by Indian nationals than National Phase applications in the year 2010. As of the 1st of December 2010 the number of applications filed by Indian nationals in Mumbai since 1st of January 2010 was 3283 as compared to 2552 in case of the national phase application. Conversely as of 1st December 2010 the rest of India did not see a similar trend, for example the no. of domestic application filed in chennai were 3649 as compared to 7800 national phase application.

This peculiar trend in Mumbai can be attributed to a greater IP awareness among the people in western India than the rest of India. It could also be attributed to the concentration of Industry and commerce in Maharashtra and the fact that in this area it is recognized that patents are an Asset.

Even in the annual report of the patent office for the 2008-2009 reflected this fact. The following are the statistics for patent applications filed by Indians "Out of the applications filed by Indian Applicants Maharashtra accounted for the maximum number, followed by Karnataka, Delhi, Andhra Pradesh, West Bengal and Gujarat. The state/ union territory wise break up of figures is as shown in brackets Maharashtra (1990), Karnataka (872), Delhi (702), Andhra Pradesh (411), West Bengal (358), Gujarat (295), Harayana (126), Uttar Pradesh (115), Jharkhand (112) , Kerala (107), Punjab (61), Madhya Pradesh (51), Rajasthan (40), Uttarakhand (29), Chandigarh (27), Assam (15), Bihar (10), Chattisgarh (10), Himachal Pradesh (10) etc."



R. K. DEWAN & CO.
ADVOCATES, TRADE MARK & PATENT ATTORNEYS

Established in 1942

Case of the two Zensars

In the month of November, Zensar Technologies Ltd. the multinational software and services company, represented by R K Dewan & Co., was successful in obtaining an interim injunction against a Zensar Infotech, a computer training institute in Jaipur.

February, 2010, while surfing internet one of the employee of the Zensar Technologies came to know about the use of the mark "Zensar" by the Zensar Infotech, Jaipur. Zensar Infotech was asked to discontinue the use of the mark "Zensar" as it amounted to infringement of the Zensar Technologies' registered trade mark. Moreover, Zensar Infotech used the symbol ® which signified that the Trade Mark "Zensar Infotech" was Registered when it was actually not. This constitutes a criminal offence under Section 107 (Chapter XII) of the Trade Marks Act, 1999 punishable by a term of imprisonment which may extend to three years or with fine or both.

Zensar Technologies instituted a suit against Zensar Infotech in the Pune District Court and the Hon'ble District Court was pleased to grant an order of temporary injunction against Zensar Infotech restraining them from using the mark 'Zensar'.

Just Desserts

WeikFIELD Products Company India Pvt. Ltd.(Weikfield), India's largest manufacturer, supplier and retailer of Custard Powder and other confectionery products such as Drinking Chocolate, Baking Powder etc.; successfully restrained Quality Food Products India, a Pune based partnership firm, from passing off the product Custard Powder, by obtaining an Order of Temporary Injunction from the District & Sessions Court at Pune. Weikfield was represented by R K Dewan & Co.

In 2009, through their team of market researchers, Weikfield found out that Quality Food Products India was manufacturing and selling custard Powder under the unregistered brand name Right Choice. The product Right Choice Custard Powder was found to be sold in packaging which was a near exact colourable imitation in respect of the design, calligraphy, colour scheme, pictures and other aesthetic features as that of the Weikfield. After conducting a Quality check it was found that Right Choice Custard was a sub standard product manufactured using inferior quality ingredients which could be hazardous to the health of its consumers. It was found that Quality Food Products made a futile attempt to pass off its product as that of Weikfield.

In spite of having received a legal notice, Quality food products continued to sell and pass off its Custard Powder as that of Weikfield's, trying to deceive the public at large, risking public health in an attempt to encash on the impeccable reputation of Weikfield earned over a period of 50 years.

Weikfield thereafter through their advocates and legal advisors, R K Dewan & Co. approached the Hon'ble Pune District Court by filing a civil suit for passing off under the provisions of the Trademarks Act 1999. The Learned Judge having heard the advocates for Weikfield on the Application for Temporary Injunction filed under the provisions of Order 39 Rule 1 & 4 of the CPC, was convinced that Quality Food Products have indeed committed passing off under the Trade Marks Act. As a result of the arguments advanced, the

Learned Judge was pleased to grant Temporary Injunction in favour of Weikfield with a direction to Quality Food Products India to discontinue their product Custard Powder and a warning not to pass off any of its other food products including custard powder as that of Weikfield's by way of deceptively similar packaging.

DINODIA PHOTO LIBRARY PRIVATE LTD -VS- INDIAN BANK

A case involving copyright infringement by Indian Bank, pending before the Madras High Court was recently settled between the parties. The Plaintiffs in the case were Dinodia Photo Library Private Ltd. and they instituted a case of copyright infringement under Section 62 against Indian Bank. The Plaintiffs were represented by R K Dewan & Co.

IN 2008 the Plaintiffs discovered that Indian Bank's calendar contained photographs from the Plaintiff's library. The Photographs in question had not be sold or licensed to the Indian Bank and yet the same were featured on the bank's calendar. Moreover, some of the photographs featured in the Bank's calendar still contained the watermark of the plaintiff and this watermark was clearly visible.

The parties recently came to an amicable settlement and the matter has been concluded.

Parle Opposition in Australia

In September 2010, Parle Products Pvt. Ltd. ('Applicant') represented by R. K. Dewan & Co. and the Australian attorneys – IP Gateway, were successful in obtaining an order for costs and removal of the Trade Mark 'PARLE' which has been registered in the name of Nina Bhavangiri ('Opponent'), who was Parle Product's Erstwhile Distributors

According to the Australian Trade mark Act if a trade mark has remained registered for a continuous period of 3 years and, at no time during that period, the person who was then the registered owner: used the trade mark in Australia or used the trade mark in good faith in Australia; then any person may apply to have such trade mark removed from the Trade Mark Register.

The Delegate of the Registrar of Trade Marks ('Delegate') after hearing both the parties found that the Opponent had not for the relevant period used the Trade Mark 'PARLE'. The Delagate did not go into the merits of the rightness or wrongness of the use or adoption but confined himself to the question whether there has been commercial use of the trade mark by the Opponent within the relevant period. After evaluating the evidence put forth by both parties the Delegate found in favour of Parle Products Pvt. Ltd. and ordered that the Trade Mark 'PARLE' be removed form the TM Register and also ordered the Opponent to pay costs to the Applicant.