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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. Universal City Studios v. Vegamovies. Run: dynamic injunction granted by Delhi HC against rogue websites committing or facilitating copyright infringement

In a copyright infringement suit filed before the Hon'ble Delhi High Court, an ex parte dynamic injunction was granted against rogue websites committing or facilitating infringement of copyright in the Plaintiff's cinematographic films. The dynamic injunction was granted to free the Court from constant monitoring and adjudicating the issues of mirror/redirect/alphanumeric websites.

2. Amazon Prime Video to roll out rental service (TVOD) enabling viewers to rent films online

Amazon Prime Video has launched a Transactional Video on Demand service to allow users to rent films instead of buying a subscription plan. This move resonates with the nostalgia of video rental libraries which prevailed in the 80s and 90s. The TVOD programme is aimed at providing users with more options and helping the expansion of outreach of the content to be rented out.

3. MakeMyTrip v. Booking.com: Delhi HC grants interim injunction in favour of MakeMyTrip in a trademark infringement and passing off suit

In a recent order passed by the Hon'ble Delhi HC in a trademark infringement and passing off suit, Hon'ble Ms. Prathiba M. Singh, J., granted an interim injunction in favour of the Plaintiff, MakeMyTrip, over the use of Plaintiff's marks as key words by the Defendants through Google Ads programme. Interestingly, the interim injunction order deliberated upon the concept of "invisible use" of a trademark in view of the use being in the form keywords which may not be visible prima facie to users on the Defendants' portals/web pages. Inter alia, it was held that "invisible" use of a mark as a keyword can constitute passing off as a matter of principle.

4. United States Trade Representative (USTR) places India on priority watch list

As a part of the Special 301 Report, i.e., an annual review of the global state IP protection and enforcement, the United States Trade Representative (USTR) has identified India as one of the seven countries on its 'Priority Watch List'. Those on this list are considered to be posing concerns regarding insufficient IP protection or enforcement or actions that otherwise limit the market access for persons relying on intellectual property protection.

5. In a suo motu case, Kerala High Court highlights the duty and responsibility of media

In a suo motu case taken up by the Hon'ble Kerala High Court, upon perusal of a news item alleging that in Sree Poornathrayeesa Temple at Thripunithura, under the management of Cochin Devaswom Board, "the devotees are made to wash the feet of 12 brahmins as atonement for sins", it was held that it is the duty and responsibility of media to ensure that they are not providing the public with information that is factually wrong, biased or simply unverified information. The Court went to emphasize on the duties and responsibilities of media and the obligation to refrain from communicating unverified/false information to readers/viewers.





Technology and E-Commerce Updates

1. FluBot Android Spyware taken down in global law enforcement operation

An international law enforcement operation involving 11 countries has culminated in the takedown of a notorious mobile malware threat called FluBot. Europol issued a statement saying that this Android malware has been spreading aggressively through SMS, stealing passwords, online banking details and other sensitive information from infected smartphones across the world. The investigation included authorities from Australia, Belgium, Finland, Hungary, Ireland, Romania, Spain, Sweden, Switzerland, the Netherlands, and the U.S. FluBot, popularly known as Cabassous, emerged in December 2020 concealing its malicious intentions beneath the guise of harmless package monitoring apps such as FedEx, DHL, and Correos. It primarily spreads via SMS-based phishing messages that trick unsuspecting recipients into clicking on a link to download the malware-laced apps. Once launched, the app would proceed to request access to Android's Accessibility Service to stealthily siphon bank account credentials and other sensitive information stored in cryptocurrency apps. The malware also obtained its access to contacts stored in the infected device to propagate the infection further by sending messages containing links to the FluBot malware.

2. Express VPN To Deinstall India-Based Servers; Slams CERT-In Directives

With just 24 days left before the new directives around Virtual Private Network (VPN) services become effective in India, ExpressVPN has decided to remove its India-based servers. In a blogpost published on Thursday (June 2), the foreign VPN service provider wrote, "ExpressVPN refuses to participate in the Indian government's attempts to limit internet freedom." The move comes after India's Computer Emergency Response Team (CERT-In), monitored by the Ministry of Electronics and Information Technology (MeitY), introduced new directions in April that mandated all private VPN service providers, cloud service providers and more such organisations to collect their user data and store them for five years or more. Legal debates have been on since then on user privacy, data protection and VPN losing its basic foundation but the government has maintained its stance on introducing the mandate. However, the company said that its India-based users would still be able to connect to VPN servers that are physically located in Singapore and the UK but provide Indian IP addresses, allowing them to access the internet as if they were located in India.

3. ChromeLoader browser hijacker provides gateway for bigger threats

ChromeLoader is a pervasive and persistent browser hijacker that eventually manifests as a browser extension, modifying victims' Chrome settings and redirecting user traffic to advertisement websites. On Windows machines, victims become infected with the malware through ISO files that poses as a cracked video game or pirated films or TV programs. However, its use of PowerShell could pose a greater risk by leading to further and advanced malicious activity, such as the propagation of ransomware or spyware or theft of browser-session data.



4. European Parliament accepts the Digital Services Act

The European Parliament came to an agreement in principle with the individual EU Member States to move forward with the process of finalizing the Digital Services Act, which will set forth new accountability and fairness standards for online platforms, social media platforms, and other internet content providers, depending on the entity's size, societal role, and impact on individuals' lives. The Digital Services Act will battle the sale of unlawful goods and services on online marketplaces, as well as illegal and damaging content on platforms like social media. It focuses on regulating anti-competitive and monopolistic behaviour in the technology and online platform (digital and mobile) industries. The DSA applies to "digital services," which broadly includes online services, including online infrastructure, such as search engines; online platforms, such as social media; and/or online marketplaces and even smaller websites. Additionally, the DSA will apply regardless of where an entity is established. If an entity is an online service that operates in the EU, it must comply with the DSA. There are four categories of online services according to the DSA: (1) intermediary services; (2) hosting services; (3) online platforms; and (4) very large platforms. Once implemented and effective, the DSA will set the standard for requirements related to fairness, transparency, and responsibility that online services must comply with. The DSA sets out a compliance deadline of January 2024, or 15 months after the DSA's final effective date.





Fashion & Sports Law Updates

1. GST exemption on fees collected towards certain sports training

The Maharashtra Authority of Advance Ruling has ruled that GST is not payable on fees collected towards training in respect of football, basketball, athletics, cricket, swimming, karate and dance. As per Entry 80 of the notification 12/2017-CTR dated June 28, 2017 that no GST is payable on the Services by way of training or coaching in recreational activities relating to arts, sports or culture by charitable entities registered under section 12AA of the Income Tax Act, 1961. The Advance Ruling authority observed that the above-mentioned activities are covered by the aforementioned notification and would be exempt from tax on the same.

2. Nike ramps up sneaker NFT lawsuit with StockX counterfeiting claim

Nike seeks leave from the court to amend its non-fungible token (NFT) centric complaint that it filed against StockX early this year. In the amended complaint, Nike adds counterfeiting and false advertising to its existing trademark infringement and dilution, and false designation of origin claims, and requests that the court swiftly and permanently stop StockX from continuing to sell Vault NFTs bearing Nike's famous marks, selling counterfeit Nike goods. StockX has altered the terms under which it is offering up the Vault NFTs, for one thing, while Nike claims that it has discovered the alleged sale of counterfeit sneakers, included Nike branded ones, by StockX. Primarily, Nike takes issue with StockX's practice of claiming that the Vault NFTs are "100% Authentic" and that they are merely "claim tickets" or "digital receipts" used to "track ownership of a specific physical Nike product that StockX has purportedly authenticated using its 'proprietary, multi-step authentication process'" These claims, according to Nike, are "intended to explicitly mislead consumers" into believing that Nike has "authorized, approved, sponsored, and/or endorsed StockX's Vault NFTs" when no such affiliation exists.





Corporate & Commercial Law Updates

1. Belated claims of homebuyers if reflected in the records, have to be included in the Resolution Plan

The National Company Law Appellate Tribunal (NCLAT) Principal Bench in the case of Puneet Kumar vs K V Developers Pvt Ltd. Has held that claims of those homebuyers who could not file their claims within the stipulated time but the same were reflected in the records of the Corporate Debtor ought to have been included in the information memorandum and the Resolution Applicant is bound to take note of the same and deal with them in the Resolution Plan. The NCLAT bench also noted that homebuyers have now been recognised as Financial Creditors under the Insolvency and Bankruptcy Code and the amendment was brought to mitigate the misery of the homebuyers and give them participation in the CIRP of a real estate company.

2. CBIC issues SOP guidelines for NCLT courts under IBC

The Central Board for Indirect Taxes has released a notification laying out a Standard Operating Procedure to be followed by the National Company Law Tribunal for cases under the Insolvency and Bankruptcy Code, 2016.

The Board has instructed that the Insolvency and Bankruptcy Board of India establish the role of the GST and Customs authorities in certain crucial matters under the Insolvency and Bankruptcy Code. The GST and Customs Authorities have been classed as operational creditors. The authorities must file claims against corporate debtors when the corporate debtors when the corporate bankruptcy and resolution process is commenced and a public statement inviting claims is published by the insolvency professional. The Standard Operating Procedure also contains detailed guidelines regarding the role and appointment of a Nodal officer.

3. MEITY's revised Draft National Data Governance Framework Policy released

The Ministry of Electronics and Information Technology's move to release a revised draft comes after its precursor, the Draft India Data Accessibility and Use Policy, which permitted the licensing and sale of public data by the Government to the private sector, faced strong criticism. The Data Governance Framework would enable the government to create a data repository of anonymised non-personal data which would bolster the Digital India initiative, and also support research and startup ecosystems in India. The Framework also has a provision for private entities to volunteer their datasets to be added to the data repository. The Framework also calls for the creation of an Indian Data Management Office to oversee the implementation and review of the NDGFP.





Hospitality & Real Estate

1. Online Food Safety Supervisory Training in Advance Catering (FoSTaC) programme conducted by HRAWI in association and FSSAI

The Hotel and Restaurant Association of Western India (HRAWI) along with Food Safety and Standards Authority of India (FSSAI), virtually, conducted a session to train hospitality professionals on health and food handling practices, namely Online Food Safety Supervisory Training in Advance Catering (FoSTaC). The programme was attended by professionals from various hotel and restaurant establishments to further the cause of imparting of requisite knowledge to hospitality professionals on food handling and food safety.

2. Marriot Growth in India Hospitality Sector as per JLL's Hotel Momentum India report for Q4, 2021

As per the report prepared by JLL (Jones Lang LaSalle), namely Hotel Momentum India for the fourth quarter of 2021, a 100.3 percent year on year growth has been recorded in Revenue Per Available Room. Despite some impact from the Omicron wave of COVID 19, reportedly, due to a good number of long weekends, festival holidays and resumption of business travel, Q4 2021 witnessed significant growth in revenues for the hospitality industry.

3. Sattvik Lead Auditor Program to be offered by HRAWI – IHM in collaboration with Sattvik Council of India

Pursuant to a Memorandum of Understanding executed between Gurbaxish Singh Kohli, Vice President of Federation of Hotel & Restaurant Associations of India (FHRAI), and Abhishek Biswas, Founder of Sattvik Council of India, a comprehensive three-week training programme for students and professionals interested in pursuing a career in the rapidly growing vegetarian certification vertical, would be offered under the banner Sattvik Lead Auditor Program.

4. IATO urges the Prime Minister to support the tourism sector by increasing promotional activities aimed at attracting more in bound tourists

In view of India's stiff competition in attracting in bound tourists with Nepal, Thailand, UAE and other countries, the Indian Association of Tour Operators has written to the Prime Minister urging for support by way of increasing promotional activities to attract more and more tourists so that the travel, tourism and hospitality sectors see progress and contribute to the economy of the country.

5. Hotels and Resorts ace the Gujarat Tourism Awards' Ceremony 2022 at City Center, Ahmedabad

With awards in 19 categories, Lords Hotels and Awards triumphed at the ceremony with a multitude of awards including the award for Best Female Entrepreneur in Tourism, Best Chain Hotel in Gujarat, Best Mutlicuisine Restaurant in Gujarat and many others.





Litigation & Dispute Resolution

1. Supreme Court to set up 25 special courts to study 33 lakh pending cheque bounce cases

Against the backdrop of more than 33 lakh cheque bounce cases that burdens the judicial docket, the Supreme Court on Thursday gave a green signal to a pilot study to set up 25 special courts headed by retired judicial officers exclusively to deal with these cases in the states of Maharashtra, Rajasthan, Gujarat, Delhi, and Uttar Pradesh. The 25 special courts would come up in five districts of Maharashtra, Rajasthan, Gujarat, Delhi, and Uttar Pradesh where the pendency of the cheque bounce cases is the highest. The bench said it would take a further call to expand it across the country after evaluating its one-year performance.

2. Challenge by NHAi On Fee Fixation by Arbitral Tribunal, Delhi High Court Holds That Tribunal Can Fix Its Fees

The Delhi High Court has ruled that the Arbitral Tribunal is permitted to fix its fee, if its appointment is made by way of an ad hoc agreement between the parties. It was held that where the Arbitral Tribunal has accepted its appointment outside the mandate of the International Centre for Alternate Dispute Resolution (ICADR), it is entitled to determine its fee and not bound by ICADR rules. The court upheld the order of the Arbitral Tribunal fixing the Arbitral fee separately for the claims and the counter claims. The court added that the Arbitral Tribunal's observations that the arbitral fee is to be determined in terms of the Fourth Schedule of the Arbitration and Conciliation Act, 1996, does not mean that the fee has to be changed cumulatively on the claims and counter claims.

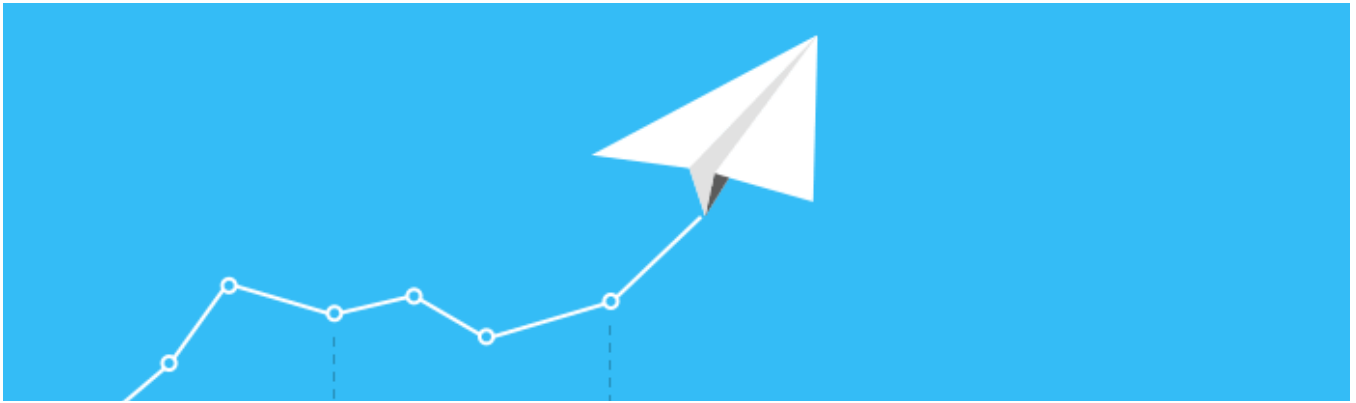
3. Mere Pendency of An Insolvency Petition Is Not a Bar To The Appointment Of The Arbitrator: Delhi High Court

The High Court of Delhi has held that the mere pendency of an insolvency petition under Section 9 of the IBC is not a bar to the appointment of an arbitrator. It was held that merely because an insolvency petition is pending, there cannot be a ban on the power of the Court to decide Arbitration application. It is only when the insolvency petition is admitted and the moratorium is declared that the proceedings under the Arbitration Act would be non-maintainable. The Court further held merits and validity of the demand notice are not to be decided by the Court while exercising power under section 11 of the Arbitration and Conciliation Act, 1996.

4. Rejected Claims by Resolution Professional in Insolvency Proceedings, To Be Decided by The Arbitrator: Delhi High Court

The High Court of Delhi held that the claims rejected by Resolution Professional in the insolvency proceedings on the ground that they arose after the Insolvency Commencement Date (ICD) are not to be decided by the Arbitrator. The Court held that the extinguishment of claims that arose after the Insolvency Commencement Date is a contentious issue that is to be decided by the Arbitrator when the parties have an Arbitration Agreement. The scope under section 11 of the A&C is confined to the examination of the existence of the arbitration agreement. The court is not to decide any contentious issue while exercising powers under Section 11 of the Act.





Start-Up Advisory & Consultancy

1. Lumis Partners-backed Emoha, Eunimart selected among TiE50 list of top start-ups

Indian startups Eunimart and Emoha on 17th May, 2022, won top positions in the TiE50 list announced at TiECon 2022, a flagship event hosted by TiE (The Indus Entrepreneurs). Emoha is a Gurugram-based tech-enabled eldercare startup, while Eunimart is a cross-border ecommerce ecosystem enabler based in Hyderabad.

The awards are contested by thousands of early to mid-stage startups worldwide. The startups, backed by Gurugram-based operating investment firm Lumis Partners, will now have access to funds allocated by TiE, greater mentoring and networking opportunities with Venture Capitalists (VCs) and angel investors. The awards will also provide the startups with a one-of-a-kind showcase opportunity amongst the world's top technology and technology-enabled startups.

2. UpGrad Abroad ties up with UK-based Prodigy Finance to offer education loans

UpGrad Abroad, the 'Study Abroad' vertical of edtech startup upGrad, has tied up with UK-based student loan company, Prodigy Finance, to provide collateral-free loans to students pursuing master's degrees from upGrad abroad-partnered universities abroad. The learners in the second year of a master's degree can avail of collateral-free loans, with a repayment period of up to 20 years. As part of the partnership, upGrad Abroad will offer master's courses across domains like Artificial Intelligence (AI), data analytics, civil engineering, entrepreneurship, cybersecurity, international business and project management across the US, the UK, Germany, Canada, Ireland, Australia, and France. Learners will have access to their loan status, allotment, transfer, and repayment on the Prodigy Finance online platform.

3. D2C meat and seafood brand Pescafresh partners with Zepto

Direct-to-consumer (D2C) meat and seafood brand Pescafresh has partnered with quick delivery app Zepto to provide speedy doorstep delivery of its products to consumers.

Pescafresh products will be available through the Zepto app across Mumbai, followed by Pune, in the near future. It also plans to launch operations in Delhi and Bengaluru.

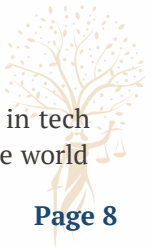
4. Pocket Aces selected for Cannes film festival

Digital entertainment startup Pocket Aces has been selected by the Ministry of Information and Broadcasting to be a part of the India delegation at the upcoming Marché du Film (Cannes Film Market) — one of the largest annual meet get together of film fraternity that is organised alongside the Cannes Film Festival, in France.

Five new-age media companies have been selected by the ministry to showcase the innovation taking place in the Indian media across digital content, Augmented reality (AR), Virtual Reality (VR) and animation. Pocket Aces will present its work at a global arena through a dedicated startup pitching Session on May 22, 2022.

5. San Francisco-based Rise Capital launches India operations

San Francisco-based Rise Capital announced its entry into the Indian startup arena, where it will invest in tech startups through its Global Fund III. The VC fund believes that the third-largest startup ecosystem in the world can create well over \$1 trillion in market cap by 2030.





Quote on Head Digital v. TickTock – Delhi HC order dated 10th May 2022

- Amay Jain

Recently in the case of *Head Digital Works Private Limited v. Tictok Skill Games Pvt Ltd.*¹, the Hon'ble Delhi High Court has reiterated that use of another party's trade marks as 'key words' on search engines or on App Store searches, as long as such use amounts to the said key words being used for promoting a business, using a competitor's trade mark, would be in violation the rights of such party whose trade mark is being so used.

This ruling is in consistence with another recent order passed by the same bench of the Delhi High Court, *i.e.*, Hon'ble Ms. Pratibha M. Singh, J. in the case of *MakeMyTrip v. Booking.com*², and various other recent precedents deliberating upon the issue of use of 'key words', 'meta tags' and other such "invisible use of trade mark", latent or so to say, less apparent or less brazen, online use of another party's trademarks intended to divert traffic on the Internet or to ride on the goodwill vesting in such a key word or meta tag despite the same being another party's intellectual property. Interestingly, the *MakeMyTrip order (supra)*, which has also been cited in this order, in addition to the above, also touches upon the role of Google as these 'key words' are allotted in accordance with bidding conducted through the Google Ads Program as Google was also made a party to the said suit.

This judicial trend, comprising of rulings in which the courts have been identifying, analysing and addressing the issue of "online invisible use of trademark" or online use which can be said to be somewhat less visible on the face of it as compared to conventional cases of trademark infringement or passing off, including cases of use as key words on search engines and similar third party platforms, is an apt example of a techno-legal tryst wherein the courts have been addressing a seemingly novel form of infringement by integrating principles of trademark law jurisprudence with an understanding of the implications of novel technological applications, allegedly being used to infringe trademark rights.

¹ CS (COMM) 301/2022, Delhi High Court

² CS (COMM) 268/2022, Delhi High Court



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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