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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. All India Film Chamber of Commerce (AIFCC) files application for registration as a copyright society

All India Film Chamber of Commerce (AIFCC) has filed an application for registration as a copyright society. The Copyright Office vide public notice dated 27th October 2021 notified that AIFCC had applied for registration as copyright society for carrying out the business of collective administration of copyright in respect of creative works i.e., literary, dramatic, musical and artistic works incorporated in cinematograph films or sound recordings.

2. Tarun Wadhwa v. Saregama India Ltd. and Anr.: Bombay HC reiterates idea-expression dichotomy; scene a faire doctrine

In a suit filed by filmmaker Tarun Wadhwa, the Hon'ble Bombay High Court, applied the scene a faire doctrine to rule that stock sequences such as the concept of Zombies cannot be a subject matter of monopoly. The suit was filed alleging infringement of copyright based on the fact that the Defendant had infringed copyright in the Plaintiff's synopsis by making a substantially similar work for its Marathi film. The idea-expression dichotomy and scene a faire doctrine were reiterated and accordingly, the reliefs sought by the Plaintiff were not granted by the Hon'ble Court.

3. Bombay High Court passes an order restraining sale of Vijaypat Singhania's autobiography in contempt petition filed by Raymond Limited

Pursuant to a writ petition filed before the Hon'ble Bombay High Court by Raymond Limited against, inter alios, its former chairperson Vijaypat Singhania, an injunction had earlier been granted restraining the release of Mr. Singhania's autobiography. Despite the said injunction, allegedly the said book had been surreptitiously released, for which contempt proceedings had been initiated. In view of this, the Hon'ble Court passed an order restraining the sale and distribution of the said autobiography.

4. K Madhavan re-elected as president of Indian Broadcasting & Digital Foundation

The Country Manager & President of the Walt Disney Company India and Star India, K. Madhavan has been re-elected for a second consecutive term, as the president of the Indian Broadcasting and Digital Foundation (IBDF). This re-election was announced in the 22nd AGM of IBDF, wherein, in his address, Mr. Madhavan expressed an intent to continue working with various stakeholders to accelerate the growth of broadcast and digital media sector in India.

5. GI filed for Kapdaganda Shawl by Dongria tribal weavers

Kapdaganda shawl is a handloom product attributable to the Dongria Kondha tribe of Orissa residing in the area of Niyamgiri hills of Rayagada. An application seeking Geographical Indication (GI) tag for the Kapdaganda shawl has been filed by Niyamgiri Dongria Kandha Weavers Association and Directorate of Scheduled Castes in collaboration with Scheduled Tribes Research and Training Institute (SCSTRTI). Reportedly, this shawl is a rare product which can be protected from misuse by mass production and rampant duplication if it is granted the GI tag.





Technology and E-Commerce Updates

1. Myntra makes foray into social commerce at scale with 'M Live'

Fashion e-commerce platform Myntra on Tuesday announced its foray into social commerce at scale with the launch of M-Live to cater to the rapidly evolving content consumption patterns and shopping preferences of consumers. M-Live brings a first-of-its-kind, interactive and real-time live shopping experience to the fingertips of millions of shoppers in the country. Myntra will target fashion and social media-savvy young men and women who are looking to have access to the best-in class fashion advisory and in-demand trends.

2. Meesho to raise \$1bn at valuation of \$8bn

Social e-commerce Meesho is finalising a financing round of nearly \$1 billion that may take its valuation to around \$8 billion. The latest talk of a fund-raise comes after the Bengaluru-headquartered company's valuation doubled to \$4.9 billion in September, when investors led by US asset manager Fidelity and B Capital pumped in \$570 million. Social e-commerce uses online platforms such as Facebook, WhatsApp and Instagram to promote and sell products & services. Meesho, which has become a leading player in the social e-commerce space, offers its platform to small businesses largely led by women to sell on Facebook and WhatsApp. It competes with the likes of DealShare and CityMall that operate through a community-based model.

3. Flipkart to enter healthcare sector, to acquire majority stake in SastaSundar co.

The Flipkart Group has announced its foray into the healthcare sector through the launch of Flipkart Health+. As part of this development, the Group has signed definitive agreements to acquire a majority share in Sastasundar Marketplace Limited which owns and operates SastaSundar.com, an online pharmacy and digital healthcare platform, as it focuses on providing consumers access to affordable and convenient healthcare. SastaSundar.com offers a digital healthcare and pharmacy platform supported by a network of more than 490 pharmacies. It aims to address the issues of access to affordable and quality healthcare in India by providing original products from authorized sources and delivering them across the country.

4. Amazon India investigates use of platform for sourcing marijuana

CAIT has approached Narcotics Control Bureau seeking probe into alleged use of e-commerce major Amazon's platform for sourcing marijuana. The accused were operating racket through a leading e-commerce which received two-thirds of the profits generated. Evidence is being collected to see if it could be prosecuted for providing a platform for such drug transactions. NCB claimed that Amazon has contravened Section 20(b) of Narcotics Drugs and Psychotropic Substances Act that states produces, manufactures, possesses, sells, purchase, transports, imports inter-state, exports interstate or uses cannabis, shall be punishable.





Fashion & Sports Law Updates

1. TVS Eurogrip signs a 3-yr deal with CSK as principal sponsor

TVS Srichakra Ltd, a leading manufacturer of two and three-wheeler tyres, and Chennai Super Kings Ltd have signed a deal under which TVS Eurogrip will be the Principal Sponsor of the CSK Team for the next three years (2022-2024). Chennai Super Kings and TVS Eurogrip will launch a series of initiatives to engage the large fan base of CSK across the country. The partnership will give TVS Eurogrip visibility on the front of Chennai Super Kings' famed yellow jersey.

2. First residential women's football academy in India inaugurated

RFC Girls Football Academy, India's first full-fledged girls residential football training facility, was launched by Rebels FC. The academy will provide top-of-the-line scientific training for young female players to achieve their dream of becoming a professional football player and also help them pursue a career in the sport. The full-fledged residential football programme integrated with educational pursuits is located in a campus at New Age World School, Yelahanka, Bengaluru.

3. Playboy and Fashion Nova settle Trademark battle over Bunny Costumes

Playboy and Fashion Nova have made peace in a legal battle over the fast fashion company's sale of bunny costumes that allegedly infringed Playboy's longstanding trademark rights. A joint filing reveals that the parties have agreed to a dismissal with prejudice of this action, including all claims and counterclaims against all parties, with each party to bear its own attorneys' fees and costs. The settlement comes just over a year after Playboy lodged a trademark infringement and dilution complaint against Fashion Nova specifying that the Southern California-based brand had been prominently featuring and selling costumes that look a bit too much like Playboy's trade dress-protected bunny costume, including the iconic bunny ears, tail, ribbon name tag, wrist cuffs, corset, and bowtie collar.





Corporate & Commercial Law Updates

1. SEBI allows framework on non-compliance with disclosure norms

Securities and Exchange Board of India modified the framework that allows fines to be imposed by stock exchange in the event of violation of disclosure norms. These fines were related to delay in completion of bonus issue by listed entities and non-completion of the conversion of convertible securities and allotment of the shares within 18 months from the date of allotment of such securities. The stock exchanges may deviate from the provisions of the circular, wherever the interest of the investors are not adversely affected, if found necessary, only after recording reasons in writing.

2. RBI: Co-operative societies can't use 'bank' in their names

The RBI cautioned the public against co-operative societies using 'bank' in their names as well as accepting deposits from people who are not their members. Post the amendment in the Banking Regulation Act, 1949, effective from September 29, 2020, co-operative societies cannot use the words "bank", "banker" or "banking" as part of their names, except as permitted under the provisions or by the Reserve Bank of India. RBI specified that some cooperative societies are using the word 'bank' in their names in violation of the Banking Regulation Act. It has also stated some co-operative societies are accepting deposits from non-members/ nominal members/ associate members which is tantamount to conducting banking business in violation of the provisions.

3. SC: NCLT cannot adjudicate contractual dispute if termination of contract is based on grounds unrelated to corporate debtor's insolvency

The Supreme Court *TATA Consultancy Services Limited vs Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited* stated that the residuary jurisdiction of the NCLT cannot be invoked to adjudicate contractual dispute if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor. In the instant case, the Corporate Debtor instituted a miscellaneous application before NCT under Section 60(5)(c) of the Insolvency and Bankruptcy Code for quashing of a contract termination notice. The NCLT, while granting an ad-interim stay observed that prima facie it appeared that the contract was terminated without serving the requisite notice of thirty days. NCLAT dismissed the appeal filed against this order.

4. Sebi extends collateral diktat by three months, rules effective from February 2022

Market regulator Securities Exchange Board of India extended the timeline for client-level segregation and monitoring of collateral by three months. The step is expected to provide relief to the broking industry, which is grappling with a host of regulatory changes. The new framework is aimed at preventing misappropriation or misuse of client's securities by brokers.





Hospitality & Real Estate

1. FAITH appreciates resumption of e-visa and inbound tourism as a positive development for Indian tourism and hospitality sectors

Reportedly, the Government of India is planning to resume inbound tourism in India from 15th November 2021. This development along with the reopening of borders for international tourist and issuance of e-tourist visas would help the Indian tourism and hospitality industry recover from the difficulties posed by the COVID 19 pandemic in the recent past.

2. BMC's Property Tax Waiver proposal in pipeline: Speculations regarding waiver of property tax to the tune of INR 41.9 Crores for hotels and lodges

Brihanmumbai Municipal Corporation has announced its intent to give property tax relief to 233 hotels that were used as quarantine facilities for suspected Covid-19 patients and international travellers arriving in Mumbai. According to BMC officials, this year Rs 41.87 crore of property tax will be waived for the period of February to May. The concession is being offered under BMC's "Wellness Package", under which these hotels were also given relief last year. According to officials, last year property tax of Rs 20 crore for 183 hotels was waived.

3. Ahmedabad Municipal Corporation comes up with new parking policy: Gujarat Government's approval obtained.

Ahmedabad Municipal Corporation's new parking policy has been approved by the state government. The new policy encourages sharing of parking space. It states that due to the scarcity of parking space in Ahmedabad and uneven distribution of parking facilities, available space must be used effectively. The new policy makes provisions to encourage sharing of parking space between several buildings and facilities that are close to each other. The civic body will implement the policy in a phased manner as implementation all at once is not feasible.

4. MakeMyTrip and IndiGo collaborate to launch exclusive Air Charter Holiday services to Phuket

MakeMyTrip in partnership with IndiGo has launched exclusive Air Charter Holiday services to Phuket. This will make travelling to the holiday island convenient for tourists. The company also aims to offer end-to-end travel services including, inter alia, airport transfers, Thailand Pass application assistance, early check-in and check-out at premium properties, travel insurance, return RT-PCR.

5. Singapore Airlines and Golden Doors collaborate to provide passengers with health and wellness related services on flight

Singapore Airlines (SIA) pursuant to its joint venture with Golden Door, is set to bring on board health focused meals, exercise regimes and other well being related services for passengers on SIA flights between Singapore and the USA. This collaboration is aimed at finding practical and efficient solutions related to well being of passengers in the course of air travel, particularly in long flights where sleep, relaxation and energy levels can be key points of consideration for customers.





Litigation & Dispute Resolution

1. Life of foetus not at higher pedestal than mother's: Telangana High Court allows minor rape victim to abort 26-week-old foetus

Telangana High Court Single-Judge Bench Justice B Vijayasen Reddy observed that infringement of the right to life of rape victim outweighs the right to life of a child in the womb by allowing termination of her 26-week-old pregnancy of 16-year-old rape victim despite restrictions under MTP (Amendment) Act 2021. Furthermore, the Court opined that termination of pregnancy is an important aspect of right to life along with dignity, self-respect and mental and physical health.

2. Aryan Khan files appeal in Bombay High Court against Sessions Court order rejecting bail in drug case

Aryan Khan who was in NCB custody since October 2 2021 was caught along with 2 other accused under the offence mentioned in Section 8(c), 20(b), 27, 28, 29 and 35 under NDPS Act. The Special Court denied bail to the accused and observed that the accused was indulging in illicit drug activities on a regular basis and further noted that the Whatsapp chats of the accused shows that he was in touch with drug peddlers. Khan has moved an appeal before Bombay High Court against the order of NDPS Special Court.

3. Seek District Attorney's opinion before registering SC/ST Act cases at the instance of the third party: Punjab & Haryana High Court

Punjab and Haryana High Court in an anticipatory bail application of an elderly couple observed that the petitioner's dispute was with son marrying a girl from schedule caste which lead to son alleging petitioners using derogatory words against to be bride's community over a video which was later posted on a social media platform. 3 persons claiming to be social activists filed a complaint under SC/ST Act against the petitioners. Justice Arvind Singh Sangwan stated the complainant had no locus standi as the complainant (three social workers) in the following petition as they don't come under the definition of the victim as stated under SC/ST Act.

4. [Lakhimpur Kheri] False Times Now tweet on CJI NV Ramana fit case for contempt, but CJI gracious: Supreme Court

Three judge bench headed by CJI NV Ramana tool strong exception by not initiating the judicial proceeding for the false tweet made by Times Now Channel stating that CJI Ramana meet the kin of the deceased in Lakhimpur Kheri incident. Justice Surya Kant and Justice Hima Kohli expressed their disappointment over the use of freedom of speech by media. Senior Advocate Harish Salve said that the act was absurd and deserved to be ignored.

5. Kiren Rijju tells the judiciary to focus on ease of dispute resolution

In the function organized by NALSA that witnessed the presence of President Ramnath Kovind, CJI NV Ramana and Law Minister Kiren Rijju. Law Minister in his speech urged the judiciary to strictly restrict the adjournments and directions shall be given to pre-institution mediations and conciliation to resolve the dispute in a time-bound manner and further claimed that adjudication cost of the commercial suit is 31%of the claim value.



6. HC: The scope of Section 34 of the A&C Act does not entail re-appreciation and re-evaluation of evidence

High Court of Delhi held that section 34 of the Arbitration and Conciliation Act does not entail re-appreciation of evidence. The Court further stated that it is unable to accept said contentions being patently illegal and on the contrary, the Court found no illegalities with the reasoning.

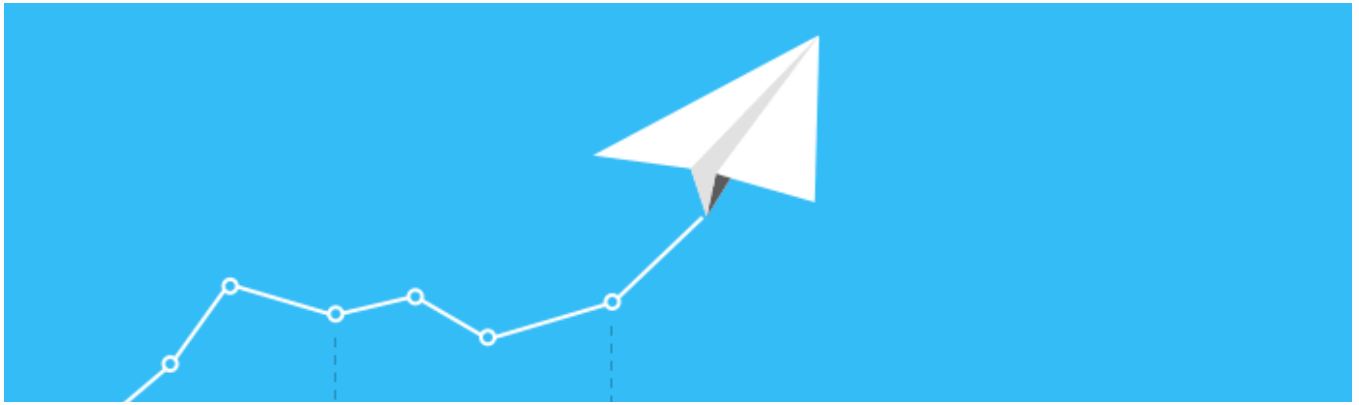
7. HC: Merely because a company is required to report any material event to the Stock Exchange doesn't render its dispute Non-Arbitrable

Delhi High Court consisting of Justice Vibhu Bakhru while hearing the petition by M/s Golden Tobacco Limited stated merely because a company has to report any material event affecting its affairs to the stock exchange don't does render the dispute in respect of such events as no-arbitrable. He also added that the maintainability and nature of the agreement have to be looked taking into consideration.

8. India to refund ₹7,900 crore Retro Tax to Cairn in settlement, firm to withdraw cases

The Indian government has accepted the undertaking of Carin Energy indemnifying the government about future claims and also agreed to any drop legal proceeding anywhere in the world. The government has issued Form II to Carin Energy committing to refund the sum of 7900 Crore towards tax collected retrospectively by the Indian government. Following the compliance as per the undertaking, the government shall initiate a refund as per the settlement deed.





Start-Up Advisory & Consultancy

1. Investment platform Groww raises \$251M in Series E led by Iconiq Growth

The investment platform has raised \$ 252 million with a total valuation of \$3 billion led by Iconiq Growth along with existing investors. The company is offering investment in mutual funds, stocks, IPO, ETFs through their platform. As per the official statement of the company, the funds shall be invested in making financial services accessible and transparent to people in India. The company further invests in spreading financial awareness.

2. BharatPe raises Rs 100 Cr in debt from MAS Financial Services

BharatPe has raised 100 Crore (\$ 14 Million) in debt from MAS Financial Services Pvt Ltd from its 8th round of debt fundraising for the company in 2021. The company previously has raised Rs 600 Cr (\$ 84 Million) from the previous 7 rounds in the debt competitive market. The official statement of the company state that BharatPe is committed to addressing the credit gap with its attractive lending products for offline merchants.

3. Intra-city logistics company Porter raises Rs 750 Cr led by Tiger Global, Vitruvian Partners

The Company Porters which is involved in providing on-demand logistic support to its customers has raised 750 Crore in its lasted round of fundraising with participation from the existing investor. The company in its official statements has stated that the funds shall be used for consolidating the position and acquiring talent expanding operations in the top 35 cities by 2023. The Company further added it has reinvented and improved intercity logistics across India.

4. Microsoft AI Innovate empowers startups in India to accelerate with artificial intelligence

Microsoft has launched a programme for nurturing and scaling startups involved in artificial intelligence. Both segments of B2B and B2C startups are invited to participate in the quarter cohorts of this programme starting from the 21st of this November. Microsoft in its official statements stated that it will help the startup in providing tech and business opportunities, improving their solution and building artificial intelligence which is accessible to all.





Scene-a-Faire doctrine as a manifestation of Idea-Expression Dichotomy: *The Case of Tarun Wadhwa v. Saregama India Ltd.*

- Amay Jain

INTRODUCTION

In the realm of copyright law jurisprudence, by virtue of conceptual foundations as well as established law laid down by way of precedents reiterated time and again, it is a settled position that there exists no copyright in an idea. Copyright exists only in a particular expression¹ of an idea or in the manner in which individual elements are put together.² This idea-expression dichotomy has several manifestations that come along with its application to the unique facts and circumstances portrayed by each case. One such manifestation can be said to be “scene-a-faire doctrine” which shall be explained in this article along with the facts of a recent Bombay High Court ruling, namely *Tarun Wadhwa v. Saregama India Pvt. Ltd. & Ors.*³

FACTUAL BACKGROUND

The above-noted case revolves around an amateur film maker, Wadhwa (“**Plaintiff**”) who had finalized a synopsis titled “*Haila! Zombie*”, registered with the Screen Writers’ Association and shared the same with Saregama (“**Defendant**”), pursuant to which, the Defendant shared its feedback and asked the Plaintiff to submit a fully developed and complete screenplay. However, eventually, the intended collaboration between the Plaintiff and the Defendant to produce any content based on the synopses and the screenplay submitted by the Defendant did not materialize and the Defendant communicated its non-interest in continuing the proposal further by sending a detailed critique to the Plaintiff, disengaging from further collaboration. Here, it

¹ *RG Anand v. Delux Films & Ors.* 1979 SCR (1) 218

² *Eastern Book Company v. D.B. Modak* 2008 1 SCC 1

³ *Tarun Wadhwa v. Saregama India Ltd. and Ors.* COM IP Suit No. 4366 of 2021



is pertinent to note that the synopsis conceptualized and finalized by the Plaintiff hereinabove comprised of, *inter alia*, elements of a story woven together as a comedy about zombies in the setting of a chawl in Mumbai.

CONTENTIONS

Thereafter, after around a year and a half, the Defendant announced the production of a film titled Zombivli scheduled to be released in 2021. The Plaintiff demanded the Defendant to organize a screening of the same for the Defendant. This demand was turned down by the Plaintiff. Later on, eventually, a suit was filed by the Plaintiff alleging, *inter alia*, that the Defendant's actions constituted a violation of copyright laws as well as breach of confidential information.

While it was an admitted position that the concept note submitted by the Defendant wasn't used, by the Plaintiff, as is, it was being argued on the basis of similarities in the storyline, theme, setting and other elements that the "symptoms" and "picturization" were very similar if not identical. *Per contra*, the Defendant argued that the two rival synopses were entirely distinct. Detailed factual arguments were advanced highlighting the dissimilarities in the two synopses.

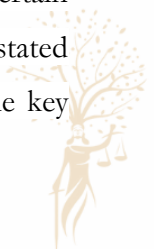
SCENE A FAIRE/TROPES

As regards the points of commonality, it was also contended that the points of similarities, actually, were 'tropes' common to all films in the zombie genre. These 'tropes' or 'scene a faire' are elements common to cinema or stock sequences or moments common to the art. In other words, these were sequences and moments customary to the relevant art form with respect to the particular genre.

For instance, a zombie related film having a storyline feature comprising of infection by water, villainous use of such infectant and/or a cure being found in the antidote prepared by protagonist, or attack on or rescue by the protagonists of the film, and other such features, would not be entirely unique. These elements are common symptoms of a work of art in this genre and thus fall within the purview of "tropes" or "scene a faire". There is no copyright over such tropes or scene a faire and this postulate is known as the scene a faire doctrine.

COPYRIGHT INFRINGEMENT

In the instant matter, the question was not that of illicit, slavish and brazen copying but that of certain components of a given piece of content turning out to be common. However, these components as stated above, were merely stock sequences/scene-a-faire. In this case, the Hon'ble Court considered that the key elements, *per se*, were not capable of attributing any form of monopolization in favour of the Plaintiff.



BREACH OF CONFIDENCE

The scope and ambit of confidence law/spring board doctrine is wider than that of copyright law. While copyright law does not protect mere idea unless the said idea is expressed and such expression constitutes subject matter of copyright protection, confidence law protects the substance of ideas and information, regardless of the form/mode of its communication. However, for an action of breach of confidence to succeed, confidential information must be proprietary. In the present case, given that the points of commonality were nothing stock sequences; information already common to the trade/art, it was argued and upheld that the Plaintiff failed to present a clear and unambiguous identification of proprietary, original and confidential material.

RULING

In light of the aforementioned facts, circumstances, legal principles and concepts, the Hon'ble Court held that if copyright is claimed in the arrangement of such elements, it must be shown that the 'arrangement' has been substantially copied. It has been further held that it is not the commonality of such elements that determines the fate of such matters. On the contrary, it is the commonality of the "arrangement" of known elements that are determinative of idea/expression. With reference to the facts of the instant matter, clearly, since zombies are not new to cinema and literature, no monopoly could be granted over the process of "zombification". Therefore, no *prima facie* case of infringement of copyright in the Plaintiff's works on part of the Defendant could be established.

Further, with respect to infringement of confidential information and application of springboard doctrine, interestingly, Hon'ble Mr. G.S. Patel, J. made a remark on the practicality of application of the established principle of law in certain facts and circumstances. It was noted that in the event, a recipient of information consisting of partly public and partly private subject matter, adds an improvement to the said existing subject matter, such recipient should supposedly carefully use only that material which is available in public domain.

CONCLUSION

Thereafter, the need to define confidential information was reemphasized and the fact that the information in question in the instant matter was not confidential information of a proprietary nature was reinforced. Therefore, given that the tests for confidential information were not being satisfied, it was held that a case for restraining the Defendant from releasing the film had not been made out. In view of the above, it was held that it is not possible to grant an injunction in the present case given the balance of convenience and *prima facie* case both being in the Defendant's favour.



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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