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GNOSIS

Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. Facebook signs a global music licensing deal with Tips

Bollywood music label, Tips, and the social media platform, Facebook, signed a deal to enter into global music licensing arrangement. As a result of this deal, Facebook and Instagram users will now be able to add music from Tips' music catalogue to their posts and stories.

2. Delhi High Court rules that “performer” includes singer: ISRA v. Dharma Productions Pvt. Ltd.

In the case of Indian Singers Rights Association v. Dharma Productions Pvt. Ltd., the plaintiff claimed that the defendant's cinematograph film titled, “*Gunjan Saxena – The Kargil Girl*”, infringed the plaintiff's copyright in respect of the performers' rights in 'Ae Ji O Ji' from the cinematograph film 'Ram Lakhan', 'Choli Ke Peeche Kya Hai' from the film 'Khalnayak' and 'Saajan ji Gher Aaye' from the film 'Kuch Kuch Hota Hai'. The Court held that Section 2(qq) of the Copyright Act which defines “performer” includes a singer. The matter is listed for 12th March 2021 and the rival contentions and underlying agreements are yet to be considered by the Hon'ble Delhi High Court.

Indian Singers Rights Association v. Dharma Productions Pvt. Ltd. (CS COMM 562/2020).

3. DOUBLE BLUE trademark infringement suit before Delhi High Court settled and decreed accordingly

In a trademark infringement suit namely *Allied Blenders and Distillers v. Ads Spirits Private Limited & Anr.*, filed over use of the mark DOUBLE BLUE in a specific colour shade on the defendant's packaging of its products, the parties agreed to settle the suit as the defendant, inter alia, undertook to switch over to a new packaging which did not resemble that of the plaintiff. Other terms and conditions for the settlement were also brought on record and a compromise decree was drawn accordingly.

Allied Blenders and Distillers v. Ads Spirits Private Limited & Anr. CS (COMM) 401/2020

4. Delhi High Court grants ex parte injunction in favour of Merck Sharp and Dohme Corp. in a suit claiming patent infringement of its salt SITAGLIPTIN

In a patent infringement suit namely *Merck Sharp and Dohme Corp. & Anr. v. Century Pharmaceuticals Limited*, it was alleged that the defendant was clandestinely manufacturing and selling SITAGLIPTIN PHOSPHATE MONOHYDRATE thereby infringing the plaintiffs' patent for the salt commonly known as SITAGLIPTIN. It was held that prima facie case had been made out, the balance of convenience was in the plaintiffs' favour and in case no ex parte ad interim injunction is granted, the plaintiffs would suffer an irreparable loss. Accordingly, the Hon'ble Delhi High Court granted an ex parte ad interim injunction against the defendant.

Merck Sharp and Dohme Corp. & Anr. v. Century Pharmaceuticals Limited CS (COMM) 552/2020



5. New intellectual property laws in the covid-19 relief and government funding bill

The COVID-19 relief and government funding bill that became law on December 27, 2020 incorporates three sections focused on intellectual property-related measures: the Copyright Alternative in Small-Claims Enforcement Act (“CASE Act”), which amends certain provisions of the Copyright Act, 17 U.S.C. § 101 et seq; amendments to the Federal Criminal Code that make it a felony to engage in unauthorized streaming of copyrighted content (commonly referred to as the Protecting Lawful Streaming Act); and the Trademark Modernization Act, which includes revisions to the Lanham Act, 15 U.S.C. § 1051 et seq. The CASE Act (Consolidated Appropriations Act of 2021, Division Q, Title II, Subtitle A) establishes a new Copyright Claims Board (“Board”) within the United States Patent and Trademark Office (“USPTO”) to serve as an alternative forum to federal courts for parties to resolve small copyright infringement claims, with streamlined procedures, and limited remedies amounting to no more than \$30,000 in total damages in a single proceeding for registered works, and \$15,000 of the same for unregistered works.





Technology and E-Commerce Updates

1. Google suspends Parler social networking app from Play Store; Apple gives 24-hour warning

Alphabet Inc's Google on Friday suspended the Parler social networking service from its app store, citing posts inciting violence and demanding "robust" content moderation from the app favored by many supporters of U.S. President Donald Trump. The actions by the two Silicon Valley companies mean that the network seen as a haven for people expelled from Twitter could become unavailable for new downloads on the world's main mobile phone app stores within a day. It would still be available in mobile browsers. Right-leaning social media users in the United States have flocked to Parler, messaging app Telegram and hands-off social site Gab, citing the more aggressive policing of political comments on mainstream platforms such as Twitter Inc and Facebook Inc. Twitter permanently suspended President Trump's account on Friday.

2. Signal, Telegram see demand spike as new WhatsApp terms stir debate

Signal and Telegram messaging apps are seeing a sudden increase in demand after larger rival WhatsApp's updated terms of service raised eyebrows on social media. WhatsApp, which uses Signal's encryption technology, laid out fresh terms on Wednesday, asking users to agree to let owner Facebook Inc and its subsidiaries collect user data, including their phone number and location. Some privacy activists questioned the "accept our data grab or get out" move on Twitter, and suggested users to switch to apps like Signal and Telegram.

3. China says U.S. behaviour towards telcos shortsighted

China's foreign ministry on Friday said the United States' behaviour towards three of its telecoms companies is shortsighted, after global index providers cut the telcos from benchmark indices. The behaviour will undermine U.S. interests, foreign ministry spokeswoman Hua Chunying said at a regular briefing. Global index providers MSCI Inc and FTSE Russell said they would cut three Chinese telecom companies from their benchmarks in response to a U.S. investment ban, crushing the share prices and widening the fallout from U.S. sanctions.

4. Shopify removes stores affiliated with Trump

Canada's Shopify Inc took down stores affiliated with U.S. President Donald Trump from its e-commerce platform on Thursday, a day after hundreds of his supporters stormed the U.S. Capitol. Shopify said the recent events determined that Trump's actions violated its policy, which prohibits promotion or support of organizations, platforms or people that threaten or condone violence to further a cause. Attempts to access TrumpStore.com and shop.donaldjtrump.com, which sold "Make America Great Again" hats and similar items, were unsuccessful on Thursday, as the websites displayed error messages. Shopify's move comes as social media platforms Twitter Inc, Facebook Inc and Snap Inc temporarily locked the accounts of U.S. President Donald Trump on Wednesday.

5. Trump bars U.S. transactions with eight Chinese apps including Alipay

U.S. President Donald Trump on Tuesday signed an executive order banning transactions with eight Chinese software applications, including Ant Group's Alipay mobile payment app. The move is aimed at curbing the threat to Americans posed by Chinese software applications, which have large user bases and access to sensitive data. The order argues that the United States must take "aggressive action" against developers of Chinese software applications to protect national security.

It tasks the Commerce Department with defining which transactions will be banned under the directive within 45 days and targets Tencent Holdings Ltd's QQ Wallet and WeChat Pay as well.





Fashion & Sports Law Updates

1. SC to hear ex-India goalkeeper Kalyan Chaubey's plea on AIFF polls

The Supreme Court will hear a plea by former India goalkeeper Kalyan Chaubey who has sought fresh elections in the All-India Football Federation. Kalyan Chaubey had moved to SC with a plea to not extend the mandate of the current executive committee of the AIFF and to hold fresh elections at an early date. He has also pleaded to correct the election eligibility process so that former players can also contest the elections and be part of AIFF's decision making.

2. Uniform National -Level Regulation for Fantasy Games

Niti Aayog, proposed uniform national-level regulation of Online Fantasy Sports activities Platforms (OFSPs) with a set of initiatives such as legislative secure harbour, light-touch the regulatory framework, and self-regulation. It has invited stakeholder feedback on the same till January 18, 2021. Niti Aayog, cited a KPMG India report and flagged the sharp surge within the sector: 2 million customers in June 2016 to 90 million December 2019; variety of OFSPs up from 10 in 2016 to greater than 140 in 2019; a tripling of income progress, from Rs 920 crore in 2018-19 to Rs 2,470 crore in 2019-20 and the potential of 12,000 jobs within the subsequent couple of years.

3. Assam Rifles Public School, 1st Khelo India Sports School from North-East

Union Minister of Youth Affairs & Sports Shri Kiren Rijiju launched the Assam Rifles Public School in Shillong as a Khelo India Sports School. At present, 9 Sports Schools have been approved across the country out of which five are managed by Defence and Paramilitary Forces. In the North-east region, Assam Rifles Public School is the first Sports School announced under Khelo India scheme. The objective of a Khelo India Sports School is to integrate sports with education and in the process, develop sports in the country and improve the overall profile and outlook of athletes. This will also help in the identification and upliftment of talent from North-Eastern, rural and tribal areas.

4. Nike, Michael Kors, Louis Vuitton among brands linked to counterfeit busts in U.S. IP Report

Recently, the U.S. Intellectual Property Enforcement Coordinator issued the Annual Intellectual Property Report. The report highlighted a number of significant large-scale piracy and counterfeiting prosecutions, a handful of which involve the trafficking and sale of counterfeit luxury and/or fashion/apparel goods, with Louis Vuitton, Nike, and Michael Kors wares among some of the most heavily cited. It stated of the opportunistic criminals taking advantage of the coronavirus health crisis, which led to an influx of counterfeit personal protection equipment and medicines, as well as the proliferation of online scams.



5. Khloe Kardashian and Dbleudazzled Bodysuit Case

California court in *dbleudazzled, LLC v. Khloe Kardashian and Good American, LLC* dismissed the special motion filed by Khloe Kardashian and her label Good Americans in an attempt to get their claims lodged against them by dbleudazzled. Dbleudazzled argued that the defendants' claims – including that they did not copy their lookalike bodysuits – are false and misleading, and therefore, constitute a fraudulent business practice in violation of the sweeping California state law, which prohibits unlawful, unfair or fraudulent business acts or practices. The California Superior Court in Los Angeles sided with celebrity-embraced fashion brand dbleudazzled, holding that statements made by the reality mega-star and Good American concerning their own lookalike bodysuits are exempt from the protections of the state's anti-SLAPP statute.

Dbleudazzled, LLC v. Khloe Kardashian and Good American, LLC 20STCV20510 (Cal.Sup.).





Corporate & Commercial Law Updates

1. HDFC Bank & Anr. V. Jesna Jose

The National Consumer Disputes Redressal Commission held that in case of fraudulent transactions leading to withdraw of money from a person's bank account, the concerned bank shall be responsible for the loss, not the customer, if it is not proven that the fraudulent transaction had taken place due to account holder's fault. It stated that in a case where the Bank has been unable to prove that the impugned transaction had taken place due to account holder's fault, for example in issue of loss of credit card, the bank shall be made liable for the unauthorized transactions, as it is understood that there was a security lapse in the electronic banking system through which the transactions had taken place.

HDFC Bank & Anr. V. Jesna Jose Revised Petition no. 3333 of 2013

2. Delhi HC asks SBI to maintain status quo with RCom's accounts

The Delhi High Court in the case of Punit Garg vs Union Bank of India asked SBI to maintain status quo with regard to accounts of Anil Ambani's firms – Reliance Communications, Reliance Telecom and Reliance Infratel, which have been declared by the bank as fraud accounts. The petition challenged the vires of the RBI circular on the classification of accounts as fraud. The court added that SBI is free to issue show cause notice to Rcom, its units and the officials in order to give them a hearing, following which a reasoned order could be passed by it as per law.

Punit Garg vs Union Bank of India W.P.(C). 11216/2020

3. SEBI issues circular on refund of security deposit on surrender of membership

SEBI issued a timeline for exchanges regarding refund of security deposit on surrender of membership by trading members. For trading members (TMs) engaged in trading on behalf of clients, on approval of surrender application by SEBI, Exchanges need to release the security deposit after three years from the date of receipt of surrender application by the exchange or five years from the date of disablement of Trading Member's trading terminals, whichever is earlier. SEBI also gave a timeline in its circular for refund of security deposit of TMs engaged only in proprietary trading in the last three years prior to the date of application.

4. M/s. Padia Timber Company (P) Ltd. vs. Board of Trustees of Visakhapatnam Port Trust

The Supreme Court in the mentioned case observed that if the acceptor puts in a new condition while accepting the contract already signed by the party proposing the contract, the said contract is not complete until the proposer accepts the new condition. It was stated that the condition was not accepted by the Appellant and it could not, therefore, be said that there was a concluded contract. There being no concluded contract, there could be no question of any breach on the part of the Appellant or of damages or any risk purchase at the cost of the Appellant. The earnest deposit of the Appellant is liable to be refunded.

M/s. Padia Timber Company (P) Ltd. vs. Board of Trustees of Visakhapatnam Port Trust CIVIL APPEAL NO.7469 OF 2008



5. Investments from China and neighbouring countries face government scrutiny

E-startup Udaan's recent fund-raise from Chinese company Tencent is ready to face intense government scrutiny because approval is required even though the technology conglomerate is among the smallest investors in the recent round of investment. This comes after the government had made changes in FDI policy previous year in order to scan all investments from neighboring countries with an eye on Chinese inflows that had begun to dominate certain sectors, especially those related to technology. While company sources indicated that investment below a certain threshold does not require government approval, officials clarified that when it comes to neighbouring countries, the proposal will need a clearance even if the sector is under the automatic route for foreign direct investment.





Hospitality & Real Estate

1. MoU between Jharkhand Govt. and Indian Tourism Department Corporation to take over Hotel Ashok

To take over Hotel Ashok, the Jharkhand Govt. and ITDC signed an MoU as per which, ITDC will sell 51 percent of its stake to the Jharkhand Tourism Development Corporation for INR 3.06 Cr. The Chief Minister has endorsed this deal as a major initiative towards development in tourism and creation of employment opportunities.

2. Ramada Encore by Wyndham, Statue of Unity bags South Asian Travel Awards 2020

Located on the bank of Narmada River in Gujarat, near the Statue of Unity, the riverfront hotel Ramada Encore has been awarded the 2 silver categories South Asian Travel Awards in recognition of the said hotel being the region's top hospitality destination.

3. Discourse between government and Hotel Association regarding Notification to penalize owners if customers are not wearing masks

Members of the Bruhat Bengaluru Hotels Association demanded withdrawal of a recent government notification as per which owners of commercial establishments would be penalized if their customers are not wearing masks. The Association demanded that the government should penalize those break the rules rather than owners of establishments who cannot go to every unit and check if people are not wearing masks.

4. Google launches a new product – An insight tool for travel industry

Google has launched a new tool called Travel Insights with Google. This tool will provide information related to demand trends related to travel. This tool can be utilized by hotels, travel start-ups, booking agents etc. to understand the trends and patterns in demands of consumers and position themselves accordingly to make the best out of the situation.





Litigation & Dispute Resolution

1. Participatory democracy, heightened judicial review and more: The Supreme Court's majority decision in the Central Vista Case.

In Central Vista redevelopment plan the Supreme Court uphold the decision upholding Centre's redevelopment plans. The judgment penned by Justices AM Khanwilkar and Dinesh Maheshwari delves into larger question of Jurisprudence discussing Rule of Law, Judicial Review, participatory democracy and others, in relation to the Central Vista case.

Rajeev Suri Vs Union of India Transferred Case (Civil) No. 229 OF 2020

2. Delhi Court allows Umar Khalid, Sharjeel Imam, other accused to access soft copy of chargesheet; Prosecution does not oppose.

Umar Khalid who is in the jail for the long time claimed that inaccessibility of his charge sheet was violation of his right to fair trial and prayed for soft copy of the charge sheet to be made available to him. The Additional Sessions Judge Amitabh Rawat was pleased to passed the order based on the application of the accused.

State Vs Tahir Hussian and Ors FIR No. 59/2020

3. District Forum deprecates misleading products ads, imposes costs on celebrity endorser AnoopMenon.

The District Forum in Kerala on a complaint was filed by Vadakkan Francis panelized Malayalam film actor Anoop Menon and Dhathri Ayurveda for false claims in relation to Dhathri's hair cream which guaranteed hair growth within 6 weeks of use. Anoop Menon and Dhathri Ayurveda are directed to pay compensation of Rs 10,000/- each to the Complainant.

Francis Vadakkan Vs One Medical and Ors CC No. 345/2012

4. International Arrest Warrant not sufficient for extradition, request must be made via official channels: Kerala High Court

The Kerala High Court Bench of Justice N Nagesh in a petition challenging the government inaction over extraditing one Sreejith Vijayan accused of committing financial fraud in Dubai, observed that mere international warrant for extradition of accused from UAE shall not be adequate and can only be allowed with intervention of foreign government.

Rakhul Krishnan Vs Union of India & Ors WP(C).No.13875 OF 2020(H)



5. Brazil: Bankruptcy or judicial reorganization of a party does not suspend arbitration.

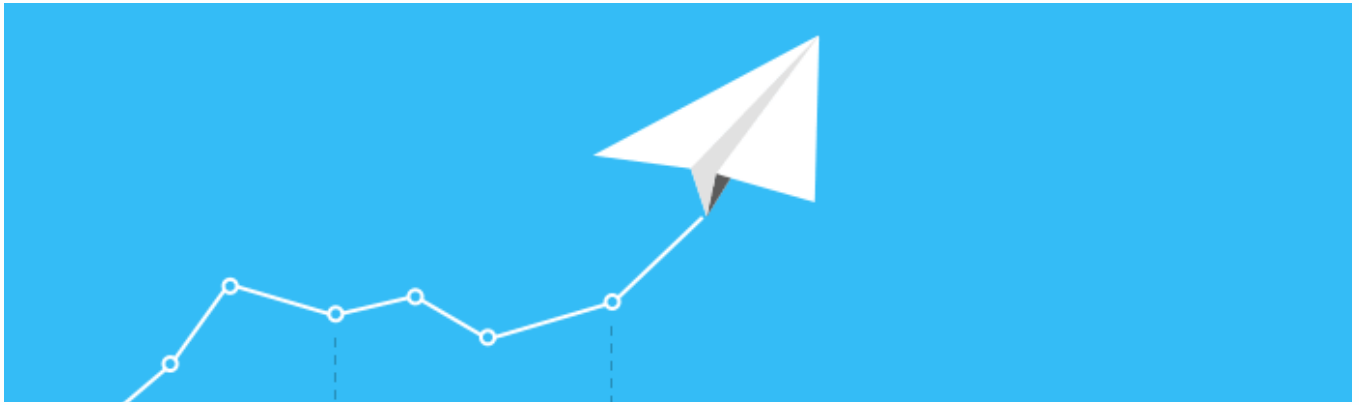
On December 24, 2020 Brazilian Bankruptcy Law was amended by Law 14.112 in order to make bankruptcy recovery proceedings more efficient in lights of the distress caused by the Covid 19 pandemic.

The amended Brazilian Bankruptcy law clarified that declaration of the bankruptcy or granting judicial recovery does not blocks the way for the arbitration proceedings, nor it justifies the party that is bankrupt or under recovery to deny the enforcement of the arbitration clause. (Art.6, Paragraph 9, of Brazilian Bankruptcy Law).

6. EU law, Polish public policy? Polish court's views on taking into account EU laws on state aid in setting aside proceedings.

While considering matter of application to set aside an arbitral award the Warsaw Appellate Court took into the consideration that whether the EU state aid regulations forms part of the Polish Public Policy. On this the Court came to the decision that EU competition law has to be taken into consideration while dealing with issue of breach of public policy by an arbitral award.





Start-Up, Advisory & Consultancy

1. Twitter acqui-hires creative agency Ueno to help design new products.

Twitter announced that Ueno a full service creative agency would be working along Twitter's own design and research teams. In light of the recent tie-up the Twitter is acquiring agencies which it had already previously worked with as Ueno is one of such agencies.

2. IBM snags Nordcloud to add multi-cloud consulting expertise.

IBM has taken a similar approach that of RedHat for setting up a hybrid ecosystem of cloud network for their customers announcing its plans to spin out its legacy infrastructure management business by all-in bet on the hybrid cloud. By the same all-in bet IBM acquired the Helsinki based multi-cloud consulting firm Nordcloud for an undisclosed price.

3. Lockheed Martin acquires rocket engine maker AerojetRocketdyne for \$4.4B as space heats up.

United State's largest defense contractor Lockheed Martin is all set to acquire Aerojet Rocket dyne for 4.4 Billion Dollar including debt and net cash flow. This has given the company a larger stake in space and hypersonic technology.

The proposed acquisition will lead to substantial expertise in propulsion to Lockheed Martin's portfolio. It is also stated that Aerojet's technologies were used as essential key components of Lockheed's aeronautic, missile and fire control offering.

4. RedHat is acquiring container security company StackRox

Redhat acquired container Security Company for an undisclosed price. RedHat has diverse portfolio of container platform and recent quisition perfectly fit with RedHat's own OpenShift, its container platform. The Company further stated it will continue StackRox usage on other platforms including AWS, Azure and Google Cloud Platform. This approach of RedHat is similar to that of IBM's strategy of supporting multicloud, hybrid environments.





THE RISE AND RISE OF K-BEAUTY

Prashasti Agrawal

South Korea has given us far better Ks than Karan Johar could have. You guessed it right-K Pop! While BTS has taken the world by a storm, we have overlooked another rather significant contribution- K-Beauty.

C-T-M - any average Indian girl between the ages of 16-30 would be able to tell you that it stands for Cleanse, Tone and Moisturise. What she would also be able to tell you is that these are only the 3 steps in a comprehensive 10 step Korean beauty skin care routine.

With the unprecedented advent of K Beauty products in India, it is important to decode and analyze the cosmetic registration process in India. The term cosmetics has been defined as “any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic”, under S. 3(aaa) of the Drugs and Cosmetics Act, 1940. The definition is quite exhaustive and leaves no room for doubt.

These products are regulated by the Central Drugs Standard Control Organisation (CDSCO). The need for such regulation arises due to the need of quality control and safety of the consumers. Such regulations are under the provisions of the Drugs & Cosmetic Act 1940 & Rules 1945 vide Gazette notification G.S.R 426(E). All products that are imported in India need to be registered with the licensing authority, as per the Drugs & Cosmetics Rules, 1945.

It is imperative to know that as per the laws, the importers need to have an Authorized Representative in India, who shall be the point of contact and shall assist with the registration process.

After such appointment, a glossier with a list of documents needs to be submitted, including, but not limited to, a Covering Letter, Form 42 and an application fee of 250 USD. Moreover, the cosmetics need to be classified as per Column (3) of Guidelines on Registration of Import of Cosmetics. The application needs to be submitted to the Drugs Controller General India, Central Drugs Standard Control Organization (CDSCO).

Upon receipt of the documents, the CDSCO may issue a query letter to the Agent. Upon clearance, and within 6 months of the Application, the Drug Controller General's office shall issue a Registration Certificate, valid for a period of up to 3 years. After that the product can enter the Indian markets upon signing an undertaking that the products were not tested on animals.

The age of Instagram has made people realise that the dermatological wonders of ginseng, red tea and snake slime are only a click away and hence, brands like The FaceShop, Innisfree and Dear Klairs have made their way to the top of the skincare market.





Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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