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THE VISUALLY IMPAIRED PROVIDED A RIGHT IN COPYRIGHT

In April this year, India became a signatory to the Marrakesh Treaty which deliberates on the rights of Visually Impaired Persons and Print Disabled Persons to access published works. Currently 64 countries are signatory nations of 187 member nations of WIPO the Marrakesh Treaty which also includes the European Union, France and Greece.

The signing of this treaty by countries is considered quite significant as it would facilitate the creation of accessible version of books for visually impaired and print disabled persons.

Joint Secretary, MHRD (India), Smt. Veena Ish had highlighted in her statements that Indian Copyright Amendments had come into effect since June 2012, and were in harmony with the principles of the Marrakesh Treaty. This places India in a good position for the ratification process of the treaty.

With the ratification of the Treaty in the future and its implementation, certain questions that may arise would be:

- i) Would all literary works of art be required to be reproduced and formatted to suit the visually impaired person's needs?
- ii) With the introduction of certain exceptions and limitations to the Copyright rules, due to the Marrakesh Treaty, would it in any way be disadvantageous to the copyright holder as it would permit reproduction of literary works in a format that suits the visually impaired person's requirement?

USTR SPECIAL 301 REPORTS: INDIA REMAINS A PRIORITY FOR THE U.S IN THE PRIORITY WATCH LIST

USTR Special 301 Reports places India in a priority watch list. The United States Trade Representative Report 301 published in April this year reflects the assessment of the IPR Landscape of each of the countries reviewed by the Offices of the Representatives on the basis of written submissions and oral proceedings before the USTR. The worst offending countries are put on a Priority Foreign Country List and such countries also suffer unilateral trade sanctions. The 2014 report reviewed 82 trading partners which resulted in 10 countries including China, India and Russia being placed in the Priority Watch List and 27 countries being in the General Watch List. Interestingly, Italy and Philippines were removed from this year's watch list. The Office of the Representative also announced that for India they will be conducting an Out of Cycle Review later this year after the new government comes in place to assess the position of the Indian Government on IPR issue. One can only wait and watch.

WIPO PROPOSAL OF PCT NATIONAL ENTRY

The World Intellectual Property Organization (WIPO) has introduced a proposal, which if implemented, will significantly simplify the procedure for national phase and regional phase entries of PCT applications. Currently several patent prosecution highways (PPH) exist by which prosecution and grant in one country is given due respect to an invention parallelly filed in another country which participates in the highway but these are bilateral arrangements and WIPO is suggesting a multilateral universal arrangement for all signatories to the PCT. What WIPO is suggesting is in a small way implemented within Europe where a single patent

application is filed at the European Patent Office and is prosecuted until grant and then validation is effected in the designated countries after grant on the basis of selection by the patent applicant. In the system proposed by WIPO, there will be a central hub for filing of national phase PCT applications in one location. WIPO suggests a single payment gateway available to both applicants and agents. The main issue that we see in WIPO's proposal is the significant differences in patent laws in different jurisdictions. For instance, methods of treatment of disease, business methods, patent applications claiming second medical use, are all thorny issues which need to be ironed out and this can happen only if there is harmonization of patent laws amongst countries. We, therefore, submit that unless this patent harmonization takes place, filing of a single patent application at the national phase stage is currently not feasible.

FASHION GETS A NEW DIRECTION

JANE NORMAN LIMITED .Vs. JANE NORMAN RETAIL PVT LTD & ORS

JANE NORMAN is a respected International brand for women's clothing, hand bag, footwear and other accessories and has been in existence internationally since the 50s. The parent company became aware that there was an entity in India having a domain name _____ when they received a casual inquiry asking them whether this entity in India was an exclusive licensee of the international chain. This resulted in a private investigation being conducted by JANE NORMAN. It was revealed that the entity in India operates under the name JANE NORMAN RETAIL PRIVATE LIMITED, has several outlets in Delhi and owns the aforesaid website. The international organization was able to establish before the Delhi High Court its trans-border reputation and that the local entity was guilty of passing off its own goods. Permanent injunction was granted and the court awarded damages worth Rs. 200,000.

JOCKEY RIDES AWAY WITH THE "WELL-KNOWN" PRIZE

JOCKEY INTERNATIONAL INC & ANR .Vs. R CHANDRA MOHAN & ORS

In a significant judgment the Indian licensee Jockey International Inc. was able to get the Delhi High Court to accept the plea that JOCKEY is a well-known trademark in India.

As a brand, JOCKEY was established way back in the year 1876 by Mr. Samuel T. Cooper. JOCKEY made its presence in India since the year 1995 and since then the entity has received several prestigious awards for its superior quality products and undergarments.

On becoming aware that the Defendant had commenced using the mark JOCKEY in respect of elastics and to manufacture counterfeit products labeled with the brand JOCKEY and similar packaging designs, the licensee of the Jockey International Inc. initiated action in the Delhi High Court in which it provided necessary proof and validation for the brand JOCKEY. This was instrumental in getting the JOCKEY brand declared as a well-known trademark under Section 2(1) (zg) of the Trade Marks Act, 1999.

GM "ELECTROCUTES" HAVELLS FOR DISPARAGING ADVERTISEMENT

M/S GM MODULAR PVT LTD vs. M/S HAVELLS INDIA LTD.

In disparaging advertisement cases the key issue is that the Plaintiff who feels that his business product or services has been disparaged is required to prove that the Plaintiff or its product or services is being shown in bad light and as a result the advertisement has caused damage to the Plaintiff's reputation. This is exactly what GM Modular was able to prima facie establish in the Delhi High Court against Havells. Both GM and Havells are manufacturers of switches and other electrical accessories. Havells released a television commercial depicting a peace conference in which when one of the dignitaries switches on a light switch he suffers an electrical shock and the dignitary is heard screaming that he has been shocked and a voice in the background says everything was done right except using HAVELLS RCCB & MCBs which resulted in the shock. The court ruled that the theme of the commercial and the presentation did show the Plaintiff's products in bad light, which diluted GM's brand value. As a result, an interim injunction was granted.

"DALMA" Monopoly

Dalma Comforts and Entertainment Company Private Limited (DCECPL) in the year 2001 opened a restaurant, exclusively dealing with Odia Cuisine under the trade name and style 'Dalma' (having a unique get up and colour combination with the word 'Dalma' encased inside a quadrilateral). Dalma is a famous Odia recipe. DCECPL obtained registration of the mark 'Dalma'. DCECPL expanded its business throughout Orissa. In November 2012, DCECPL learnt that one Mr.

Sathapathy had opened a restaurant under the name 'Dalma' and had used a similar colour combination and get up. DCECPL filed an infringement suit against Mr. Sathapathy in the District Court. Mr. Sathapathy defended his actions on the grounds that, 'Dalma' was not an invented word and it was commonly used in Odia cuisine. After perusing all the documents produced and hearing both sides the District Court decided in favour of DCECPL. Mr. Sathapathy appealed. The Orissa High Court upheld the order of the District Court on the grounds that:

1. DCECPL could establish that it was the prior user of the mark.
2. The Court found the get up and colour combination to be similar.

R.K. DEWAN & Co. CONGRATULATES ITS PATENT ASSOCIATES

R.K. Dewan & Co. congratulates its following Patent Associates and wishes them well for being selected in their respective international programs, they are:

- 1) Ms. Disha Dewan for being selected for an international internship and IP workshop at Boehmert & Boehmert in Germany.
- 2) Ms. Rujuta Mehendale for being selected in the Summer School on Intellectual Property course jointly conducted by the World Intellectual Property Organization and Intellectual Property of Singapore

NATIONAL IP AWARDS IN TRADEMARK REGISTRATIONS

On Intellectual Property Day this year (26th April 2014) R. K. Dewan & Co.'s client Bilcare Limited was conferred upon the National IP Award 2014 by the Government of India for the Top Organization in Trademark Registrations. Interestingly, similar contribution and efforts by R. K. Dewan & Co. helped Bilcare receive the same National IP Award two years ago in respect of Design Registrations. In a mail sent to us Dr. Naik, Executive Director & Chief Scientific Officer of Bilcare Ltd. wrote "your organization's contribution has been invaluable and has been instrumental in Bilcare being conferred with this prestigious Award".

THERMAX DECLARED AS A WELL-KNOWN TRADEMARK

In a recent case R. K. Dewan & Co. was successful in obtaining an ex parte injunction for Thermax Limited which restrained another company known as Thermax Engineers Private Limited from using the Trademark 'Thermax' as a part of its corporate name. What is noteworthy is that by presenting a properly drafted plaint and submitting detailed oral arguments before the Hon'ble Justice Manmohan Singh in the Delhi High Court, R. K. Dewan & Co. was successfully able to get the judge to declare that Thermax was a well-known mark in the initial order of injunction itself. Declaration of such a status is extremely important for a company in future infringement actions and to oppose marks before the Trademark Registry.