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Monkey Business

The U.S Copyright Office has settled an amusing dispute between photographer David Slater and Wikipedia regarding rights over a photograph taken by a monkey. While trying to click the perfect 'monkey picture' on his photography expedition in Indonesia, a Macaque monkey grabbed David Slater's camera, and accidentally ended up taking a bunch of selfies of itself. These selfie photographs were uploaded by Wikipedia's editors on the Wikipedia website. The photographer was not amused. Wikipedia claimed that the photograph was in the public domain because, under US law, animals can't own copyrights. However, Slater contended that the photograph existed only because of his creativity and his equipment; hence he was the rightful owner of the copyright in the photograph.

Agreeing with Wikipedia's stand in the matter, the US Copyright Office relied on the newly-updated US copyright manual which states that a photo taken by an animal cannot be copyrighted at all and said that no one owned the copyright in the photograph and the photograph therefore was in the public domain.

'Statement Of Use Cannot Be Amended' – Says The Controller General Of Trademarks

In India, applications for registrations for trademarks can be filed either on intent to use basis or by providing the details of use. The application form for registration of a trademark specifically requires an applicant to either state that the mark in question is proposed to be used or alternatively give the actual date in day/month/year format from which the proprietor has commenced using the trademark. Frequently, trademark applicants have been resorting to making requests for amending the statement of use, particularly when it comes to light during examination that the same or a similar mark has been applied for or stands registered in the name of a prior applicant or registered proprietor respectively. This claim to prior use by way of amendment has often been found to be dubious and has led to disputes between parties. The Controller General of Trademarks, in his recent order, has prohibited the use of such amendments. However, to provide for genuine cases where such statement of use was wrongly mentioned in the earlier application, the Controller in his order has opined that in such cases, applicants should file fresh applications giving the correct statement of use. Therefore, applicants who subsequently discover that the statement of

use was wrongly mentioned in their earlier trademark application are now at liberty to rectify this wrong by refilling the application with the correct statement of use, with the 'blessings' of the Authorities.

Please contact us at dewan@rkdewanmail.com for further information or any questions on this matter.

Right To Use One's Own Name Protected By The Supreme Court Of India

Section 35 of the Indian Trademarks Act, 1999 disentitles a proprietor of a registered trademark to interfere with any bona fide use by a person of his own name. Hitherto, however, courts in different parts of the country have been protecting proprietors of those trademarks which happen to be a name, surname or a full name from other persons whose name, surname or full name happened to be identical or similar. In the case of Precious Jewels v. Varun Gems, the Supreme Court of India, however, upheld the provisions of section 35. Earlier, in the Delhi High Court, the registered proprietors of the trademark 'RAKYAN' in respect of jewellery had obtained injunction orders against another entity using the mark 'Neena and Ravi Rakyan' in respect of jewellery business. What appears to have favoured the plaintiff in the Delhi High Court at the time of obtaining the interim injunction was the fact that the defendant had set up business next to the plaintiff's shop bearing the sign board 'RAKYAN'. After considering the facts, the Supreme Court decided that in light of the provisions of section 35 of the Trademark Act, the injunction order was not just and proper since the defendants carried on business in their own name and their bona fides were not disputed. There was also no similarity in the hoardings of the respective shops excepting the use of the name "RAKYAN". The interim injunction order passed by the Delhi High Court was therefore set aside.

Officer's Choice is the same as the Choice of the Collector

The Delhi High Court recently decided a case in which it considered associative thinking of the consumer while comparing the Plaintiff's mark "Officer's Choice" and the Defendant's mark "Collector's Choice".

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It was also observed by the Court that the concepts, cues, experiences and the memories that a brand conjures up play an important part in determining whether the consumer will be likely to be confused.

The Hon'ble Court decided the case in favour of the Plaintiff and restrained the Defendant during the pendency of the suit from selling, distributing, advertising or otherwise dealing in goods bearing the mark "Collector's Choice" or any mark/label similar or deceptively similar to the Plaintiff's mark/label "Officer's Choice" or from doing anything leading to passing off their goods as the goods and business of the Plaintiff.

Finolex Succeeds In The Pune District Court, India

RKD recently obtained permanent injunctions for its client Finolex in two separate trademarks infringement suits in the Pune District Court. The court also awarded the costs of the suits to Finolex. These cases were filed in 2011 and within a span of 36 months after trial, the suits were decreed.

Finolex is a widely known business entity in respect of manufacturing and marketing electrical cables and wires and has been in business for over 50 years. Both cases were filed after serving cease and desist notices to the defendants and not receiving any replies. RKD was able to establish the defendants' mala fide intentions and after trial secured orders preventing further infringement.