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Topical Updates: To IP & Beyond

Snapshots

DELHI HIGH COURT

AKSHAT BALDWA V. YASH RAJ FILMS

In a Petition calling for implementation of accessibility standards for entertainment services, the Court issued directions to the Ministry of Information & Broadcasting to hold stakeholder consultation to implement the provisions of the Rights of Persons with Disabilities Act, 2016 and frame appropriate guidelines in this regard. The consultation process must be completed by August 2023 prior to the next date of hearing.

The matter is listed on 26th September 2023.

DELHI HIGH COURT

KHADI AND VILLAGE INDUSTRIES COMMISSION (KVIC) V. KHADI DESIGN COUNCIL OF INDIA & ORS.

The Court has restrained the use of 'Khadi' and 'Charkha' marks by Khadi Design Council of India and Miss India Khadi Foundation. The Defendants challenged the validity of the registrations held by the KVIC as Khadi is a type of fabric. The Court held that the registration of a mark is the evidence of its validity for the purpose of deciding an application for interim relief.

BENGALURU COMMERCIAL COURT

ACC LIMITED V. ACC STEEL PVT. LTD.

In an ongoing matter, the Plaintiff has raised an argument that it need not formally obtain the leave of the court to file those documents that came into existence after the filing of the suit, as Order XI Rule 1(5) of the CPC (as amended by the Commercial Courts Act, 2015) only pertains to documents that existed at the time of filing the suit.

BOMBAY HIGH COURT

IPRS V. RAJASTHAN PATRIKA

The Court has held that the 2012 amendments to the Copyright Act have the effect of creating substantive rights in favour of authors of underlying works. Communication of a sound recording to the public on each occasion, other than in a cinema hall, amounts to utilization of underlying literary and musical works, for which the authors thereof have a right to collect royalties.

SUPREME COURT

NN GLOBAL V. INDO UNIQUE FLAME

An unstamped instrument when it is required to be stamped cannot exist in law as it is neither a contract nor enforceable in law. Thus, an arbitration agreement (independently or in a larger instrument) which attracts stamp duty but is unstamped or insufficiently stamped would render agreement contained in such instrument as being non-existent in law and cannot be acted upon.

Significant Judgments

DELHI HIGH COURT

INTEX TECHNOLOGIES V. T.L.M. ERICSSON

First judgment in India dealing with SEP issues from a Division Bench. Court has laid down the test to seek interim injunction in SEP matters viz. assess prima facie (i) whether patent is infringed, (ii) whether defendant is an unwilling licensee and (iii) whether SEP Owners royalty offer is on FRAND terms. Court has also held that injunction, interim or final, can be granted based on infringement of a single patent from the whole portfolio.

“...though in *Unwired Planet v Huawei (supra)*, the UK Supreme Court did not grant an injunction until after the FRAND trial, yet this court is of the view that the Courts can and should do so before the trial.”

Court has also held that defendant must pay appropriate security to secure the SEP owner if the defendant is using the SEP technology and has rejected the SEP owner's offer and /or made its own counter offer.

On facts, Intex was held to be an unwilling licensee who had infringed the asserted

patents. Court has relied upon its admissions on essentiality in its complaint to CCI and its lack of expert evidence to disprove infringement. Ericsson's offered royalty was found to be prima facie FRAND. Accordingly, the Court directed Intex to pay the entire amount to Ericsson during the pendency of the proceedings.

DELHI HIGH COURT

DIGITAL COLLECTIBLES V. GALACTUS FUNWARE TECHNOLOGY

Rario, that sells, purchases and trades officially licensed 'Digital Player Cards', along with 5 cricket players who have licensed their personality rights to Rario, filed this suit against Defendants that operate online fantasy sport (OFS). These Digital Cards are NFTs sold by the Plaintiffs. The Plaintiffs' grievance against the Defendant arises from their sale of NFTs that use the likeness of the cricket players.

“In the absence of a specific legislation, the right to publicity cannot be an absolute right in India.”

Refusing to grant an injunction, the Court has made significant observations affecting the jurisprudence surrounding personality rights in India. The court noted that the violation of the right to publicity must be considered on the touchstone of passing off and weighed against the fundamental right to free speech. Hence, for the right of publicity to be infringed, it would have to be shown that there is misappropriation of the goodwill / reputation.

The court has also applied the principle of transformative use to hold that a work that contains significant number of transformative elements or creative contributions, it would become a protectable expression rather than an infringement of personality rights.

DELHI HIGH COURT

MRS. X v. UNION OF INDIA

Petitioner sought blocking of websites exhibiting intimate images / Non-Consensual Intimate Images (NCII) by various

intermediaries, including search engines. In the facts of this case, the petition had become infructuous, but the Court decided the matter to protect the interest of the victims like the Petitioner.

Court has held that search engines have a social responsibility to be proactive in de-indexing the links containing illegal (NCII) content when brought to its knowledge. It is untenable that the user/victim must approach the intermediary every single time the content is duplicated. Noting that technology tools already exist to achieve this purpose, the Court noted that intermediaries that do not remove content within the stipulated timeline cannot invoke the immunity under s. 79.

“The timeframe as stipulated under Rule 3 of the IT Rules must be strictly followed without any exceptions.”

Court has made extensive directions and recommendations to the MEITY and Delhi Police to ensure cases pertaining to NCII are dealt with in a manner that minimizes the trauma to victims. It has held that the intermediaries have a pro-active obligation when dealing with NCII.

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