

## Newsletter May 2010

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### **Patent Agent Examination Results**

The results for the patent agent exams which were held in January 2010 were announced in May 2010. The percentage of people who appeared and passed are better this year than previous years. This year 22% of the candidates passed. RKD is proud to announce that out of the 223 candidates which passed this year, 7 were from RKD

### **India fights Bio- Piracy at the EPO**

With a view to curb bio piracy India has established a mechanism to protect its traditional medicinal knowledge. In 2009 the Indian Govt. agreed to make the Traditional Knowledge Digital Library (TKDL), which is a 30 million page searchable database of traditional knowledge, available to the Patent Examiners at the EPO. The accessibility of data base has come into operation from February 2, 2009.

The efforts taken to curb rampant bio piracy seem to have borne fruit as a recent TKDL team study shows a sharp decline, about forty four percent, on filing of patent applications concerning Indian systems of medicine/ medicinal plants and the like at the EPO.

An example of the effectiveness of the efforts of the Indian Govt. would be the successful setting aside by the EPO of a patent granted to Data Medica Padova SPA, Italy, on February 2009 for use of pista (Pistacia vera) in an anti-cancer drug. The Indian health ministry filed an application to block the patents and successfully thwarted the attempts at patenting traditional knowledge by citing evidence based on eight Unani books and one Siddha book. The EPO, was pleased to set aside its earlier decision to grant patent.

Since July 2009 the TKDL identified 36 patents/ applications at EPO which attempt to patent Indian Traditional Knowledge. These have been challenged by the Govt. of India and out of these 36 patent/ applications; two have been set aside by the EPO (pistachio and muskmelon); 11 patents/ applications including Indian Lotus for curing heart disease, turmeric, onions, jeera and ginger as a slimming agent and Bengal gram for curing obesity have been withdrawn by the applicants themselves after being shown

evidence of traditional knowledge by the TKDL. It is hoped that the other 23 are either rejected by the EPO or are withdrawn by the Applicants without much fuss, as what they claim to be novel is really traditional.

## **Introduction**

India seems to have caught the cricket fever (once again), and this time the sport comes with a new buzz. Yes, we are talking about the Indian Premiere League. In 2009 The IPL as it is popularly known had a brand value of more than US\$ 2 billion. In 2010 it has been valued at \$4.13 billion (over Rs. 18,000 crore). The "fastest growing sports property in the world" as Forbes magazine described it, has a lot to do with IPR than just the strength and weaknesses of the star players.

## **Trade Marks**

Sponsorship is the name of the game and exhibiting their brand to the millions of viewers is how the corporate world plays it. Look at any uniform of any team of the IPL and you will see at least 20 brands on the player from head to toe. The cricketer has also become the billboard. The Player has become a bouquet of trade marks, most of which have little or nothing to do with the player/ the team or even the sport other than having paid a lot of money for having their brand displayed on the uniforms of the team. Even the umpires were not spared the tirade of brands with Kingfisher Airlines signed up as the official umpire partner for the series in a Rs. 106 crore (15 million) deal. The Kingfisher Airlines brand is now seen on all umpires' uniforms and also on the giant screens during the decisions given by the third umpire.

The teams themselves have icons, designs and websites for which copyright/ trade mark and design protection has been sought. The teams did not limit their protection to just India, the initial 8 teams applied to protect their mark in all the 15 cricket playing countries.

One look at the stadium and the enormity of the commercialization hits you, from the stumps to the pitch to the side railings, to even the 'time out' announcements have all of them, some brand or another being displayed.

The enormity of the money involved in sponsorship deals in sports is fantastic, especially with regard to Indian cricket, for example in 2005 the BCCI (the Board of Control for Cricket in India which is the controlling authority for inter alia, the IPL) opened bidding for the Official kit sponsorship for team India; Nike outbid its rivals Adidas, Reebok and others, to secure the rights to endorse its brand through Team India, by quoting a whopping Rs. 196.99 crore. The contract gave Nike endorsement rights till December 31, 2010 from first January, 2006. Air Sahara, a part of the Sahara group too obtained sponsorship rights for the Team India from 2005 to 2009 for a sum of US\$70 Million.

## **What's in a Name? \$\$**

It's not just a name, it's a symbol. When a sports personality becomes a legend his mere name can make him tonnes of money. The product or service which bears that name receives the goodwill and attention which that name carries. The name eventually symbolises the special essence of the player.

The brand which comes first to mind is Jordan, for those of us who don't even watch basketball on a regular basis the name still holds awe. We still picture those gravity defying jumps when we hear that name. Had we the money would we not want to buy those same shoes? According to Forbes Michael Jordan's brand is worth \$30 million. This figure is based on his endorsement deals with companies such as Nike, Hanesbrands and PepsiCo's Gatorade.

Tiger Woods one of the biggest names in golfing holds top spot among athletes with a brand value of \$82 million according to Forbes.

The Legends of cricket:

Kapil Dev- speak the name and you get a picture of him holding up that world cup trophy. When you remember the man you also remember his voice saying "Palmolive ka Jawab nahin"; now regardless of whether he ever used Palmolive he did promote it and it did give Palmolive good brand recognition even to this day.

Sachin Tendulkar's name and persona too have that power and they shall continue to, even after he retires. According to Mr. Venu Nair, president (South Asia), World Sport Group: "Sachin is planning a brand overhaul. We are working with him to chalk out a strategy to make sure that the sustainability curve of his brand doesn't dip suddenly after he stops playing. We are betting on him for at least the next 10 years."

Brian Lara- every kid who played computer games, associated cricket on computer with Brian Lara which was very popular right from 1996 when it first came out to 2006.

## **Not just Sports**

Like every other promising venture the IPL and its teams have sought protection not only for sporting goods and services but also for other classes.

It appears that superstar Shah Rukh Khan's team, the Kolkata Knight Riders, have sought protection over their trade mark in many classes including financial services, insurance, websites, telecom, entertainment and beauty care products. Mumbai Indians too have sought to protect their trade marks in various classes including those for cosmetics, musical instruments and photographic and cinema equipment. This move is crucial as third parties should not be allowed to destroy the mark by selling spurious goods and services under the trade mark owned by the team. The Players of a team may change but the mark shall remain.

It pays to have your mark registered in classes other than your main stream of operation. Consider the example of F1 in china. The owners of the F1 mark Formula One Administration Ltd. filed a suit against 8 defendants who were selling garments with "F1", "F.one" and "F1 JEANS" showing on such garments, packing and website. Formula One Licensing B.V. which owns the F1 Trade Marks. In this case had its trade mark registered, inter alia, in class 25 which relates to "Clothing, footwear, headgear". The Court held that the representations used in the defendants' garments and publicity have infringed the exclusive trademark

right of the registered "F1 Formula 1" and that the Defendants should cease the infringement and pay the Plaintiff compensation amounting to RMB 144,000 Yuan (US\$18,000) to the Plaintiff.

## **In come the Infringers**

When one owns, controls or manages a sporting league it becomes imperative to keep up the vitality and sanctity of the Mark. The mark should also be such, as not to get so associated with the sport that it be confused with the name of the sport itself rather than be identified as a Trade Mark. For example- in 2007, F1 the world renowned trade mark of the Formula One Group was denied exclusivity in the UK as it was found by the U.K. Registry the public recognises Formula One as a type of sport rather than a brand name.

In 2009 a South African firm by the name of KBJ Asset Holding filed applications for registration of the trade marks of the IPL teams, before the Patent and Trade Marks Office in South Africa. The South African firm sought to register the Trade Marks in relation to "Education; providing of training; entertainment; sporting and cultural activities, soccer sport, rugby & cricket". News reports indicate that the applications were opposed by the IPL Teams.

2010 is the year that FIFA World Cup is scheduled to be held. FIFA short for Fédération Internationale de Football Association is the international governing of association football. In order to protect its rights and the interests of its various sponsors who pay huge sums of money in order to be associated with the event, FIFA has sought to protect its various trade marks around the world especially in respect of the trademark 2010 FIFA world Cup. The Association has been rigorously been protecting and enforcing its right over the mark. One such example of FIFA trying to maintain exclusivity of the Mark is when it filed a suit against a South African firm, Metcash when the firm released its confectionery line under the title "Astor 2010 Pops". The promotional material carried the title alongside the South African Flag and images of footballs. FIFA accused the company of passing off and trade mark infringement as it tried to associate its product with the World Cup without permission. The Court found in favour of FIFA and ordered Metcash to cease production and pay all costs.

FIFA attempting to outline the dos and don'ts of the use of certain words relating to the world cup and football has released a Public Information Sheet on its website. According to FIFA, a general advertisement using generic football terms and imagery does not create an unauthorised association and is thus permissible. So, for example, "Enjoy the Football with 'Brand X' this summer!" is acceptable, but "Enjoy the 2010 World Cup with 'Brand X' this summer!" is not.

The IPL too has issued an advisory on its official website, which describes the proprietary names, marks and content protected by law and the restrictions on unlicensed use for third parties. This is a wise decision, since, though the mark is to be protected it should not deter fans from using it which itself leads to promotion of the brand. According to Mr. Lalit Modi the IPL chairman and commissioner "There seems to be a presumption among third parties that the BCCI-IPL's proprietary names, marks and contents can be used for various commercial purposes without permission of the BCCI-IPL. This document has been issued to correct

any such misconceptions. We are committed to protecting the IPL brand from dilution and damage and will do all things necessary to safeguard the large investments that our sponsors, partners and broadcasters have made to make the event possible."

## **Ambush marketing**

In order to sponsor and be associated with a sporting event a company/ firm has to pay great sums of money. Ambush Marketing is the ingenious method by which a company associates itself with the event without paying any such sum of money for sponsorship. The most memorable example of this would be the tag line used by Pepsi in the year 1996 "Nothing official about it". Pepsi came out with this tag line in the year that the cricket world cup was to take place. Coca Cola was the official sponsor of the world cup, but Pepsi stole the show by featuring its tagline "Nothing official about it".

The strategy is very harmful to the sponsor as it dilutes exclusive association of the sponsor with the event, and the money spent by the sponsor goes to waste as he is unable to recover the amounts he expected to earn by such sponsorship.

FIFA's website itself talks of the problems faced by FIFA with regard to infringement; the site states – "After its sporadic beginnings in 1994 with 258 cases across 39 countries, the problem first became a major concern when the 1998 FIFA World Cup <sup>TM</sup> was held in France and 773 infringements of registered marks were discovered in 47 countries. Eight years on, 3,300 rights infringements were uncovered in 84 countries in relation to the 2006 FIFA World Cup <sup>TM</sup>. By contrast, when the 2002 event took place in Japan and Korea, there had been 1,884 cases in 94 countries, and with three-and-a-half years to go until the 2010 FIFA World Cup <sup>TM</sup>, there have already been 127 cases of rights' abuses, 70% of them in the host nation, South Africa. 19 of these incidents related to counterfeit products that have been confiscated by South African customs, thus illustrating the efficiency of FIFA's rights protection programme."

In recent news a South African budget airline has been promoting itself as the "Unofficial National Carrier of the You-Know-What". The South African budget airline named kulula, had come up with this witty marketing strategy. The Airline however stopped this ad campaign after FIFA filed a complaint that it infringed its trademark the 2010 World Cup. FIFA alleged that the advertisement breached South African law "by seeking to gain a promotional benefit for the kulula brand by creating an unauthorised association with the 2010 FIFA World Cup".

Ambush marketing may be frowned upon and be occasionally equated with infringement but it does lead to original, imaginative and often hilarious forms of marketing. In a land mark judgement pronounced in 2003 by the Delhi High Court, (in the case of ICC vs. Arvee

Enterprises and Philips), it was held that while the alleged act is recognized as ambush marketing, under the current legal frame work such acts are not in fact prohibited under current law.

## **Broadcasting Rights**

Another big way in which sporting events generate revenue, is by licensing of broadcasting rights. With regard to the IPL, Forbes magazine stated "Revenue from TV, mobile and digital rights deals totalled USD 100 million for the second season, of which teams split an 80% share equally." Some big deals which took place in the Indian cricketing scene are as under:

- The BCCI sold global media rights to Nimbus Communications for US\$612 Million for international cricket to be held in India between March 2006 and March 2010.
- In 2006 Zee Telefilms secured the broadcasting rights for matches played by India at neutral venues (non-ICC member countries) for a price of \$219.15 million. This deal was for 25 matches played over a period of 5 years.
- In 2008 it took 8700 crores to secure global broadcasting rights of the Indian Premier League. The rights were awarded to a consortium consisting of India's Sony Entertainment Television network and Singapore-based World Sport Group.
- In October 2009 Nimbus Communication entered into an agreement with the BCCI for global broadcasting rights to a minimum of 64 international matches and 312 days of domestic cricket until 2014 for an amount of Rs.2000 crore (US\$436 million).

With so much money at stake it is but obvious that disputes arise; for example in 2007 the English Premier League sued YouTube and Google for the unauthorized download of match clips for 1.65 Billion USD. The suit is still pending in U.S. Courts.

In India the main broadcasting issues have to do with the govt. owned channel Prasar Bharati (Broadcasting Corporation of India) which owns the Door Darshan (DD) TV network and All India Radio. In a dispute between Ten Sports (owned by Taj Sports India Pvt. Ltd.) who held the exclusive telecast rights for the India-Pakistan cricket series and DD, the Supreme Court directed Ten Sports to share the signal with DD as it was in the 'public interest' since Cricket is so popular in India and more than half the country did not have access to Ten Sports. The order further stated that the broadcast by Prasar Bharati/ DD must be relayed along with the Ten Sports logo and all the advertising that Ten Sports had secured. The Hon'ble Court in the order directed Prasar Bharati to deposit a sum of Rs 100 million with it as surety towards compensation payable, if any, to Ten Sports in regard to the dispute.

As stated above, in 2006 Nimbus Communications secured the exclusive global media rights for international cricket to be held in India from the BCCI for the period between March 2006 and March 2010. Prasar Bharati did not even participate in the bidding process. DD without the permission of Nimbus broadcasted the second One Day International between India and West Indies. Nimbus prayed in its petition

before the Delhi High Court, for an order to restrain DD from using footage of the match and breaching their exclusive right. The Hon'ble Court however passed a provisional order by way of which Nimbus was ordered to provide feed DD, which DD would telecast on DD International and its DTH service subject to DD broadcasting the same with a delay of 7 minutes.

The Broadcasting Signals Ordinance 2007 made it mandatory for all private television and radio channels to share all live television and radio feed, without any advertisements to Prasar Bharati for events judged by the Union Government as those being of national importance. The ordinance carries a penalty of 1 crore for not sharing the feeds with Prasar Bharati.

## **Mongoose Bat and others**

This branch of Intellectual Property also plays a role in the world of sports. The most recent and identifiable innovation would be that of the Mongoose Bat, which is being endorsed by Matthew Hayden (Chennai Super Kings), Andrew Symonds (Deccan Chargers) and West Indian Dwayne Smith (Deccan Chargers). The Bat claims to be 33 per cent shorter than the average cricket bat and the handle is longer and is supposed to have a larger sweet spot. According to the makers of the bat it has about three times more wood at the bottom than the conventional bat, which allows the batsman to hit even the yorkers and the low full-tosses with a lot of power. The bat has been created by Marcus Codrington for more information [click here](#)

Some other recent innovations in the world of sports are listed below:

PCT published application no. WO 2010/033329A1 discloses a force attenuation system comprising a pair of foam layers encompassing a fluid-filled chamber, to be provided in sports gloves. The fluid-filled chamber of the force attenuation system is located near the metacarpophalangeal joint of a finger or a hand or can also extend over the entire palm, depending upon the subsequent use of the sport glove. The sport glove can be used in various sports including soccer, baseball, softball, hockey, cricket and other sports to protect hands of an athlete, where the athlete is required to catch a fast-moving ball or tightly grab a stick or a bat.

PCT published application no. WO 2009/090410A1 discloses a helmet for protecting sports people in case of powerful impacts by an object such as a fast-moving ball, during the game. The helmet comprises an outer shell member, disposed along the inner surface of which is a protective layer provided with an inflatable element connected to an inflation means. The inflation means allow the inflatable elements to expand when the helmet is worn. The inflation means could be an inflation fluid at super-atmospheric pressure which is pumped into the inflatable elements which comprise of cells and pockets made from a fluid-impermeable plastic membrane material and containing porous impact-absorption or cushioning materials. The advantage of the helmet discussed above over, the existing helmets is that the commercially-

available helmets in impact attenuation tests show deterioration with each impact; however the helmet disclosed in WO 2010/033329 provides continuous matched protection.

US published application no. 2010/0064422A1 discloses a multipurpose performance eyewear for motion sports and activities. The multipurpose performance eyewear comprises two frame members adapted to receive a lens and magnetic members which are embedded in the frame members. The eye rims provided partially or completely contact the wearer's orbit, are made from foam particles and are provided with air directing channels to allow air flow. The multipurpose eyewear is lightweight, easily stored and provided with detachable elements for protection to the wearer from unwanted air flow, provides adequate ventilation without fogging.

US published patent application no. 2009/0029804A1 discloses a multi-sports ball return net system and method thereof that consistently returns a ball hit, kicked, thrown or stuck into it to a practicing player, which is portable, easy to assemble and disassemble. The net system comprising a frame having an upper frame and two side frames and a net attached to the upper and side frames forming an upper forward bulging portion and a lower U-shaped channel portion between the side frames. The ball entering into the net drops into the U-shaped channel portion and is directed into the lowest and central point of the channel from where the ball propels back towards the user. The net system is lightweight, portable and returns the ball straight to the practicing player.