

RKD NewsNet October-2018 – Volume II

Compiled by: Adv. Sachi Kapoor | Concept & Edited by: Dr. Mohan Dewan

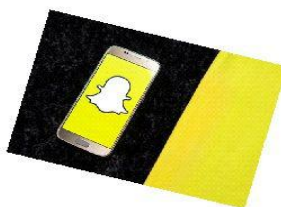
International News

- IP TROUBLE FOR FACEBOOK, SNAPCHAT AND INSTAGRAM
- NO DOWNHILL FOR DUNHILL!
- SONY PS4 COPYRIGHT CLAIM

National News

- AMITY INTERNATIONAL VS. AMITY INTERNATIONAL
- IS YOUR MATERIAL COPYRIGHTABLE?

IP trouble for Facebook, Snapchat and Instagram!



Corrino Holdings LLC is a private limited company and has been operating since 2012. The company has recently filed individual suits at the California District Court, against Facebook, Snap, the parent company of Snapchat and Foursquare app for allegedly infringing US patents relating to the GPS technology owned by them.



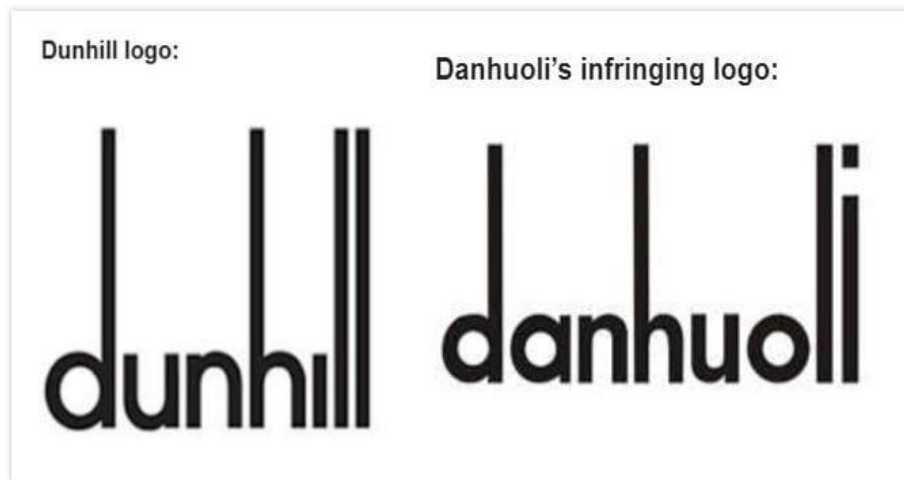
The patents in question relate to technology that notifies users of nearby services or allows them to search for services within a certain geographical range. This technology is supposed to work more effectively than a regular GPS system by updating the user of services that are nearby. Corrino alleged that Facebook has infringed the patents by offering apps for mobile phones and other devices that incorporate their technology. Further, the company also claimed that Instagram's mobile app provides users with technology that clearly infringes the patents in question. Whereas, in its claim against Snap, it is alleged that the Snapchat app infringes the patents by providing a location-targeting service that provides the location of the user for local advertisers to target.

Corrino has prayed for damages in all the four lawsuits.



NO DOWNHILL FOR DUNHILL!

There are ample of luxury brands that have not been successful in a trademark infringement battle filed against Chinese indigenous products. Richemont is the owner of the brand Alfred Dunhill and has been operating in the Chinese market for over a score of years. Recently, Alfred Dunhill Ltd. filed a suit against a China based company named 'Danhuoli'. The suit was filed for trademark infringement and unfair competition practices.



On observing the above shown marks, the infringement is evident as the infringing Danhuoli logo looks similar to Dunhill's original thin, black, and elongated logo with an identical font. In addition to the similarities in the logo, both the brands market products with respect to menswear, footwear and headgears. On investigation conducted during the case, it was found that Danhuoli had registered its name under the shadow of a Hong Kong based company called the 'Dunhill Group' and were actively operating in over 200 franchise stores in nearly 60 cities across China, resulting in huge losses for the original brand of Alfred Dunhill.

The Court ordered the infringing brand Dunhuoli to pay compensation to the tune of USD1.47 Million to Richemont. This case is a landmark judgment and a victory for global brands in China.

Sony PS4 Copyright Claim

A device conceptualized and marketed by Sony Entertainment, the Play Station has been in the market from over a decade. Every gamer since, has looked forward to a new upgraded launch of the play station, the latest in the market being the PS4. However, recently, Sony Interactive Entertainment LLC, has filed a suit in California District Court, against an individual by the name of Eric Davis for copyright infringement claiming for a permanent injunction against the individual.



Sony has alleged that the individual has been involved in marketing, selling and distributing, 'Jailbroken' PS4 consoles that contain pirated copies of PS4 compatible video games. These were produced and designed for purposes of use and to hamper the technological protection measures that ensure that the original PS4 systems will not support the working of pirated video games made. It is further alleged that similar 'jailbreaks' are available for the PS3 model through his website. All video games sold and distributed by Sony consist of large amounts of creative audiovisual material, stories, characters, and other matter that are wholly original to the company and are subject to copyright for which Sony holds copyright registrations. Further, all First-Party PS4 games and Third-Party PS4 games include copyrighted computer code known as PS Program Code. The Defendant has been selling 'jailbroken' consoles on popular websites like eBay which clearly has a wide audience and is phenomenally affecting Sony causing damages to the tune of millions! (since each video game CD for the PS costs around USD60 (approximately Rs.4000)). It has also been observed that the defendant has been publishing codes in order to exploit the PS software and run the pirated game CD's.

Sony has prayed to the Court that all disputed devices are delivered to it for destruction and all profits received by defendant as a result of the alleged infringement, as well as statutory damages and costs incurred are awarded to Sony.

Amity International vs. Amity International

Amity International School, a name most of us are well acquainted with, recently filed a case against Amity International School! Confused? That's exactly why the case was filed. Amity International School as we all know is operating out of multiple locations such as New Delhi, U.P., Rajasthan, Madhya Pradesh. In addition, there is Amity University and Amity Law School which belongs to the same group i.e. Amity Group of Education Institutions.

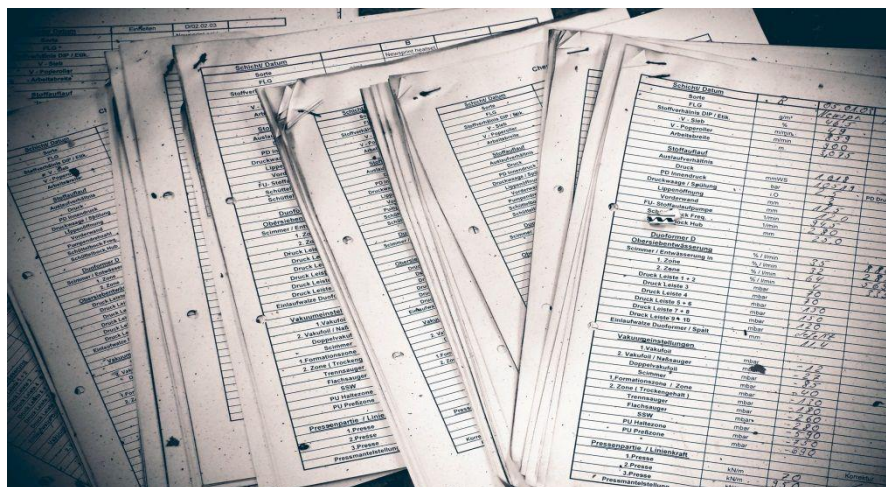
This case has been brought against one Amity International School, operating in Bharuch, Gujarat. The Amity Group stated that use of the word 'AMITY' in relation to education is a direct violation of their rights under the Trademark Act. Further, they stated that, such use is clearly with an intention to ride on the goodwill established by them. Amity Group has been continuously using and has registered its mark Amity since 1991. The Defendants stated that a school named 'Amity School' has been operational since 1986. Such school is being operated by a trust viz. Trustees of Gyanada Educational Trust, and this trust has an MOU with the trust operating the defendant school. Based on this MOU the defendant school claimed having prior rights. On May 30, 2014, the court granted an injunction in favour of the Plaintiff and restrained the defendants from using the word 'Amity' or any other deceptively similar mark in respect of educational services. However, such order was suspended in November 2014, as a result of an interlocutory application filed by the defendants.

Amity argued against the defendant stating that since the trust operating 'Amity School' and that operating 'Amity International School' is not one and the same and thus there can be no transfer of prior rights for the use of the word *Amity*. Further, it was brought to notice of the court that Amity School, Bharuch was not a party to the suit and thus such party having prior rights on the use of the word 'AMITY' holds no relevance. The Court admitted this argument and held that Trademark law is meant to protect not just the rights of the owners, but also to avoid any confusion from being caused amongst the public at large. The Court pointed out that the Defendant is relying on the prior rights of a third party who is not a party to this case, moreover, such third party too has no statutory right or claim over the mark AMITY since the word AMITY is not registered by them. Further, on viewing the Defendant's website it is evident that emphasis has been placed on 'AMITY INTERNATIONAL SCHOOL'. Further, the use of the terms AMITY, INTERNATIONAL and SCHOOL in conjunction is a clear attempt to pass off as the Plaintiff's school and thus, it is a clear case of passing off. The Court restrained the Defendants from opening any new school by the name of 'AMITY INTERNATIONAL SCHOOL' and stated that such injunction would come into force in the academic year 2019-2020 in order to avoid inconvenience to the current batch of students.

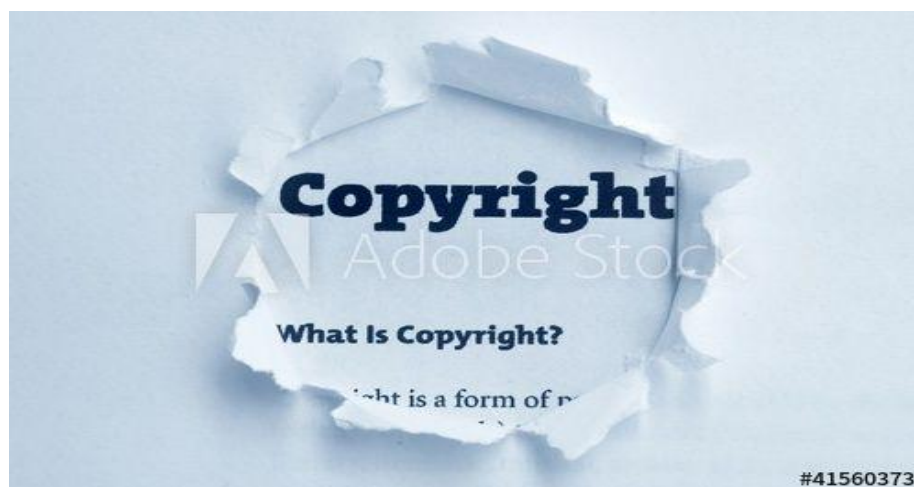
Is your material Copyrightable?

Copyrights vested in information of Clients and/or Customer Lists maintained by service providers has been an issue of disparity for the past several years. The High Court of Delhi, in *Navigators Logistics Limited vs Kashif Qureshi and Ors.*, on September 17, 2018, has once again attempted to bring some clarity to the prolonging confusion.

The Plaintiffs alleged that, the defendants had misappropriated copyrighted material and confidential company information which was in direct violation of their employment contracts. Such copyrighted material included client database, confidential data, accounts related information, plans, reports, airway bills templates and the likes. However, upon investigation it was found that the records misappropriated only included Client lists and contact information. As per the facts of the case, all employees resigned from the Plaintiff firm one after another. The plaintiff contended that such material comprised of *original and artistic literary works* as defined in Section 2(c) and Section 2(o) of the Copyright Act, 1957.



The Court referred to an earlier judgment of *Tech Plus Media Private Ltd vs. Jyoti Janda*, 2014 wherein it was held that, the key to establishing whether a copyright claim exists is to examine the degree of skill or judgment that has been invested into the creating the said material. The gist of the judgment stated that, when the output is merely a result of labour, such material lacks the use of any skill or creativity and thus is not copyrightable in nature. In order for a material to be copyrightable, it must have to satisfy the standard of creativity required. A mere compilation of existing information by arranging it in a sequence manner does not require creativity and thus cannot be held copyrightable.



In the present case, the Plaintiff had claimed copyright over lists which consisted of names and contact information of the Clients of the company, however, it was observed by the Court that such information was easily available in the public domain and thus cannot qualify as a confidential list. Further, the Court criticized the ex-parte interim order passed in favour of the Plaintiffs in 2016, restraining the Defendants from using the 'confidential information' for any reason whatsoever. Another ground put forth by the plaintiff was that the defendants had violated the employment

contract clause which prohibited them from working in a competitive industry for a period of one year after they resigned from the plaintiff company. However, the Court held that such a clause was a clear violation of Section 27 of the Indian Contract Act, which states that any contract restraining trade is void ab initio. The suit was thus, dismissed and the Court held that the Plaintiffs had no cause of action.