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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. Khadi & Village Industries Commission v. Khadi Design Council of India & Ors.: Delhi High Court grants ex parte interim injunction restraining Defendant's use of KHADI trademarks.

In a trademark infringement and passing off suit filed by Khadi & Village Industries Commission, the defendants were allegedly involved in unauthorized use of the mark KHADI and other KHADI formative marks by way of organizing events, through social media and as a part of their domain names. It was contended that the Defendants' websites and social media pages have been scripted and structured in a manner that gives the impression that the Defendants are the same as the Plaintiff and/or they are part of a government body providing the same services as the Plaintiff. In view of this, it was held that a prima facie case had been made out; balance of convenience was in the Plaintiff's favour and irreparable loss would be caused to the Plaintiff in case an ex parte interim injunction is not granted. Accordingly, the Delhi High Court granted an ex parte interim injunction restraining the infringing activities

2. Benett Coleman v. WhatsApp Inc.: Delhi High Court restrains dissemination of Plaintiff's e-newspaper through WhatsApp, Telegram etc.

In a copyright infringement suit filed by the plaintiff against unauthorized and illegal circulation/distribution of its e-newspapers through WhatsApp, Telegram etc., it was held that the plaintiff being exclusive owner of the copyright in the said literary work, owns all rights to such literary work in any material forms and that the defendants' circulation of copies of e-newspaper owned by the plaintiff was illegal. In view of this, an interim injunction was granted in favour of the plaintiffs by the Hon'ble Delhi High Court.

3. Indian Broadcasting Foundation and Internet and Mobile Association of India look to form separate self-regulatory bodies.

With broadcaster owned OTT platforms on one side and standalone OTT platforms on the other side there has been a split between IMAI (Internet and Mobile Association of India) and IBF (Indian Broadcasting Foundation). The OTT flank of the media and entertainment industry awaits further developments in addition to IBF being renamed as IDBF (Indian Broadcasting and Digital Foundation), in wake of the new intermediary rules and this split between IMAI and IBF.

4. Verizon v. Innovation Meditech: Delhi High Court grants ex parte injunction restraining defendant from infringing the Plaintiff's VERIZON trademarks.

In a trademark infringement and passing off suit, the plaintiff being the proprietor of the trademark VERIZON and its formative marks for various goods and services including communication related goods and services as well as real estate related development and construction related services, alleged that the Defendant had filed an application for the VERIZON mark for a host medical devices and equipment. Further, the Defendant had also adopted the plaintiff's layout and design for the VERIZON label in addition to the VERIZON mark which was deceptively similar to VERIZON Logos of the plaintiff. In view of the above, and in light of the plaintiff's contentions that the plaintiff's mark was a well known mark and was entitled to highest degree of protection, the Hon'ble Delhi High Court granted an ex parte injunction restraining the defendant from manufacturing, marketing, selling, offering, or making for sale, or providing goods and/or services, or in any manner using the trademark 'VERIZON', or using any other mark identical or deceptively similar to the Plaintiffs' trademarks.

5. Recorded Music Performance Limited (RMPL) registered as a copyright society.

Recorded Music Performance Limited (RMPL) has been granted certificate of registration under Section 33(3) of the Copyright Act, 1957. The said copyright society has been permitted to commence and carry on the copyright with respect to sound recordings.

6. Indo Pak standoff for Basmati GI recognition: Settlement Speculated.

India and Pakistan are now being expected to share ownership over Geographical Indication rights for Basmati rice in the European Union. With a stand-off between the two countries going on since September 2020, reportedly, now it is more likely that the countries reach an agreement and settle for joint ownership for the said GI.





Technology and E-Commerce Updates

1. Kerala petition seeks ban on WhatsApp over IT rules

In the case of Omanakuttan KG Vs Union of India and ors., a public interest litigation petition has been filed before the Kerala High Court seeking directions to the Central government to ban WhatsApp if it does not comply with the orders issued by government authorities. The petition was filed by Omanakuttan KG, a software engineer from Kerala, after WhatsApp moved the Delhi Court challenging the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021(IT rules). The petitioner submitted that WhatsApp had claimed before the Delhi High Court that it is not amenable to IT Rules, 2021 because the end-to-end encryption of the app prevents it from tracing origins of messages.

2. India's New E-Commerce Rules considered cause for concern

India's proposed new e-commerce rules have been stated as a cause for concern as these rules will lead to a stringent operating environment for companies. It was stated that, new draft rules are not issued by commerce and industry ministry. Consumer affairs ministry issuing the draft, and explaining that proposed rules deal with 'unfair' trade practices that hurts customers, may be an attempt to cover the harsh rules. Secondly, unlike the last set of e-commerce rules issued by the commerce ministry, this draft doesn't distinguish between foreign and domestic e-commerce. Thus, the same rules shall be applicable to Amazon and Flipkart as well as domestic players such as Reliance's and Tata's ventures.

3. Amazon buys encrypted messaging app Wickr

Amazon is acquiring the encrypted messaging app Wickr which offers secure communications for businesses, government agencies and individuals. Amazon stated in a statement that it would incorporate Wickr in its Amazon Web Services division which offers cloud computing and other services.





Fashion & Sports Law Updates

1. Amazon and HanesBrands team up to file lawsuits over sale of counterfeit Champion products

Amazon and Champion-owner HanesBrands have jointly filed more than two dozen new lawsuits in connection with the sale of counterfeit goods on Amazon's marketplace platform. In the complaints filed in a federal court in Washington state, Amazon and HanesBrands allege that the defendant Amazon sellers are running afoul of the law by offering up and selling silicone covers for earbud cases that illegally bear registered trademarks of HanesBrands, Inc., namely, Champion's name and well-known "C" logo without its authorization in an effort to deceive customers about the authenticity and origin of the products and the products' affiliation with HanesBrands.

2. Undergarments startup Adore Me sues Savage x Fenty over trademark infringement

Rihanna's Savage X Fenty venture is being sued by fellow undergarments-maker Adore Me. In the trademark infringement complaint, filed in a federal court in California, Adore Me claims that Lavender Lingerie, the company that does business as Savage X Fenty, is "blatantly and willfully trading upon Adore Me's goodwill and infringing Adore Me's intellectual property, including through its unauthorized use of a mark or marks confusingly similar to Adore Me's 'ADORE ME' trademark in connection with its sale of clothing products, such as lingerie and related online retail services.

3. US investment firm buys 15% stake in Rajasthan Royals \$250 mn evaluation

Redbird Capital Partners, a private investment firm which has invested in the company that owns Liverpool football club and Boston Red Sox baseball team, has acquired a 15 per cent stake in the Indian Premier League franchise Rajasthan Royals. The amount of transaction signed with the Royals is valued at US\$250 million and US\$300 million. The Royals won the inaugural edition of the popular tournament, which is played in the sport's shortest Twenty20 format, in 2008 and are majorly owned by London-based venture capitalist Manoj Badale's investment firm Emerging Media.

4. Bombay High Court sets aside an arbitration award against BCCI regarding termination of Deccan Chargers from the Indian Premier League

The Bombay High Court has set aside an arbitration award that asked the Board of Control for Cricket in India to pay a compensation of Rs 4,800 crore plus interest to Deccan Chronicle Holdings, the owner of the terminated Deccan Chargers franchise in the Indian Premier League (IPL), over the termination of the franchise in 2012. Deccan Chargers was one of the eight original franchises in the cricket league when it started in 2008. Four years later, BCCI terminated Deccan Chargers' agreement, saying the franchise failed to honour its payment obligations.





Corporate & Commercial Law Updates

1. Market regulator SEBI to come out with framework for SPACs

Capital market regulator Sebi is planning to come out with framework on special purpose acquisition companies (SPACs), which will enable listing of startups on domestic stock exchanges. SPACs or blank cheque companies are formed to raise capital in an initial public offering (IPO) with the purpose of using the proceeds to identify and merge with a target company. SPACs are usually formed by private equity funds or financial institutions, with expertise in a particular industry or business sector, with investment for initial working capital and issue related expenses. Such companies have recently become popular in the US.

2. RBI tightens dividend payout norms for NBFCs

The Reserve Bank of India (RBI) has tied down a non-banking financial company's (NBFC's) ability to pay dividends to certain factors, including how much bad debt it has in its books and whether it has declared it correctly. The dividend ratio, which is the ratio between the amount of the dividend payable in a year and net profit, is now capped at 50 to 60 per cent, depending upon the nature of the business. Any extraordinary income in the year has to be excluded from profits to arrive at the dividend ratio. However, there will be no such cap on NBFCs that do not take public deposits and also do not have a customer interface.

3. SEBI plans data analytics project to track market manipulators.

Sebi is looking to engage an agency to implement a data analytics project to track possible market manipulations like insider trading and front running. The move is part of Sebi's effort to address and handle challenges arising out of technological advancements in the markets. The regulator is looking to leverage artificial intelligence, machine learning and deep learning to address critical challenges for data analytics impacted by the processing of a vast amount of data, either structured or unstructured.





Hospitality & Real Estate

1. RBI's Resolution Framework 2.0: Federation of Hotel & Restaurant Associations of India (FHRAI) requests RBI to extend loan restructuring benefits.

With the hospitality industry suffering the aftermath of the second wave of COVID 19 pandemic, the Federation of Hotel & Restaurants Associations of India (FHRAI) have been reliefs on various fronts. As a part of the Reserve Bank of India's Resolution Framework 2.0, FHRAI has requested for extension of loan restructuring benefits to all applicants who could not avail such benefits under the first version of the resolution framework.

2. French Company, Ultraconfidentiel Design Private Limited gets the nod from Ministry of External Affairs to sue Spanish Embassy in India.

As per Section 86 of the Code of Civil Procedure, a permission from the Central Government is required for the institution of suits against foreign States, rulers, envoys or ambassadors. A French company engaged in providing global design concepts and projects for design, namely Ultraconfidentiel was engaged by the Embassy of Spain in India to construct a new security center and public washroom, guard hut, changing of metal gates and internal doors in its office. An invoice for the same had been raised by Utraconfidentiel for the design fee, but the same was not paid. In view of this, a permission was sought by the said company to sue the Embassy of Spain for recovery of the amount due, and the said permission was granted by the Union Ministry of External Affairs on 4th June 2021.

3. Liquidity Window extended by RBI for tourism and hospitality industry: A short term relief

The Travel Agents Association of India (TAAI) and Federation of Associations in Indian Tourism & Hospitality (FAITH) issued a joint statement saying that the INR 15000 crore liquidity window till March 31, 2022 will only be a partial short time benefit to the suffering hospitality and tours and travels industries. It is noteworthy that while the said liquidity window provides a short-term boost, reportedly it may not be sufficient per se as the loans outstanding for the hospitality sector today are more than 50000 Crore.

4. Draft Model Tenancy Act, 2020 approved by Union Cabinet.

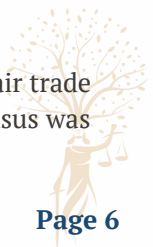
The Model Tenancy Act, 2020 ("the Act") is likely to bring about major changes with respect the legal framework related to rental housing in India. The legislation appears to be aimed institutionalization of rental housing by shifting it more and more towards the formal market. A few noteworthy aspects of this new law are as follows. However, given that land is a state subject, the States or Union Territories will be free to adopt this law and it shall come into force on such date as the State Government or Union Territory Administration concerned, may notify in the Official Gazette.

5. AHAR approaches Government for help: Positive Announcements Expected in near future

The Indian Hotel and Restaurant Association (AHAR) approaches government for support in light of issues being faced by restaurants and bars due to the pandemic induced lockdown and expects some positive developments to help stakeholders recover from the aftermath of the lockdown.

6. CCI Order against OYO set aside by Gujarat High Court: Matter sent back to CCI.

Earlier CCI order which granted relief to Fab Hotels and Treebo in which MakeMyTrip was accused of unfair trade practices, was set aside by the division bench of the Gujarat HC. During the course of the hearing, consensus was arrived at on the point that Oyo can be afforded an opportunity of hearing within a fixed time frame.



7. Reliance Home Finance: Panel appointed for resolution process of the mortgage company

The debt laden mortgage Company, Reliance Home Finance is set to be taken over by Authum Investment and Infrastructure vide a letter of intent dated 19th June 2021 issued under the Inter Creditor Agreement.





Litigation & Dispute Resolution

1. Allahabad HC observations while granting anticipatory bail over the fear of death due to Covid.

The Supreme Court has stayed the general observations and directions made by the Allahabad High Court granting anticipatory bail to the accused on grounds of apprehension of death due to fear of covid 19 infection. The Supreme Court directed the lower courts not to consider the observation and grounds while considering other application of anticipatory bail on merits.

2. Infosys files arbitration proceedings against US customer.

Infosys has initiated an arbitration proceeding against Delaware based Whittle Management against the unpaid invoices raised for the software services rendered by the former. Whittle Management has refused to respond to the arbitration notice issued by Infosys thereby as a consequences Infosys was compelled to initiate arbitration proceedings in the United States District Court (Southern District of New York) against Whittle Management, Inc.

3. For getting its \$1.2-bn arbitration, Cairn sues Air India in the US

Cairn Energy Plc has initiated a legal proceeding in the United States District Court (Southern District of New York) against Air India for enforcement of \$1.2 Billion arbitral award against the Government of India. Cairn Energy Plc has contended that the carrier, as a state-owned company, is legally indistinct from the state itself as the distinction between the state and carrier is illusory and serves only to aid India improperly shielding its assets from creditors like (Cairn).

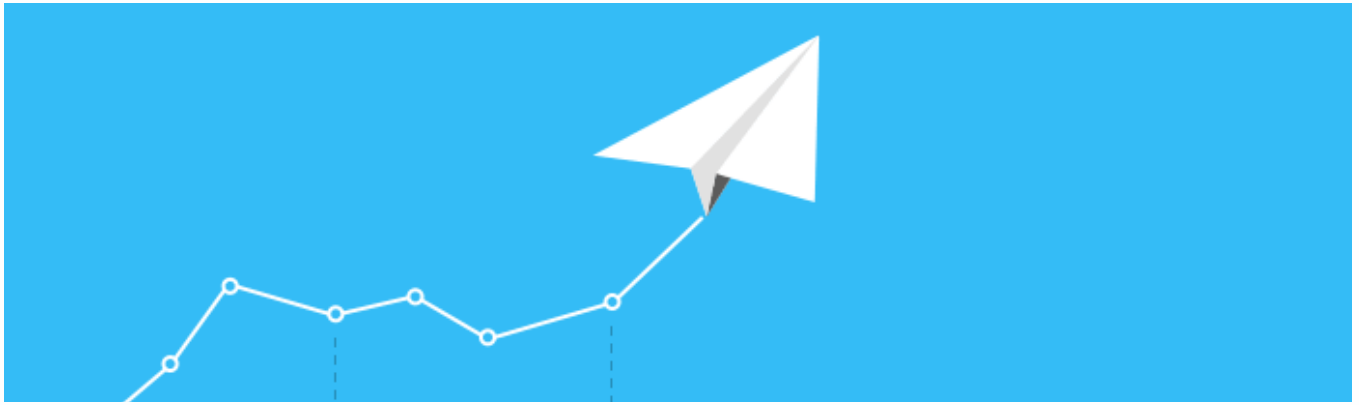
4. Hong Kong and Mainland China enhance law on mutual enforcement of arbitral awards.

Mainland and Hong Kong have signed 4 separate supplementary agreements amending the 4 aspects in the original agreement to bring in line the current practice with the international standards. Under the newly amended provision, the decree-holder can seek enforcement of the award in both jurisdictions simultaneously subject to the principle that the total amount to be recovered from enforcement must not exceed the amount determined in the award.

5. Cannot interfere with the arbitral award on account of disagreement over inference drawn from evidence: Delhi High Court

Delhi High Court held that it cannot intervene with Arbitral Tribunal simply on the grounds of disagreement with Tribunal's findings. The High Court further held that arbitral tribunals are not bound by the provisions of the Indian Evidence Act and that under Section 65B of the Indian Evidence Act, 1872, an arbitral tribunal cannot be said to have "grossly erred" if it accepts electronic evidence without an affidavit.





Start-Up Advisory & Consultancy

1. Govt asks e-commerce companies to appoint a nodal officer for compliance with consumer protection rules

The Government has directed the e-commerce companies to appoint a Nodal officer or an alternate senior designated functionary who is resident in India to ensure compliance under the newly inserted sub-rule in Consumer Protection (E-Commerce) Rules, 2020 implemented under the Consumer Protection Act 2019. The rules are applicable to e-commerce entities incorporated in India as well as those incorporated abroad but offering goods and services in India under the Companies Act 2013.

2. Chennai Startup's Drones To Deliver Food, Medicines In Andhra Pradesh

Chennai based startup Garuda Aerospace has come with an innovative idea of drone-based delivery of medicines to hospitals in Bengaluru during the covid crisis. The development comes after the Indian Space Research Organisation (ISRO) approached the startup for conducting trials for drone-based delivery in their housing colonies in Sullurpeta, Andhra Pradesh.

3. Ratan Tata-Backed Startup Joins Unicorn Club After Raising \$120 Million fund

Moglix a 2015 startup backed by Tata Emeritus Ratan Tata was the latest entrant into the much-coveted Unicorn Club. That startup has raised \$120 million in a financing round led by Falcon Edge and Harvard Management Company. The startup is a Business-to-Business platform which provides manufacturers with industrial goods through its e-commerce platform. The startup is providing an ecosystem for customers with full-stack service covering procurement, packaging, supply-chain financing and highly integrated software.

4. Spacetech startup Agnikul raises \$11 million led by Mayfield India

Angikul Cosmo Pvt Ltd an IIT Madras incubated space startup has raised \$11 million in series A funding round led by venture capital fund Mayfield India. The space tech has become 1st private player in India to launch a satellite in space. The Chennai-based company said that the funds shall be utilized to strengthen and build technology infrastructure. The space tech is also working towards the country's 1st plug and play private satellite launch vehicle which is capable of carrying 100kg into space and can be customized as per customer's requirements.

5. HNIs to invest \$30 billion in Indian tech startups by 2025: Report

High net-worth individuals are expected to invest \$30 billion in Indian tech startups by 2025, according to a report by 256 Network and Praxis Global Alliance India. India will have 150 unicorns by 2025, thrice as many as currently, reiterating the growing investment opportunity for homegrown tech ventures, the report, released on Thursday, showed. The report - "Turning Ideas to Gold" - showed how more than 55,000 Indian startups raised over \$70 billion in funding between 2014.





Realization of Right to Privacy - Recent Precedents Probing Into Right to be Forgotten as a Prong of Privacy

- Amay Jain

Introduction

With the landmark judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of *K.S. Puttaswamy v. Union of India*¹, the right to privacy has been recognized as a fundamental right guaranteed under the Constitution of India. An important aspect of privacy in the modern world, where digitization; flow of information and data through the Internet are almost inescapable in our day-to-day affairs, is data protection and the right to control the information available about oneself on world wide web. As captured in the above-noted Supreme Court ruling, the hallmark of freedom in a democracy is having the autonomy and control over our lives and that it is essential that an individual knows as to what the personal data for various facilities and services is being used for, along with the ability to correct and amend it.²

This article is aimed at throwing some light on a recent case regarding the “right to be forgotten” and also at drawing an analysis of its implications on other such cases. The recent ruling to muse upon for the purpose of the instant deliberation is the order passed by Ms. Prathiba M. Singh, J.

¹ 2017 10 SCC 1

² *K.S. Puttaswamy v. Union of India* 2017 10 SCC 1, Para 53



in the writ petition filed in the case of *Jorawer Singh Mundy v. Union of India & Ors.*³ before the Delhi High Court.

Factual Background and the Story of the Petitioner

The factual matrix of this case revolves around a person of Indian origin who was an American citizen by birth (hereinafter referred to as the “Petitioner”). The Petitioner was a professional working in the sector of managing investments and dealing with real estate portfolios. In around 2009, when the Petitioner travelled to India, a case was lodged against him under the Narcotics Drugs and Psychotropic Substances Act, 1985. As the proceeding in this case went ahead, on 30th April 2011, the trial court acquitted the Petitioner of all charges. Thereafter, an appeal was filed before the High Court challenging the said acquittal. However, on 20th January 2013, the Hon’ble Delhi High Court upheld the Petitioner’s acquittal in its verdict.

Following this litigation proceeding being driven to its conclusion and the Petitioner’s acquittal by the Court in India, the Petitioner went back to the United States and pursued law. While pursuing his degree at the University of San Diego School of Law, the Petitioner realized the repercussions of this case. The Delhi High Court judgment and other public documents related to this earlier litigation in which he was involved, was available on a google search in the event any potential employer seeking to conduct a background verification, looked up the Petitioner for seeking some information on the Internet. At this juncture, the Petitioner contemplated that despite a good academic record, the availability of this judgment online, was an impediment for the Petitioner in his endeavour to secure employment opportunities to his expectations.

Legal Recourse sought by the Petitioner

In view of the above factual scenario, the Petitioner sent a legal notice to Google; Indian Kanoon and vLex.in, the platforms through which the Petitioner’s judgment could be accessed demanding removal of the said judgment. In response to this notice while vLex.in removed the judgment, other platforms did not comply with the demands of the notice.

Following this when some of the entities did not remove the said judgment, the Petitioner filed a writ petition before the Hon’ble Delhi High Court seeking removal the said judgment from

³ *Jorawer Singh Mundy v. Union of India* WP (C) 3918/2021



online platforms wherein notice was issued to the respondents including Google, Indian Kanoon, and the MEITY, on behalf of which notice was accepted for directions to the other respondents.

Ruling and Analysis

The Hon'ble Court, in light of the above facts, held that this case calls for the determination of the question whether a Court order can be removed from online platforms. It was observed that this question requires an examination of Right to Privacy of the Petitioner on one hand and the Right to Information of the public and maintenance of transparency in judicial records on the other hand.

In addition to the Apex Court's Constitutional Bench judgement in K S Puttaswamy case⁴, the Court placed reliance on *Zulfiqar Abman Khan v. Quintillion Businessman Media Pvt. Ltd. & Ors.*⁵, another ruling by Ms. Prathiba M. Singh, J. wherein the factual gamut revolved around the #metoo campaign in which articles against the Plaintiff were published on the basis of anonymous harassment complaints. In this case, it was held that the allegations having been made as part of #MeToo campaign and the three individuals having chosen to remain anonymous and the publisher of the articles having already agreed to pull down the said two articles, further re-publication of the same is liable to be restrained. It was also stated that campaign also ought not to become an unbridled and unending campaign against an individual with other electronic/digital portals or platforms picking up the pulled down content through archived material. The #MeToo campaign cannot become a 'Sullying #UToo' campaign forever. If re-publication is permitted to go on continuously, the Plaintiff's rights would be severely jeopardised.⁶ Further, the Delhi High Court, in the said earlier ruling, recognized that the right to be forgotten and the right to be left alone were inherent aspects of right to privacy.

Considering the aforementioned, the Hon'ble Court in the present case, observed that despite being acquitted of charges against him, the Petitioner may suffer irreparable prejudice in terms of his social life and career prospects, if interim relief to the Petitioner is not granted. Accordingly, the Hon'ble Court directed removal of the said judgment from the search results of the

⁴ Supra Note 1

⁵ CS (OS) 642/2018, Delhi HC

⁶ Supra Note 5, para 7



concerned platforms and also directed the other respondents to block access to the said judgement until the next date of hearing of this case.

Interestingly, as stated above, it is pertinent that the ruling does not order removal of the judgement itself from IndianKanoon or other platforms, but specifically for removal from search results and blocking of access to the judgment. It will be of great significance how the legal issues regarding such matters and the alternatives of blocking, de-linking from search or concealment of the concerned party's identity from the published judgment are worked out and determined by the Court in this matter.

The matter is now scheduled to be listed on 20th August 2021 and it will be interesting to follow how things unfold in this case of utmost contemporary relevance in today's digital world.



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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