Sports and Intellectual property rights: An Overview

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Introduction

Sports have traditionally influenced various aspects of our society. Generally, sports are considered as a social avenue for society to celebrate the greatness of the human spirit. In modern times, worldwide sports events such as Olympics and Commonwealth games, the spirit of games has reached a new dimension. With the introduction of live broadcasting, sport events have emerged as one of the biggest platforms for advertising and branding. Considering the growth rate of this sector, Intellectual Property Rights plays a key role in protecting the rights of every entity involved in sports, may it be a sportsperson himself or an organization connected to sporting activities or organization conduction/ sponsoring the sporting event. Furthermore, the growth of traditional sports in the virtual and digital sectors has opened up new avenues for IPR in sports.

Confluence of Sports and Intellectual property rights

The primary objective of and Intellectual Property right is to empower an individual or an entity to protect their intellect for a limited duration. In sports, a lot of hard work and efforts are put in by the sportspersons, the team, the organization/club associated with the sports activity, or the organizers of the sports events. Each one of these entities may use the IP rights from monetary benefits. In succeeding section, the application of Intellectual Property Rights such as Patents, Industrial Designs, Trademarks, and Copyrights in the field of sports is discussed.

Patents

Patent is an exclusive right to granted to an inventor or assignee for a limited period of time in exchange for detailed public disclosure of his invention. Further, Patents are also negative rights granted to the owner of the patent to exclude others from making, using, selling, offering for sale, or importing the invention patented by the inventor. On the other hand, Industrial Design rights are granted for protecting the aesthetic value or the visual design of an object. Typically, sportsperson, team, or competition gains significant benefits from exclusive control by way of patent over a technique/invention. Owners can capture considerable cash by dominating sports contests using the invention or license their invention. Thus, patent protection to the new inventions protects against
third party infringements as well as enhances commercial interests. Patent rights are granted for 20 years, and patents in India are governed by the Patents Act, 1970.

With the development in technology the conceptualization of new games and sports activities has turned reality. There are a number of sports types and methods for which patent is being sought. Inventors have recently begun to obtain patent protection for sports method inventions like method for putting a golf ball, method for fitness training, a ball rolling game, multiple type target game, body ball tag game and so on. Furthermore, till the end of 19th century, there was no concept of online gaming. However, with the development of computers and electronic gadgets by the end of 20th century, there was a revolutionary change in the definition of games in the 19th century as compared to the 20th century. In one example, the newly launched “Pokémon go” game is a classic example of using augmented reality concept in the field of mobile gaming. In a similar manner, a lot of other sports activities such as car racing and bike racing use advanced safety features which may be patent protected. In some condition, patented technology has given rise to non-traditional sports such as bungee jumping and paragliding. Nowadays, even in traditionally played games such as cricket, are actively utilizing patented products such as the contact sensing stumps.

**Trademark**

Trademarks are recognizable sign, expression of design indicator for distinguishing services or products of a particular source from that of the others. Trademarks play a vital role in brand recognition throughout the globe. Nowadays sports events like football and cricket are branded using taglines, slogans and logos. The brand value generated from these sports events may be associated with a sports team, sportsmen, or even the merchandises. Once a brand is established, monitory profits may be encored through live broadcasting and advertising. In some cases, trademarks have been filed on the name of the players considering their popularity and brand image. One such example is the name of the famous football player “David Beckham,” who has filed for trademark of his own name and earned millions of dollars through sponsorship deals and endorsements.

With the development of online gaming, it has become vitally important to protect the brand name considering the trends of upcoming online games. Online gaming is considered as one of the best platform for generating revenue. A large amount of these games are evolved from the sports leagues played at a global level. Hence, it becomes vitally important to file trademark protection for the teams participating in these sports leagues to avoid IP rights conflicts at a later stage. The current revenue model of the football clubs is through advertising and online broadcasting rights. However, it
would not be surprising to see huge amount of revenue generated through online games derived from different sports leagues throughout the globe.

**Copyright**

Copyright also known as author’s right is a type of intellectual property owned by a creator of literary and artistic works. Copyright protection covers literary and artistic works such as books, paintings, music, films, and sculpture. Apart from this, copyrights also cover computer programs, advertisements, maps, databases, and technical drawings. In the world of sports, copyrights play a very important role in protecting the artistic work which is a part of these sports events. Nowadays, with the increasing popularity of the sportsmen and the different leagues played throughout the globe, a lot of video games and online games are immerging based on these sports events. Some of these video games include F1 (Formula 1) racing games and FIFA world cup games which have immerged as a result of increasing popularity of the world class racing and football events. The look and feel of these games is as good as participating in the event actual event itself. This is mainly because, of advance graphics and the technologies such as augmented reality and virtual reality which are used in these games. Another key aspect of these games is the use of avatars of icon players in the video game. The experience of playing a game with the star players is in itself a delighting experience. However, in order to avoid misuse of these avatars (virtual players) care has to be taken in order to protect these star player avatars through copyright protection.

**Other Intellectual property rights**

**Trade Secret**

In sports, information, such as game plays, statistics, and analysis of the competitors, method of coaching etc. provide a competitive edge. Further, in respect of information the confidentiality has to be maintained. There have been numerous instances, where there has been a leakage of confidential information by the team members leading to losses to the team. Typically, a trade secret may be understood as any information which is not generally known or available to public, and by which a person/company/organization obtains an advantage over its competitors. In India, trade secrets are generally protected on basis of principles of equity, and at times, upon a common law action of breach of confidence, which in effect amounts a breach of contractual obligation. Thus, having proper agreements and using confidentiality clauses is beneficial in order to avoid trade secret leakage.

**Personality Rights**

In current environment, sports celebrities are created overnight and celebrity status leads to various forms of image creation, brand endorsement, revenue generation and capitalizing on fame.
Thus, endorsements, utilizing personality, image and celebrity status is a major source of revenue for sports celebrities. Personality/publicity right, a related right, may be understood as the right to control any commercial exploitation of one’s name, image, likeness, or any other aspect of personal identity. Further, under the Indian Trademark Act, 1999, a sports celebrity may file and obtain for a trademark in respect of his or her name. For example, Sachin Tendulkar has registered trademark over his name.

Another related right close to sports, is character merchandising. Generally, character merchandising may be understood as monetizing ones character, name or image, which has become a huge revenue earning business for example Sachin Tendulkar who has merchandising business such as gifts and collectibles from colorful T-shirts, baseball caps, knapsacks and mugs to china plates and crystal glasses to name a few. Furthermore, even sports clubs come up with merchandising with the players of their teams.

### Broadcasting Rights

Broadcasting rights may be understood as IP that is created during screening of sporting events and which if further recognized by the Indian Copyright Act, 1957. The term of broadcasting rights is twenty five years. Typically, the broadcasting companies own the broadcasting right, which allows the owner to rebroadcast sporting event. Further, as per the Indian Copyright Act, 1957, any person who re-broadcasts the broadcast or makes any reproduction of such sound recording or visual recording where such initial recording, or sells or hires to the public or offers for such sale or hire, any such sound recording or visual recording, without the license from the owner, is said to have infringed the broadcasting right.

### Domain Name

Internet and related commercial activity has contributed substantially to the importance of domain name and its use a business identifier. In sports, colossal information is distributed and events are broadcasted through Internet, which has further assimilated a vast market value in branding. Now a day’s all sports club has its own website. Additionally, some of the sportsmen have their own website for example, www.sachintendulkar.in etc. In the Indian context there is no a separate domain name registration mechanism, the best way of protecting one’s domain name is to register the domain name as trademark, which generally is taken into account while adjudicating over the domain name disputes.

### Conclusion

Sports traditionally being a recreation active now has become a serious business with huge profits. With increase in investors and stakeholder in sports, the criticality of protecting ones rights has increases many folds. In such conditions, various types of intellectual property rights act as an
effective tool, which enable effective and complete monetization. All in all, intellectual property rights plays a silent but an important role in creation, protection and monetization of sports and its related activities.

Reference


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