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International News

- APPLE INC. VS WARF
- PAT-INFORMED – A GLOBAL DATABASE
- BROKEN-HEARTED GIRL, BEYONCE
- NIVEA VS NIVEA
- ZERO!

National News

- RAJMOTI VS. RAJMOTI

Apple Inc. vs WARF

The case was instituted in 2014, by Wisconsin Alumni Research Foundation (WARF) who manage patents for the University of Wisconsin Madison, against Apple Inc. claiming that the iPhone 5S, iPad mini with Retina Display, and iPad Air all benefit from an information processing system called the A7 processor, developed at the University of Wisconsin - Madison and patented in 1998. WARF demanded damages and an injunction to stop the sale of any product using the A7 processor until licensing payment was agreed upon. The A7 processor powers older iPhones and iPads. The technology improves battery life and the efficiency of processors by having them execute commands efficiently.

In 2015, the jury found Apple guilty of patent infringement and ordered to pay WARF \$234 million as damages. Further, WARF filed a separate lawsuit against Apple over chips it uses in the iPhone 6s, iPhone 6s Plus, and iPad Pro models.

In 2017, the US District Judge denied Apple's appeal to reverse the findings of 2015 and instead doubled the damages payable to WARF bringing it to the tune of \$506 million. This increase in damages was awarded to WARF since Apple did not discontinue its products and instead continued use of the patent until it expired in 2016.

Apple Inc. then filed an appeal at the US Court of Appeals, where the judge ruled in favour of Apple and stated that, the evidence presented before the court of law at the time of trial was insufficient to prove infringement of WARF's patent.

Thus, the lack of evidence which was something that could have been easily produced as the patent existed and so did the product, the University lost more than \$500 million. It is once again clear that proper production of evidence is the most important strategy in winning an IP litigation.

Pat-INFORMED - A Global Database

The terms - Patent and Invention are inter-related with one another. However, these inventions, are not limited to only technological upgradation of machines, but in fact play a vital role in the scientific advancements made in the pharmaceutical field and enable cures to innumerable diseases. The International Federation of Pharmaceutical Manufacturers and Associations (IFPMA), based in Geneva, have official relations with the United Nations and contribute industry expertise to find solutions that improve the global health.

Recently, WIPO and the IFPMA developed a program along with twenty leading research-based biopharmaceutical companies, called the the Patent Information Initiative for Medicines (Pat-INFORMED). The aim of this program is to make it convenient for national and international drug procurement agencies to access patent information. The program is built upon the industry's firm belief that, an efficient patent system should not only work to sustainably incentivize innovation, but also to make information about patented inventions available and accessible to the public in order to inform and educate others, to add to the database of scientific and technological knowledge, and to promote the further advancement and improvement of technology. This database will initially provide information on granted patents for any products on the WHO Essential Medicines List. In addition, a facility for follow on enquiries will also provide a channel for procurement agencies to seek additional clarification regarding the patent status of the products they wish to procure.

The Pat - INFORMED initiative is based on creating a 'Global' version of the *US Orange Book*. For those unaware of the *US Orange Book*, it is a database that reflects the drug products, approved on the basis of safety and effectiveness by the Food and Drug Administration (FDA) and provides patent information concerning the listed drugs. The US Orange Book has been in force since 1984.

The implementation of this database will have positive impacts on researchers, patent holders, pharmaceutical agencies and many others working in the profession as it will ease the process of procuring information on patented medicines and also encourage further technological advancements and experiments on such patented medicines.

Broken-Hearted Girl, Beyoncé

The International Singer/Artist Beyoncé recently filed for a Trademark Infringement Case against a Texas-based company called 'Feyoncé', operated by Andre Maurice and Leana Lopez (No! she's not related to Jennifer Lopez). Beyoncé sent a cease & desist notice to the duo in February, 2016 asking them to cease using the name 'Feyoncé' as their brand name, as it is likely to create confusion among the public making them believe that the products were connected to the line of fashion run by her.

Beyoncé owns trademarks for her name and variations of it, including 'Beyoncé' and 'Beyoncé Rise' and even owns a website by the name of 'shop.beyonce.com' which consists of products such as apparel, headgears, perfumes and the likes. The 'I am.....Sasha Fierce' album singer did not receive any reply from the duo Andre Maurice and Leana Lopez, following which she filed for a Trademark Infringement Suit at the US District Court, New York asking the court to serve an injunction on the company Feyoncé from selling, mugs, hoodies, t-shirts and the likes claiming that the company is infringing her rights and attempting unfair competition and trademark dilution. The singer also claimed that products sold under the name Feyoncé contained lines from her songs which would further trigger confusion among the consumers.

In March 2016, the USPTO refused from registering the mark Feyoncé, however, their products were still available in the market. On October 1, 2018, the District Court held that, though the text, font and the pronunciation of the terms Feyoncé and Beyoncé are similar, the term Feyoncé has a different connotation. The Court concluded by saying that, even though there was clearly pun intended by the defendants, however, by replacing the letter 'B' with 'F' the defendants term Feyoncé is pronounced similar to the word 'fiance' resulting in establishing the difference between the brands and thus, not creating any confusion among the public.

Thus, there is no trademark infringement as per the courts findings. Do you agree?

NIVEA vs NIVEA

'Nivea' a product name we have all heard and most likely, have used since time immemorial. The brand is well known for its skin care products.

In August 2017, a UK-based Company, Just Enough Programme (hereinafter referred to as JEP), applied to register a mark featuring the word 'Nivea' in the form of a label at the UK Intellectual Property Office (IPO). The mark was accepted by the UKIPO and thereafter published in September 2017 for goods in class 34, covering cigarettes, electronic cigarettes and the likes. Nivea, a Germany based company, opposed the trademark application on the ground that it was similar to the company's registered trademark 'NIVEA' for cosmetic products.

The German Company further claimed that their trademark 'NIVEA' was well-known and has been widely advertised since 1922 and if a mark consisting the term 'NIVEA' was used by the applicant in the tobacco industry, the likelihood of confusion arising among the public who will believe that they have expanded into the tobacco industry. Further, NIVEA products are known for skincare whereas tobacco is considered harmful. The German Company, also stated that, NIVEA cosmetics was involved in the Charity Cancer Research UK and the registration of the mark NIVEA for tobacco is likely to hamper and tarnish the image of the cosmetic company.

The Intellectual Property Office concluded that though JEP created a unique label however, the use of the trademark NIVEA results in the marks to appear virtually identical. The IPO went on the state that, the NIVEA cosmetic brand

enjoyed distinctive reputation since it was an originally coined term. The Beiersdorf's opposition was thus successful and the UK Company 'Just Enough Programme' was ordered to pay damages worth USD 1640.

Thus, it can be concluded that in a case where two companies with similar trade names, the prior adopter of the mark can oppose the application for registration by later adopter of the mark even if the goods or services produced/provided are significantly different from one another.

ZERO!

In a recent US case *Royal Crown Company, Inc., Dr Pepper/Seven Up, Inc., Vs. The Coca-Cola Company*, the Coca-Cola Company applied for the registration of the term ZERO in order to claim exclusive rights over it and monopolize use of the term.

The appellants, Royal Crown Company, Inc. and Dr Pepper/Seven Up Inc. (hereinafter referred to as "Royal Crown") and Coca Cola Company, both market various brands of beverages. ZERO is used by both companies to indicate the calorie count or sugar content in their respective products.

Coca Cola, filed for several marks containing the term ZERO, viz., Sprite ZERO, Coca Cola Zero, Fanta ZERO, etc. and asserted that they were exclusively entitled to use ZERO as an element in their marks since the consumers identified ZERO with only their brands. The Patent and Trademark Office granted registrations to Coca Cola based on their assertion.

Royal Crown appealed to the US Court of Appeals against the exclusive rights given to Coca Cola over the term ZERO. The Court of Appeals in its ruling stated that the term ZERO is generic in nature and thus exclusive rights cannot be granted over such a term. The Court further stated that, the popularity or the scope of a distinctive quality acquired over such term is irrelevant due to its genericness.

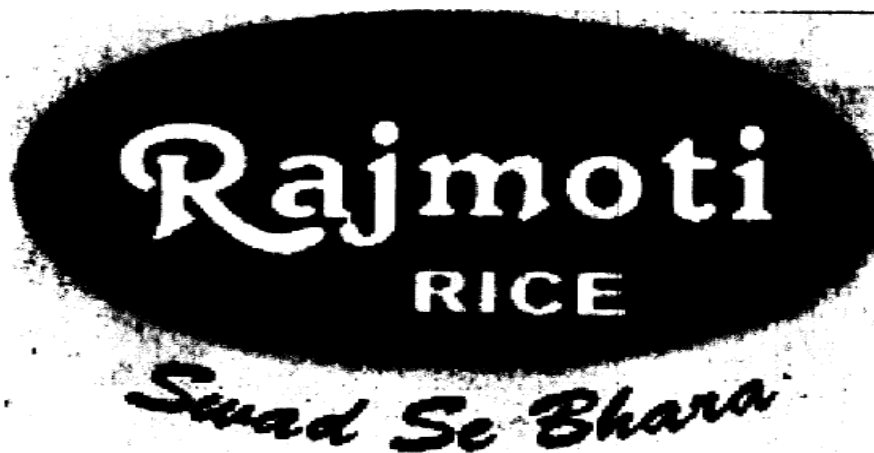
Thus, it can be inferred that 'ZERO' as a term can be used freely by any beverage company in order to indicate the calorie count in addition to its existing trademark.

Rajmoti vs. Rajmoti

In a recent case filed at the High Court of Delhi, M/s Shree Rajmoti Industries filed for a trademark infringement and passing off suit against, M/s Shri Vishwaprabha Foods Pvt. Ltd.



The Defendant's, Vishwaprabha, used the word 'Rajmoli' along with a tag line, as a part of their label for rice, as show below,



The Plaintiff claimed extensive use of the trademark RAJMOTI for edible oils and stated that, the defendant's mark was likely to cause confusion amongst the consumers since the defendant's products with the mark RAJMOTI, were also food products. Both, Rajmoti and Vishwaprabha were readily available in shops and supermarkets in the food section. When the plaintiff approached the High Court initially, the Court agreed to Rajmoti's submissions and granted an ex-parte injunction in favour of Rajmoti, and also appointed a Local Commissioner to investigate the activities of the Defendant. However, when the Local Commissioner reached the defendant's place of business, no infringing rice with the trademark RAJMOTI was found. The defendant did not even appear in the proceedings nor did the defendant deny any allegations. The Court was convinced by the initial evidence produced and passed a decree of permanent injunction against Vishwaprabha.



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Two inferences can be arrived at from these proceedings, , *firstly*, use of the same trademark for a different item of food, in this case, edible oil and rice, will amount to infringement. *Secondly*, even if no evidence of infringement is found or produced during the subsequent proceedings, the initial evidence will be sufficient for the court to pass a decree of permanent injunction.