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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. Thank God Film: Makers Settle Dispute After Bombay High Court Refuses To Stay Release

Less than six weeks after the Bombay High Court refused ad-interim reliefs to plaintiffs Azure Entertainment in a commercial suit worth Rs. 4.50 crore. However, the court recorded the settlement amount of Rs 3.75 crores and said that if there was even a single default in payment, then the entire decretal amount of Rs. 4.50 crores together with interest would become forthwith due and payable. In the suit filed before the Bombay High Court, Azure claimed that it had acquired the remake rights of the Danish film 'Sorte Kugler' (What Goes Around) on the basis of which the Hindi film 'Thank God' was produced under a co-production arrangement between Azure and Maruti International pursuant to which Maruti had committed to pay Rs.4.50 Crores to Azure prior to the release of the domestic theatrical prints of the film and had also committed to Azure that the domestic prints of the film will not be released until an NOC is given by Azure.

2. Kantara Movie : Kerala court returns second plaint filed against Hombale Films alleging copyright infringement

Rishab Shetty's blockbuster Kannada movie Kantara, and its music composer B Ajaneeshh Loknath soon faced allegations of copyright infringement around the song 'Varaha Roopam' soon after its release on September 30, 2022. Thaikkudam Bridge, a Kerala based music band alleged that the song was a rip-off of one of its songs 'Navarasam' that was released over five years ago. Both Kozhikode District Court (October 28) and Palakkad District Court (November 02) initially passed temporary injunction orders restraining the makers of the movie from using the song "Varaha Roopam" on streaming platforms and in movie theatres. Subsequently, the Kozhikode District Court on November 25, had ruled that the suit by Thaikkudam Bridge was not maintainable. However, on 1 December, the Kerala High Court on Thursday stayed this order of the Kozhikode District Court. On December 02, the Kerala High Court clarifies that the stay of the order returning Thaikkudam Bridge's plaint is for re-presentation and will not result in revival of the earlier injunction orders passed by the trial court against Varaharoopam song. On December 03, Palakkad District Court has returned the plaint filed by Mathrubhumi Printing and Publishing Ltd. So at present, there is no interim injunctions against the song and the makers are free to use it.

3. Google To Drop Advertisements Of Online Betting Firms

India has asked Google to stop displaying surrogate ads of overseas betting companies such as Fairplay, PariMatch, Betway and 1xBet in search results and YouTube, amid a crackdown on illegal online gambling.

Overall, ₹5,000 crore is being deposited in the accounts of multiple agents of these companies in India every month, according to estimates by the All India Gaming Federation (AIGF). However, there is no clarity on where this money is going or how it's being used, the lobby group claims.



4. Centre directs FM radio channels not to play songs glorifying liquor, drugs, weapons, gangsters and gun culture

The Centre has cautioned FM channels against playing songs or broadcasting content glorifying alcohol, drugs, weaponry, gangster or gun culture.

The Ministry asserted broadcast of such songs or content is in violation of the All India Radio Programme Code and the Central government has the right to impose restrictions up to suspension of permission and prohibition of broadcast.

Recently, Punjab and Haryana High Court had taken note that such content affected children of impressionable age and gave rise to gun culture and had banned the broadcast of songs containing such objectionable content.

5. Delhi High Court grants permanent injunction and an award of Rs. 20 lakhs in favour of Microsoft Corporation

In a 20-years long litigation, the Delhi High Court passed an award of Rs. 20 lakhs and permanent injunction in favour of Microsoft Corporation in a suit for copyright infringement for its products Microsoft Windows, Microsoft Office and Windows Server.

The Court in 2010 had granted an ad-interim ex-parte order of injunction in favour of Plaintiffs and against the Defendants, restraining them from infringing the Plaintiff's software program.





Technology and E-Commerce Updates

1. ONDC to start outreach programme to help sellers speed up their business

Following the Beta testing in Bengaluru, Open Network for Digital Commerce (ONDC) is initiating an outreach programme under which it will host events across the country, inviting sellers and MSMEs for interactive sessions on ONDC, while informing them how it can help accelerate their business. The first event of the outreach programme will be an introductory session in Delhi NCR for restaurants, food entrepreneurs, and cloud kitchens in association with National Restaurant Association of India (NRAI)

2. Amazon Pay's #AbHarDinHuaAasan campaign highlights the convenience of digital payments for merchants in India

The second leg of Amazon's Pay brand campaign #AbHarDinHuaAasan shows the many opportunities digital payment systems present for small businesses in India. The first leg of the campaign was launched last year in November with a short film that illustrated the convenience of digital payments through its services. It captured varied use cases like shopping offline, shopping on Amazon.in or for bill payments, recharges, payment to delivery personnel and much more. While the first leg of the campaign focused more on how customers can benefit from Amazon Pay's services, the latest film brings spotlight on small business merchants and how their lives can get more 'aasan' (convenient) everyday with Amazon Pay.

3. RBI introduces single-block-and-multiple debits functionality in UPI

The Reserve Bank of India (RBI) on Wednesday announced introducing a single-block-and-multiple debits functionality in Unified Payments Interface (UPI). Customers can enable a payment mandate for a merchant by earmarking funds in their bank accounts for debits whenever required. According to RBI, the functionality will make payments easier for e-commerce and investments in securities. It would be helpful for hotel bookings, purchase of securities in the secondary capital market as also purchase of government securities using the central banks' Retail Direct scheme, e-commerce transactions etc. Customers will be able to block funds in their accounts for various payments. It will facilitate in making smoother e-payments and increase the efficiency of online checkouts during e-commerce transactions.

4. Surat-based Renon India wants to power an all-electric future

B2B startup Renon India produces 300 battery packs per day, each with 0.5 kWh capacity at its Surat manufacturing facility. An original equipment manufacturer (OEM), Renon operates a business-to-business (B2B) model, which revolves around Li-ion battery packs and energy storage systems (home UPS). It has products for various applications, including solar home lighting systems (SHL), solar water pumps, wheelchairs, EV two-wheelers and three-wheelers, solar street lighting systems (SSL), and UPS/BESS, to name a few. Bootstrapped with Rs 15 crore, the startup operates on a hybrid model of horizontal and vertical mixed units.

5. Meet Purple Butterfly Technologies, which helps parents and children manage Autism Spectrum Disorder

Bengaluru-based Purple Butterfly Technologies intends to solve the problem of a completely broken ecosystem through a scalable technology solution—from early detection to interventions in the area of ASD—and help parents in the complete journey till the kids learn to manage the condition themselves. The startup also helps parents seek correct information when they see their child having a developmental delay or other early signs but are unaware of how to help them.



Fashion & Sports Law Updates

1. Mirabai Chanu Clinches Silver At World Weightlifting Championship Despite Wrist Issue

Star Indian weightlifter Mirabai Chanu was not at her best due to a wrist injury but still won a silver medal at the World Championships with a total lift of 200kg in Bogota, Colombia. The Tokyo Olympic silver medallist, competing in 49kg category, managed to lift 87kg in snatch and in clean and jerk her best effort was a lift of 113kg. The Indian finished behind China's Jiang Huihua, who won the gold with a total effort of 206kg (93kg+113kg) while her compatriot and Tokyo Olympics champion Hou Zhihua 198kg (89kg+109kg) took home the bronze medal.

2. Vans Prevails in Bid to Cancel OLD SCHOOL Trademark Registrations

Vans has prevailed in a long-running attempt to cancel an unrelated company's OLD SCHOOL trademark registrations for use on men's and women's apparel and footwear, successfully arguing that Branded, LLC failed to consistently use the trademarks and had no intent to resume use. On the heels of issuing a final decision this summer, the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board ("TTAB") formally cancelled Branded's registrations for the OLD SCHOOL mark this fall. The cancellations come almost five years after Vans first filed petitions for cancellation, arguing that it was being damaged by Branded's registration since the USPTO refused to register its own OLD SKOOL mark because of a likelihood of confusion with Branded's trademarks.

3. Rihanna's Savage X Fenty to Pay \$1.2 Million to Settle Consumer Protection Lawsuit

Rihanna's Savage X Fenty has agreed to pay \$1.2 million to settle a consumer protection lawsuit with California regulators which alleged that the lingerie company engaged in false and misleading advertising practices in connection with its VIP membership program, an automatically renewing online subscription service. According to the complaint, filed by the Santa Clara, Santa Cruz, San Diego and Los Angeles County District Attorney's Offices and the Santa Monica City Attorney's Office, Savage X Fenty deceptively advertised discounts on its lingerie and clothing products without clearly and conspicuously informing consumers that they must enroll in the membership program, which automatically renews until canceled, and failed to disclose material limitations on store credits offered under the program. The lawsuit further alleges that Savage X Fenty failed to properly disclose the material terms and conditions of its automatic renewal plan and obtain proper consent for such charges. Under California law, online businesses that market to consumers need to disclose all automatic renewal charges "clearly and conspicuously," whether part of a subscription, membership or other recurring fee.

4. Jos Buttler, Sidra Ameen Win ICC Player Of The Month Awards For November

England's T20 World Cup-winning captain Jos Buttler was named ICC men's Player of the Month for the first time following his stupendous show in November. Pakistan's Sidra Ameen became the second successive winner of the women's Player of the Month award from the country, thanks to her brilliant performance in the ODI series win over Ireland. One of the most fearsome batters in world cricket, Buttler had produced a Player of the Match performance in the dramatic 20-run victory over New Zealand in Brisbane to start the month with a bang.



5. Yuga Labs, Guy Oseary, Celebs Named in New Lawsuit Over Bored Ape Promo

A class action lawsuit filed alleges that a slew of celebrities—including Justin Bieber, Madonna, Steph Curry, and Paris Hilton—violated state and federal laws when they promoted Bored Ape Yacht Club NFTs while failing to disclose their financial relationships to Yuga Labs. The suit, filed in the U.S. District Court’s Central District of California, named no less than 37 co-defendants—ranging from Yuga leadership to celebrities and executives. It also names MoonPay, the crypto payments startup that allegedly facilitated those endorsements. Though the suit lists 10 charges ranging from violations of California’s consumer protection laws to violations of federal securities laws, its 100-page filing tells, more or less, a single story.

6. Court Cuts Part of Privacy Lawsuit Over Louis Vuitton Virtual Try-On Tool

A virtual “try-on” tool for sunglasses offered by Louis Vuitton collected customers’ facial scan data without their consent, violating the Illinois Biometric Privacy Protection Act, a new lawsuit against the luxury brand alleges. The proposed class-action suit, filed April 8, claims the LVMH corporation’s North America unit took biometric data from online shoppers when they used their webcams to try out eyewear products and then translated the data into computer code and sent it to an outside server, Bloomberg reported.

The lawsuit accuses Louis Vuitton of violating the privacy act “each and every time” a shopper in Illinois used the online try-on tool, according to reports. Violations of the Illinois Biometric Privacy Protection Act can carry fines of between \$1,000 to \$5,000 each.

7. Amazon May Be Liable for Third Party Ads, Says EU High Court in Louboutin Case

The Court of Justice of the European Union (“CJEU”) has issued a highly anticipated decision in two cases centering on the advertisement and sale of fake Louboutin footwear on Amazon, finding that Amazon, itself, may be deemed to be “using” another party’s trademark in connection with the advertisement of infringing goods and thus, be liable for infringement as a result. The combined cases, which were initiated by French footwear brand Christian Louboutin in district-level courts in Luxembourg (C-148/21) and Belgium (C-184/21) back in 2019, asked the CJEU to determine whether – and, if so, in what conditions – the operator of an online marketplace may be found liable under Article 9(2) of the EU Trade Mark Regulation 2017/1001 for the display of advertisements of infringing goods.





Corporate & Commercial Law Updates

1. [Arbitration & Conciliation Act] Proceedings U/S 9 Interim In Nature, Not Meant For Enforcement Of Conditions Of Contract: JKL High Court

The Jammu and Kashmir and Ladakh High Court on Monday ruled that final relief cannot be granted under Section 9 of the Arbitration and Conciliation Act 1996 as proceedings under the said provision are of interim measure and are not meant for enforcement of the conditions of the contract, which can be done only when the rights of the parties are finally adjudged or crystallized.

2. Rights of secured creditors under SARFAESI, Recovery of Debts Act take precedence over statutory tax dues: Madras High Court

The Madras High Court recently held that the right of secured creditors under Recovery of Debts and Bankruptcy Act and SARFAESI Act to realise debt must be prioritised over statutory dues under the Income Tax Act in the event of a conflict of priorities [State Bank of India v The Tax Recovery Officer]. A bench of Justices R Mahadevan and Mohammed Shaffiq said that even if recovery proceedings are quashed for any reason in a case, "the bankers/ financial institutions right to claim priority in terms of Section 31B of the Recovery of Debts and Bankruptcy Act and Section 26E of the SARFAESI Act would be available and the right to recover under the Income Tax Act, 1961 must yield to the provisions under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act."

3. IBC Does Not Prohibit An Assignee From Continuing Pending Section 7 Proceedings: NCLAT Delhi

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench while adjudicating an appeal filed in Siti Networks Ltd. v Assets Care and Reconstruction Enterprises Ltd. & Anr., has held that there is no prohibition in the IBC or any of the Regulations from continuing the proceeding by an assignee. Section 5(7) of the IBC which defines 'Financial Creditor' also includes a person to whom such debt has been legally assigned or transferred to. By virtue of assignment, an assignee becomes the Financial Creditor and it has every right to continue the proceeding which was initiated by the original Financial Creditor/Assignor.

4. After Participating In The Arbitral Proceedings Without Any Protest, Can't Object To Jurisdiction Later : MP High Court

The Madhya Pradesh High Court has held that a party which has participated in the arbitration proceedings without any protest or challenge as to the jurisdiction of the tribunal cannot for the first time challenge the jurisdiction of the tribunal under Section 37 of the A&C Act. The bench of Justice S.A. Dharmadhikari held that an issue as to non-jurisdiction of the private arbitrator when the Madhyastham Adhikaran Adhiniyam, 1983 Act provides for statutory arbitration for 'works contract' cannot be raised for the first time in an appeal and has to be taken at the earliest possible opportunity.



5. ICAI can initiate suo motu proceedings against CAs even in absence of written complaint: Delhi High Court

The Delhi High Court recently held that the Institute of Chartered Accountants of India (ICAI) has the power to initiate suo motu disciplinary proceedings against its members even in absence of a written complaint. Single-judge Justice Yashwant Varma said that Section 21 of the Chartered Accountants Act, 1949 empowers the ICAI to proceed suo moto and unhindered in the absence of a written complaint or allegation. "A written complaint or allegation in writing cannot, in any manner, be understood to be a pre-requisite or a sine qua non for the initiation of action under Section 21," the Court said. The Court added that the meaning of the words "any information" as contained in Section 21 would extend to any material or fact that may come to the notice of the institute and from which it may derive knowledge.

6. Moratorium Under Companies Act, 2013, Parties Cannot Be Referred To Arbitration: Delhi High Court

The Delhi High Court has ruled that the moratorium granted by the National Company Law Appellate Tribunal (NCLAT), staying the institution of suits and proceedings against the Corporate Debtor, after the resolution process is initiated against it under Sections 241 and 242 of the Companies Act, 2013, is akin to an order of moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). Thus, in view of the moratorium issued by the NCLAT, the Corporate Debtor cannot be referred to arbitration.





Hospitality & Real Estate

1. Online Home Loans, Property Documents Could Be A Reality Soon

The Ministry of Electronics and Information Technology (MeitY) in a recent notification stated that it will soon be possible to digitise property and mortgage documents. This will also act as a push for home loans, as it will make the process more digital. According to the notification, home loans will be brought under the digital documentation category. MeitY is keen on digitising home loans as well as related property documents. The current home loan process is tedious and requires several documents (party agreements, home loan agreements etc.) and multiple visits to the bank. However, with this new move, this daunting process could be eased. As for the bankers, the smooth process (when implemented) could lead to an increase in lending in the times to come.

2. Dettol pro solutions now for hospitality business

The hygiene and safety of hoteliers and their guests play an important role in the hospitality industry. Since the haphazard spread of Covid-19, the world has become more cautious than ever. The entire hospitality world has now bounced back, taking extra care of themselves along with their guests. The products used in hotels to maintain hygiene are even more important as they not only should serve the purpose of cleaning but should be efficient. The brand now offers its science-backed and trusted products and protocols designed for hospitality business. You can even Submit your enquiry to get up to 40% off. A Dettol Pro Solutions expert will contact you in 2 working days.

3. Haryana RERA issues non-bailable warrants against 18 developers for contempt

The Gurugram bench of Haryana Real Estate Regulatory Authority (RERA) on December 7 said that non-bailable arrest warrants have been issued against 18 builders for violating its orders in cases pertaining to refund and delayed possession. A statement was issued by the Authority in which it said that as many as 18 city-based builders are to land in trouble for violating the orders of the RERA, inviting non-bailable warrants. “Non-bailable warrants have been issued by the court of RERA adjudicating officer (AO) against 18 builders in as many as 86 contempt cases at different times, filed by 86 different complainants for the execution of RERA court orders before the AO court as per RERA Act 2016,” the statement said.

4. M3M India acquires 1.3 acres of land in Gurugram for Rs 200 crore to develop luxury boutique retail project

Realty firm M3M India has acquired a 1.3-acre land parcel in Gurugram for about Rs 200 crore to build a luxury commercial project, primarily retail space. The land, located near IFFCO Chowk, has been acquired through an auction conducted by Haryana Shahari Vikas Pradhikaran (HSVP). M3M India will utilise this premium land parcel purchased with internal funds to construct a top-of-the-line boutique commercial project. The development cost would be Rs 250 crore. The estimated top line for this project is Rs 1000 crore.



5. UP RERA imposes penalty of Rs 1.77 crore on 13 real estate developers for non-compliance with orders

To protect the interests of home buyers, the Uttar Pradesh Real Estate Regulatory Authority (UP RERA) has imposed a penalty of more than Rs 1.77 crore on 13 real estate developers for not complying with its orders. UP RERA, in its 111th meeting held under the chairmanship of Rajive Kumar, on December 19 reviewed the status of compliance with its orders by the promoters and noted that some promoters had not complied with its orders despite the Authority having granted them sufficient time. The Authority, using its powers under section 38/63 of the RERA Act that empowers it to penalise the promoters for non-compliance with its orders with up to 5 percent of the cost of the project, decided to impose penalty against the promoters, said UP RERA Secretary Rajesh Kumar Tyagi. Non-compliance relates to issues like delay in handing over flats to buyers, refunds, and submission of approved maps in group housing projects.

6. Hansgrohe India launches its first exclusive AXOR store in Mumbai

Hansgrohe India, the Indian subsidiary of the Hansgrohe Group, one of the world's leading bathroom and kitchen fittings manufacturers, recently announced the launch of its first exclusive showroom Mumbai for the luxe brand -AXOR. Dedicated to manufacturing iconic objects for luxurious bathrooms and kitchens, the state-of-the-art store was inaugurated in the presence of Hans Jürgen Kalmbach, CEO and chairman of the executive board, Hansgrohe Group, Thomas Stopper, VP Sales Asia, Hansgrohe Group and Hansgrohe India MD, Gaurav Malhotra. Spread across 1,500 sq ft, the showroom is located in the heart of Mumbai, Lower Parel, central for all consumers looking to build luxurious homes with elegant design pieces.





Litigation & Dispute Resolution

1. Mother's choice is ultimate: Delhi High Court allows 33-week pregnant woman to terminate pregnancy

The Delhi High Court on Tuesday allowed a 33-week pregnant woman to undergo medical termination of pregnancy. [Mrs Pooja Kumari v. GNCTD & Anr] While doing so, Justice Prathiba M Singh held, "The Court comes to the conclusion that the mother's choice is ultimate. Considering this, the Court holds that the medical termination be allowed. The petitioner is permitted to undergo termination immediately at the LNJP Hospital or any other hospital of her choice." Justice Singh further noted that in Indian law, it is ultimately a mother's choice whether or not she wants to continue with her pregnancy. "Cases like these highlight the severe dilemma that a woman has to undergo. With the emergency of modern technology, the issues around abortion and termination are bound to become more difficult," the Court added. Justice Singh added that through her conversation with the petitioner, she was able to gauge that she was aware of the risks involved as well as the mental trauma that comes with giving birth to a child or its termination.

2. Customer in a brothel can be booked under Immoral Traffic Prevention Act: Kerala High Court

Justice Bechu Kurian Thomas held that a 'customer' would come under the purview of a 'person with whom the prostitution is carried on' under Section 7(1) of the Act as sexual exploitation cannot be done singularly. The meaning to be ascribed to the words the "person with whom such prostitution is carried on" is significant for this case. Those words will have to be read in conjunction with the definition of the word prostitution. The term prostitution is defined as the sexual exploitation or abuse of persons for commercial purposes. Sexual exploitation cannot be done singularly. The person engaged in the act of exploitation is also a person who falls within the term 'persons with whom such prostitution is carried on'. In other words, the person who exploits or abuses the prostitute is the person with whom the prostitute carries on prostitution. Thus, immoral traffic cannot be perpetrated or carried on without a 'customer'. By using the words 'person with whom the prostitution is carried on in section 7(1) of the Act, I am of the considered view that the legislature has intended the customer also to be brought within the purview of the penal provisions," the Court said.

3. Supreme Court calls for amendment to Hindu Succession Act to make it applicable to Scheduled Tribe women

The Supreme Court urged the Central government to consider amending Section 2(2) of the Hindu Succession Act which specifically excludes female members of Scheduled Tribes from the purview of the Act [Kamla Neti v The Special Land Acquisition Officer]. A bench of Justices MR Shah and Krishna Murari opined that there was no justification for denying the right of survivorship to female members of a community.

"When the daughter belonging to the non-tribal is entitled to the equal share in the property of the father, there is no reason to deny such right to the daughter of the tribal community. Female tribal is entitled to parity with male tribal in intestate succession," said the judgment.



4. Venue Restriction Provision Contained In Section 42 of A&C Act, Not Applicable To Proceedings Seeking Enforcement Of Award: Delhi High Court

The Delhi High Court has reiterated that Section 42 of the Arbitration and Conciliation Act, 1996 (A&C Act) would have no application to proceedings seeking enforcement of arbitral award. The bench of Justice Yashwant Varma noted that execution application is neither an "arbitral proceeding" within the meaning of Section 42 of the A&C Act, nor is it a subsequent application arising out of the arbitration agreement and thus, the venue restriction provision contained in Section 42 would have no application to enforcement proceedings.

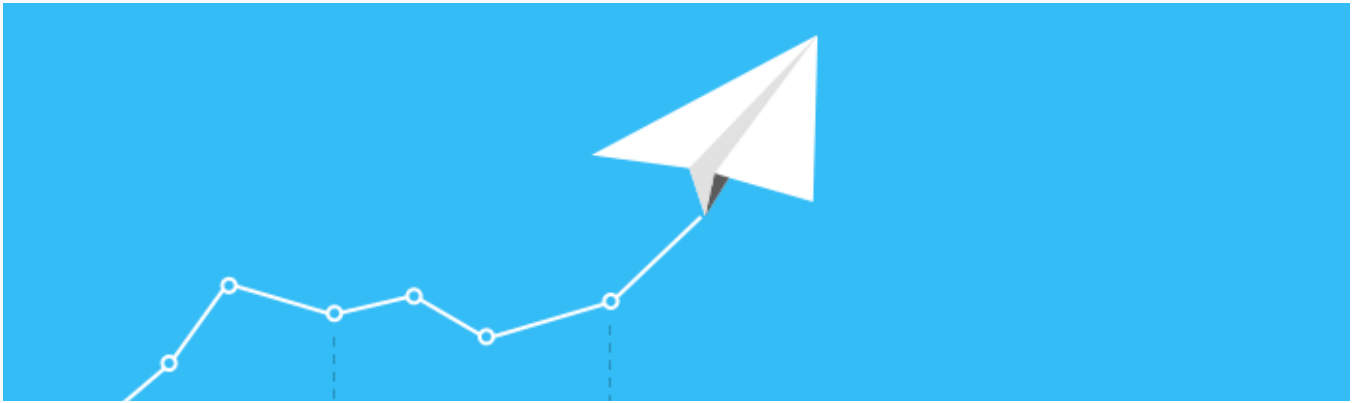
5. Criminal Proceedings Cannot Be Initiated For Recovery Of Amount Due Under The Arbitration Award: Calcutta High Court

The Calcutta High Court has held that criminal proceedings cannot be initiated for recovery of amount due under an arbitration award. The bench of Justice Tirthankar Ghosh held that a party aggrieved by non-payment of amount due under a post award settlement agreement should not resort to filing a criminal case by giving a civil dispute criminal colour as the same is an abuse of the process of law. The Court held that the correct recourse for the party would be putting the award into execution. The Court observed that from the facts of the case it emerges that the criminal complaint was filed to recover the amount deducted by the petitioners as the GST Cost on the tax invoice raised by the respondent. It held that the respondent has given criminal colours to a civil dispute, therefore, the complaint is an abuse of process.

6. Punjab & Haryana HC Allows Kidney Swap Transplant Between Persons Not 'Near Relatives', Says Can't Afford Loss Of Life Due To Technicalities

The Punjab and Haryana High Court has recently allowed 'swap transplantation' of kidneys between persons not related to each other as per the definition of 'near relatives' under the Transplantation of Human Organs and Tissues Act, 1994. Noting that even though a 'mother-in-law and a 'son-in-law' would not fall within the definition of 'near relatives' as per the Act, the single bench of Justice Vinod S. Bhardwaj, while allowing for swap transplant, said that: "The object of Section 9 (3)(A) should not be permitted to be defeated by a rigid, dogmatic and stigmatic interpretation and not to include people who get related by matrimony and would have same love and affection."





Start-Up Advisory & Consultancy

1. This investing app is helping customers elevate their financial health

Bengaluru-based personalised investing app Elever is not blindly return-centric. Instead, the focus is to use the returns to help people achieve their lifestyle goals. Elever is a personalised investing app committed to helping the masses invest like professionals, banking on their deep personalisation and rule-based algorithms. The Bengaluru-based wealth tech startup envisioned creating an investment platform without advising investments through mutual funds. Instead, the idea was to create a fully personalised and customised investment platform, based on the customer's risk profile, financial ability, future goals, and requirements.

2. Truecaller launches verified digital government directory Caller identification app for smartphones

Truecaller, has announced launching an in-app digital government directory to support interaction between citizens and government officials. The directory will offer access to helplines, law enforcement agencies, embassies, educational institutes, hospitals and other key departments across 23 states and union territories in India. The information for the directory has been sourced from official government sources and is aimed to streamline public interactions. The app which has nearly 240 million users in India said it is also working with different government departments to expand the directory and add contacts at the district and municipal levels in the next phase.

3. Snapdeal to shelve its \$152 million IPO amid tech stock market retreat

SoftBank-backed Indian e-commerce firm Snapdeal has decided to pull the plug on its \$152 million IPO, the company told Reuters, making it the latest casualty of a meltdown in tech stocks that has soured investor sentiment. Snapdeal filed its initial public offering (IPO) regulatory papers for approval in December 2021, a year that saw many stock market debuts and record fund raising by Indian startups. But many are delaying IPOs amid a stock market rout that has raised concerns over frothy tech valuations. Snapdeal, which competes with larger rivals Amazon and Walmart's Flipkart in India's booming e-commerce space, filed a request this week with the country's market regulator SEBI to withdraw its IPO prospectus.

4. How Upriver helps brands stand out on ecommerce marketplaces

Upriver offers tailored services, including strategy formulation and execution, as well as providing full ownership and management of online channels. The startup's account management services encompass onboarding new markets, launching D2C websites, listing and catalogue management, daily inventory and order management, advertising and promotion, customer retention, and more.

5. How Aer Media is tapping into the Rs 2,200 Cr influencer marketing segment

Aer Media's model works with brands instead of working with influencers. The founding team explains that Aer Media activates the influencer marketing strategy for their brands. For example, when a brand launches a particular product, it gives Aer Media an outline of its target audience and what it likes to achieve. "Based on this, our platform Unbox Social creates a list of the best influencers that would work with the brand and the product. We work with the influencers and give them access to these brands," Vinay says. The team charges the brands a retainer fee after factoring in its own expenditure.

6. Drone startup Droneacharya a hit at stock market, listing touches Rs 107.10 a share

Pune-based DroneAacharya Aerial Innovations Ltd made a strong debut on the BSE's SME bourse. The company's shares were listed at a premium of 88% at Rs 102 a share over its issue price of Rs 52-Rs 54 per share. The company's shares were immediately locked at the 5% upper limit of the circuit breaker and touched a high of Rs 107.10 a share, post listing. Profit-taking caused the shares to give up some gains and drop to a low of Rs 96.90 before regaining lost ground. The company witnessed total traded volumes of 26.92 lakh shares and clocked a turnover of Rs 27.57 crore on day.

7. Garuda Aerospace gets DGCA approvals for type certification and pilot training

Drone manufacturer Garuda Aerospace has received both type certification and pilot training approvals from the Directorate General of Civil Aviation (DGCA) for its homegrown 'kisan' (farmer) drones. Under India's Drone Rules 2021, it is mandatory to get type certification to operate a drone in the country. The Chennai-based startup's Kisan drones will be used for reducing crop loss, monitoring crop health, yield measurement and mitigating crop losses.





An Analysis - Publicity Rights in India

- Moxy Shah

INTRODUCTION

A frequently asked question is: What is in a name? If you are famous today, your name can have considerable commercial value. In industries like entertainment and sports, there are countless instances where the celebrity has made a fortune off of their name, image, or likeness in addition to income from their profession. Privacy rights, sometimes referred to as privacy rights, protect individuals from unauthorized use of their name or other aspects of their personal identity. These characteristics can include a nickname, voice, signature, or picture.

A person can assert their publicity rights by licensing the use of their name, likeness, or other elements of their identity for commercial purposes such as advertising and promotion, and can take legal action against those who violate their rights.

WHAT ARE PUBLICITY RIGHTS?

It is undeniable that celebrities lead a very different lifestyle. Since their voice, signature, photos or likeness are immediately recognizable, they live from the memory value. While this has some benefits, it makes them vulnerable to injury. The right to publicity is relevant in this situation. This privilege is recognized as part of the intellectual property of a well-known person. It essentially helps a well-known personality to legally defend their personality against copying or unauthorized use. It refers to the ability to manage the use of one's name, image or appearance and prohibit unauthorized third parties from doing so for profit. Personal rights arise when the legally protected personal right is coupled with the other two rights.

As defined by the International Trademark Association, the right of publicity is an intellectual property right protecting against the misappropriation of a person's name, likeness or other indicia of personal identity, such as a nickname, pseudonym, voice, signature, likeness or photograph, for the purpose of commercial benefit, by another person.

According to John Locke, "the economic value of identity should be allocated to the celebrity individual because the value is primarily the result of the celebrity's labor".



Personality rights recognize the market value of a celebrity and protect the celebrity's proprietary interest in the viability of their public image. In India, this right is not guaranteed by law, but courts have taken note of this right and created a jurisprudential framework for resolving complaints. Personality rights are primarily extended to celebrities. 'Celebrity' comes from the Latin word 'celebritatem', the condition of being famous. Essentially, the personality right includes within its scope physical characteristics of the celebrity, e.g. It also includes an actor's name, an actor's voice, photos, occasional video footage, or even the celebrity's signature. Unique movements specific to celebrities, for example taking off the glasses like Rajnikanth, Shah Rukh Khan's famous broad arms and sloping posture, etc. can also be considered a personality trait. In summary, it encompasses all those qualities and traits of a person that are central or peripheral to being a celebrity.

The greatest prerequisite for the extension of personality or personality rights is therefore public perception, i.e. whether a person has attracted public attention or not. Individuals must achieve a certain level of fame and public recognition in order to claim personality rights.

The right to publicity is understood to last at least for the lifetime of such a celebrity and sometimes even after their death, with reliance on the commercial value attached even after death. For reasons of ambiguity, the notion of right may be at the discretion of the court.

In the absence of a specific statute, violation of the right to publicity is not defined under Indian law. However, any unauthorized use of a celebrity's personality, image or information constitutes a violation of their publicity rights and may therefore be challenged as a violation of their publicity rights. Subject to the provisions of the Trademark and Copyright Acts, an action for infringement may be brought by either the licensor or the licensee or jointly based on the terms of such agreement. Trademark and copyright objections may apply to privacy rights. For example, the media may release information about an individual if that information is of public interest and concern.

The right of publicity is inherent in the right to privacy guaranteed in Articles 19 and 21 of the Indian Constitution. The right of publication can only belong to a person or to a characteristic of a person's personality (name, personality traits, signature, voice, etc.) The right of publicity is therefore only granted to one person. Furthermore, the right to publicity is hereditary and thus can be transferred to the legal representatives of the person upon his or her death, although there is currently no specific provision or case law in India to support this. , the Delhi High Court has defined the term "advertising rights" broadly, stating that the term "advertising rights" may include an individual or any indicia of an individual's personality (e.g. their signature or voice).

While deciding the matter in *ICC Development (International) Ltd v Arvee Enterprises*¹, the court came to the conclusion that "*publicity right has evolved from the right to privacy and can be in here only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc.... Any effort to take away the publicity right from the individuals to the organizer of the event would be violative of articles 19 and 21 of the Constitution of India. The publicity right vests in an individual and he alone is entitled to profit from it.*"

IMPORTANT JUDGEMENTS RELATING TO PUBLICITY RIGHTS

There has been no recent legislative change in Indian law relating to the right of publicity. However, Indian courts are actively expanding the scope of public rights to protect the rights of celebrities.

¹ *ICC Development (International) Ltd v Arvee Enterprises*, 2003 VIIAD Delhi 405



(i) Titan Industries Limited v. Ramkumar Jewelers

In the matter of Titan Industries Limited v. Ramkumar Jewelers,² CS (OS) No. 2662/2011, the Delhi High Court had issued a permanent injunction against the defendant, preventing the defendant from obtaining the Misappropriate rights of celebrities famous Indian film actors, Mr. Amitabh Bachchan and Ms. Jaya Bachchan. In this case, the plaintiff owned a well-known jewelry brand and had entered into an agreement with the actors to endorse the brand by using the actors' images and other material. The defendant used the identical image of the actors to market and advertise their jewelry brand. The court found the defendants' advertising to be false and misleading, noting that the right to publicity goes beyond the traditional limits of false advertising law and violating the right to publicity does not require proof of confusion or deception, particularly where the celebrity is identifiable is. In this case the court had described personality rights as “When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialise their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity.”

(ii) Amitabh Bachchan vs Rajat Nagi

The Hon'ble High Court of Delhi recently issued an ad-interim injunction in a case titled Amitabh Bachchan v. Rajat Nagi and Ors to prevent the defendants altogether from violating the personality and publicity rights of Bollywood star actor Amitabh Bachchan. The present judgment, limiting the violation of the prominent plaintiff's publicity rights, is a notable judgment and the court's Obiter dictum in this case will help to outline the legal protection afforded to privacy rights in India.

The lawsuit was filed by legendary actor Mr. Amitabh Bachchan, who alleged that the defendants violated his publicity rights by using his personality traits for commercial purposes without permission. The plaintiff alleged that the defendants operated websites and mobile applications using Plaintiff's photo and other features to gain popularity among the public and induce customers to download their application.

It was alleged that the defendant used the plaintiff's image and distributed it on WhatsApp along with infringing text about the famous game show Kaun Banega Crorepati hosted by the plaintiff, including lottery fraud related to the game show with the intent to defraud the general public. It was also alleged that the defendants had created a website with the domain name www.amitabhbachchan.com that sells infringing products bearing the characteristics of the plaintiff.

The Hon'ble Delhi High Court, after analysing prima facie evidence and arguments put forward by both parties, issued an ad interim ex-parte injunction to prevent the vendors from using Mr Amitabh Bachchan's name, face and voice to sell Attract customers to their websites and mobile applications, creating an association assumption between the actor and the offending websites/mobile applications.³

The Court also held that if such activities were not restrained then the actor being a popular personality would suffer an irreparable loss to his reputation.

The court in its injunction also ordered the Department of Telecommunications and the Union Department of Electronics and Information Technology to order ISPs (Internet Service Providers) to remove the list of

² Titan Industries Limited v. Ramkumar Jewellers, CS (OS) No.2662/2011

³ Amitabh Bachchan vs Rajat Nagi CS (COMM) 819/2022.



links and websites infringing on Mr Bachchan's privacy rights and ordered the telecom providers to block all contact numbers used to spread these messages via WhatsApp, which violated Mr Bachchan's rights.

(iii) D.M. Entertainment Private Limited v Baby Gift House

Likewise in the case of D.M. Entertainment Private Limited v Baby Gift House, popular singer Daler Mehndi sued sellers of dolls singing lines to his popular rhythms. The singer claimed that the sellers' actions constituted a violation of his right to commercially exploit his personality and identity. He claimed that Baby Gift House sold dolls bearing the singer's likeness in Delhi markets after importing them from China. The court found that the singer enjoys a right to advertising and protection from unauthorized commercial gain by others using his identity and that said action by sellers would mislead consumers into believing that the singer is endorsing the product in question.

CONCLUSION

Violating the rights of publicity and privacy of celebrities and famous people has become a chronic practice, and companies and individuals often encroach on such rights of celebrities to override the goodwill associated with such celebrities. Often, however, the infringer himself does not know where a line should be drawn. One of the biggest examples of one such violation is online influencer's creating reels and content mimicking the voice of a celebrity for entertainment purposes. This however may seem harmless to the common eye but in reality, is an infringement of the personality and publicity rights of the celebrity if such mimicking is done without his/her permission. Such incidents can also be reported for misleading advertisements as the general public is made to believe that their beloved celebrity too uses such product and are hence, lured into purchasing them.

Although there is no specific legislation dealing with this issue, the Indian judiciary has in a large number of cases protected the rights of celebrities from unlawful gain by infringers while using celebrities' personality traits or photographs on their products to induce to form unwarranted assumptions that the celebrities are affiliated with their brands.



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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