2014

PATENT

Dr. Aloys Wobben and Anr. vs. Yogesh Mehra & Ors. - The Supreme Court of India in a landmark judgment dated 2nd June, 2014 in this case has decisively settled the controversy concerning multiple remedies that can be adopted in proceedings for revocation of patents. The Supreme Court set aside the Order dated 20 January 2012 passed by the Delhi High Court which was the subject of challenge in the Special Leave Petition.

The provisions of the Patents Act, 1970 interpreted by the Supreme Court are:

a. Section 25 (2) of the Patent Act 1970, i.e. a Post Grant Opposition which can be filed within one year of the grant of a patent.
b. Section 64 (1) of the Patents Act which provides for an original revocation petition before the Intellectual Property Appellate Board (IPAB) "or" a counter claim seeking revocation in a suit for infringement before the High Court.

The Supreme Court in its well-reasoned order held the following:

1. Where there is a post grant opposition filed under the provisions of Section 25(2) of the Patents Act, it would eclipse Section 64 as also a counter claim. In other words, once there is a post grant opposition, no revocation before the IPAB or a counter claim in an infringement court can be entertained.
2. The use of the expression 'or' in Section 64 implies that either a revocation before the IPAB or a counter claim before the High Court will lie but certainly not both.
3. If there is a revocation filed before the IPAB prior to infringement suit, then such a revocation would continue and a counter claim before the infringement court would not lie.
4. If, on the other hand, an infringement suit has been filed first, then only a counter claim can lie but a subsequent revocation petition would be barred on the principles of *res judicata*.
5. The High Court is a superior court to the IPAB.
6. The Apex Court also elaborated on the concept of "person interested" under Section 2(t) of the Act holding the same to be a dynamic term.
7. The parties can by consent decide to take their disputes before a specific forum and in light of this, the consent order dated 1st September, 2010 was fully justified.

This is an extraordinary judgment as it affects all infringement actions and related counter claims and/or revocation petitions. It also affects post grant oppositions and creates a balanced regime which harmonizes:

i. Post grant oppositions
ii. Revocation before the IPAB
iii. Infringement actions and counter claims.

Anand and Anand represented the Petitioners Dr. Aloys Wobben and WPG before the Supreme Court.

Natco v. Teva (SLP(C) 15602 of 2014) - Natco preferred to file a Special Leave Petition before the Hon'ble Supreme Court against the order of the Division Bench of the Delhi High Court granting territorial jurisdiction in the matter of Teva Pharmaceutical Industries Limited & Ors vs. Natco – FAO No. 144 of 2014.

On the date of the admission of the Special Leave Petition, the Hon'ble Supreme Court of India was pleased to dismiss the application holding that no grounds for an appeal were made out.

The Hon'ble Court also stated that litigation cannot be stalled on technical issues like jurisdiction wherein the very same parties were litigating the similar matter in the Delhi High Court.

TEVA Vs. NATCO - Teva Pharmaceutical Industries Limited & Ors. v. Natco Pharma Limited (FAO (OS) 144 of 2014) – Delhi High Court (Division Bench)

The Appellate Bench of the Delhi High Court overturned the decision of the Single Judge returning the Plaint filed by Teva Pharmaceutical Industries Limited (Teva) on the grounds of lack of territorial jurisdiction.

Teva had filed a suit in the nature of a *quia timet* action against Natco Pharma Limited (Natco) seeking an injunction against the use of its patented process of manufacturing Glatiramer Acetate, a treatment for Multiple Sclerosis. The said process is covered under Indian Patent No. 190759.

The Single Judge returned the Plaint for presentation before an appropriate forum on the following grounds:

a. That the patent in question is a process patent and not a product patent and there is no pleading to the effect that the infringing process is either being or is likely to be practiced in Delhi.

b. That the entire focus of the Appellants' case was that the product is going to be exported to the US and it is not the case that the product will be exported from Delhi.

c. That Section 48(b) of the Patents Act, 1970 which gives a patentee the right to exclude third parties from using a patented process or from selling a product obtained directly by the patented process would not give rise to sufficient apprehension of infringement in Delhi to give a court in Delhi jurisdiction in a *quia timet* action.

The Division Bench while overturning the order of the Single Judge found that on a purposive reading of the Plaint it could not be said that the suit was restricted to preventing export of the infringing product to the US as *"the suit is for using the patented process of the appellants /plaintiffs for manufacturing the product for sale in US and "elsewhere" and from the averments of the respondent / defendant of sale network of the respondent / defendant in Delhi, it has to be held that the averments pertain to Delhi also."*

The Division Bench further went on to hold that the Defendants by virtue of giving an undertaking that they will not sell in Delhi, cannot oust the jurisdiction of the Delhi High Court which is based on a reasonable apprehension of sale in Delhi, as it would amount to forum shopping on behalf of the Defendants.

The Division Bench therefore concluded that the Learned Single Judge had erred to the extent that he found that the suit was restricted to the export of the infringing product to the US alone. The averments in the Plaint also extend to the apprehension of the marketing of the products manufactured by the patented process in Delhi. And thus, as per the law laid down in ***Bristol Myers Squibb v V.C. Bhutada*** Courts at Delhi would have territorial jurisdiction to entertain the suit.

TEVA Vs. MYLAN [Patent Office) - Review petition against Indian Patent No. 190759 (920/DEL/1995 dated 23rd May 1995) -order dated March 13, 2014 (Indian Patent Office)

Mylan laboratories Ltd. filed a review petition against the grant of IN190759 to Yeda Research and Development Co. Ltd. As per Mylan, patent application no. 920/DEL/1995 was entitled to seven years of term of patent as said application related to invention in the category of pharmaceutical/ drug. Hence the term of patent should have expired on May 23, 2002 as per the Patent (Amendment) Act, 1999. However, the Patent Office erroneously issued the Letters Patent on 15th March 2004 for 20 years term from the date of filing of the application under the Patents (Amendment) Act, 2002. Therefore the grant of patent is *void ab inito.*

Findings of the Controller

- The Patent (Amendment) Act, 2002 came into force with effect from 20th May 2003 where the provisions with respect to term of patent among other things were amended.
- The acceptance of the application was notified in the official gazette dated 23rd August 2003 under the provisions of the Amended Act of 2002.
- Since there was no opposition, the applicant requested sealing on 23rd January 2004 and patent was granted on 15th March 2004.
- There was no infirmity in the procedure followed by the Patent Office in processing the application.

- Mylan is neither the applicant to the concerned application nor patentee or licensee to concerned patent. Also, they have not filed any opposition to the grant of the patent in the past. Accordingly, Petitioner has no *locus standi* to file such review application.
- The review petition under Section 77(1)(f) and (g) of the Act, has been filed after a period of more than 10 years.
- From the records, it is clear that the Petitioners have not made any previous attempt to file any opposition or review after the patent was granted on 15th March 2004.
- The timelines prescribed under the law are not merely directory in nature but mandatory and the delay in filing the review petition cannot be cured by filing a petition under Rule 137.
- The Controller has no power to condone such unreasonably long as well as unexplainable delay.
- A writ petition titled Natco Pharma Ltd. vs. UOI & Ors and numbered W.P. (C) 7188/2013 is pending before the High Court of Delhi.
- The issues raised by Natco at High Court of Delhi in W.P.(C) 7188/2013 relates to the same matter and is *sub-judice.*
- Therefore, the Controller held that the review petition cannot be entertained as the Petitioner has no locus to file the review petition and is time barred.

Pfizer's Patent IN 229260 Reinstated by the IPAB

One of the patents covering Pfizer's commercial product Detrol® was revoked by the Controller of Patents *vide* an order dated 27th November 2013 in a post grant opposition proceeding filed by Ranbaxy. The order was appealed by Pfizer. Pfizer also filed an application for stay of the order of the Controller until the final disposal of the appeal.

The hearing in respect of the petition filed by the Appellant praying for stay of the impugned order by the Controller was appointed by the IPAB on 26th of March 2014. Ranbaxy wanted the hearing to be adjourned, and had written a letter to the IPAB for the same, however the Board refused to accept any such request as the board had a considered view that the second respondent having received the notice from the petitioners' as early as on 13.03.2013 had enough time to appear and argue the matter of stay petition. The Board further went ahead and granted a stay to the impugned order as it believed that the Petitioners have a prima facie case in their favor because of the following reasons:

- The petitioner succeeded in the pre-grant and the grounds on which the pre-grant was based were also taken in post grant and the Respondent succeeded,
- The opposition Board report in the post grant proceeding was also completely in favor of the petitioners,
- Ignoring both, the positive pre grant order and the opposition board recommendations, the controller revoked the patent.

The Board also held that the controller incorrectly has removed the patent from the patent register on 05.12.2013, before the limitation period of three months for filing of the appeal.

Blackberry v. UOI – Blackberry's abandoned patent application remanded back to the Patent Office for re-determination as the Patent Office, in a bold and encouraging step, admits to its error!

The Delhi High Court recently gave a decision in favour Blackberry Limited (previously known as Research in Motion) (*hereinafter referred to as the 'Petitioner'*) who had filed a writ petition against Union of India challenging the order dated 22nd August, 2012 by which the Indian Patent Office abandoned patent application number 980/DEL/2004 on the ground that it had that it was not put in order for grant within the statutory period of one year prescribed under the Patents Act, 1970 (*hereinafter the Act*).

In the present case, the first examination report was issued on 23rd December, 2004. The statutory period for putting this application in order for grant expired on 23rd December, 2005. The Petitioner in compliance with the provisions of the Act replied to the First Examination Report by 1st August, 2005. However, the Patent Office did not get back to the Petitioner regarding the status of the application till the penultimate day i.e 22nd December, 2005 and that too on the insistence of the Petitioner.

The Petitioner thereafter tried to resolve all the objections raised in the First Examination Report by filing written submissions and amending the claims of the patent on the last day for putting the application in order for grant i.e 23rd December, 2005. When the Examiner was not satisfied, the Petitioner also had a meeting with the Assistant Controller till 6 pm on the same day. *Despite the Petitioner's physical presence* *in the office till 6 pm, the Indian Patent Office dispatched a second examination report via post at 7 pm on 23rd December, 2005!*

This report obviously could not be received by the Petitioner within the time stipulated by the Act. The Petitioner filed a review under section 77(f) of the Act to set aside the second examination report. The same was not heard. After incessant follow up, the patent office in a shocking decision vide order dated 22nd August, 2012 abandoned the patent application 980/DEL/2004 on the ground that it was not put in order for grant within the statutory period i.e 23rd December, 2005.

The Petitioner, represented by Mr. Pravin Anand, Anand and Anand, challenged the above decision on the grounds of violation of principle of natural justice as the Petitioner had not been given a fair opportunity for a hearing. During the proceeding, the Respondent submitted a letter dated 7th January, 2014 to the Court by which the Patent office admitted to its own error!

The relevant portion of the letter reads as –

"*... The office is of considered view that this was an error as the applicant* [Blackberry Ltd] *was not given natural justice before taking adverse decision on their application.... Therefore, keeping in view the principles of natural justice, the office will have no objection to decide the case on merit...*"

The Petitioner therefore submitted that in view of the letter dated 7th January, 2014, the writ must be allowed as regard patent application no. 980/DEL/2004 and that the Patent Office must hear the application and decide the same on merits.

The Hon'ble Court took cognizance of these arguments, allowed the writ and passed the following order on 28.02.2014 –

"*... the impugned order dated 22nd August, 2012 in the case of Patent No. 980/DEL/2004 is set aside and the matter is remanded back to the Patent office for re-determination after giving opportunity of hearing to the Petitioner...*

Submission of this letter is an extremely bold and encouraging step by the Patent office as the same is a clear acknowledgement of the existing practice where the Patent office instead of examining the patent application deemed an application abandoned under section 21 of the Act. These applications used to be abandoned despite the fact that the patent applicant continued to vociferously prosecute the same as in the present case.

The parties to the petition and especially the Patent Office should be highly appreciated and credited for setting this valuable precedent as this acknowledgement is a death knell to the continuation of the above practice as the Patent office now shall have to necessarily examine each application and pass orders under section 15 of the Act in case it finds a patent application unfit for grant.

This decision and the background facts that led to it are also a positive development for the patent scenario of this country and should act as a great incentive for inventor companies restoring their faith in the Patent Office.

TRADE MARKS

WWE v. Reshma Collection & Ors-The Division Bench vide order dated 15th October 2014 for the "first time" in India has held that due to advancements in technology, and rapid growth of new models of conducting businesses over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as the seller having shops in that place in the physical world. The Division Bench keeping this in mind have held that when the shop "in the physical sense" is replaced by "virtual shop" because of the advancement of technology, it cannot be said that the Plaintiff would not carry on business in Delhi.

Christian Louboutin Sas v. Nakul Bajaj & Ors.-This case was filed for infringement of the CHRISTIAN LOUBOUTIN trademarks and publicity rights of Mr. Christian Louboutin against N.R Wardrobe Fuss Pvt. Ltd and the Hon'ble Delhi High Court granted an ex parte ad interim order of injunction against the Defendants restraining them from selling, offering for sale, advertising or in any other manner dealing with goods of any description bearing the Plaintiff's registered trademarks, either through their e-commerce website i.e. www.darveys.com or through any outlets or any events or exhibitions.

The Plaintiff in this case argued that the goods bearing the Plaintiff's trademarks i.e. the word mark CHRISTIAN LOUBOUTIN or its distinctive 'Red Sole' trademark displayed for sale on the Defendant's website were "deemed" counterfeits as they were being sold without the Plaintiff's authorization or permission. The Plaintiff also argued that even if these goods were presumed to be grey-market goods, the normal rules of parallel importation would not extend to the Internet due to considerations like anonymity and ubiquity of the Internet.

Furthermore, the present case involved "luxury goods" which have an aura of prestige and exclusivity attached to them which aura is likely to suffer immensely if such goods are made available outside the Plaintiff's exclusive distribution channels.

Lastly, the Plaintiff argued that the exceptions provided under the Trade Marks Act for grey-market goods do not apply to the facts of this case due to various reasons including the absence of a disclaimer on the Defendants' website regarding their non-affiliation with the Plaintiff, the Defendants alluding to tie-ups with the Plaintiff and the presence of other legitimate reasons.

Foundry Visionmongers Ltd. vs Vishal Dudeja and Ors. This is a contempt petition filed by the petition in response to the obstruction of the court mandated ex-parte inspection of the computer systems by the Local Commissioner. Previously, the Hon'ble court had granted an ex-parte ad interim injunction as well as appointed a Local Commissioner to carry out a technical inspection at the defendants premises. In light of the obstruction to inspect the computer system as well as the hostile attitude of the Defendants, the Hon'ble Judge, **ordered the sealing of the entire premises**. In a first of its kind orders, the Hon'ble Court recognized the need for protection addressing strongly to contempt situations.

M/s Allied Blenders & Distillers Pvt. Ltd. v. Shree Nath Liquor Pvt. Ltd. CS (OS) 2589 of 2013 – The Hon'ble Mr. Justice R. S. Endlaw on July 01, 2014 allowed the Plaintiff's application for interim injunction and retrained the Defendant from using the mark **'Collector's Choice'** or any other mark deceptively similar to the Plaintiff's trademark **'Officer's Choice'**.

M/s Allied Blenders & Distillers Pvt. Ltd. v. M/s Sentini Bio Products Pvt. Ltd. and Anr. CS (OS) 247/2009

The present suit is an interesting dispute pertaining to the alcohol trade.

The Plaintiff is the registered proprietor of the mark "**Officers Choice**". The Plaintiffs whisky sold under the mark Officers Choice is the world's largest selling Whisky with over 16.9 million cases. The Defendant in the present instance had adopted the mark **Officers Special**.

The Delhi High Court vide its order dated 1st July, 2014 confirmed the interim order dated 06.02.2009 in favor of the Plaintiff. The Court held that the balance of convenience was in favour of the Plaintiff and if the injunction was not confirmed then not only the Plaintiff but also the unwary consumers who cannot be compensated in terms of money shall also suffer.

Ford Motor Company and Anr. vs. Mrs. C.R. Borman, CS(OS) 1710 of 2005 - The Delhi High Court recently declared "FORD" as an extremely well known mark in the suit that was settled between the parties.

The Delhi High Court took into account the following factors to come to the above conclusion -

i) the long duration for which the mark had been used by the plaintiff,
ii) the wide extent of the geographical area of the use of the mark "FORD",
iii) the knowledge of the trademark "FORD" to the general public,
iv) the goodwill and reputation that it had earned through extensive promotion, publicity, advertisement and sales and
v) the various trademark registrations that it had acquired

The Plaintiffs placed various documents on record which proved the above factors and aided the High Court to determine whether the mark "FORD" should be declared as a well-known mark or not. The Plaintiffs proved that –

- The mark "FORD" was being used as a part of their trade/corporate name and as a trademark on its products and services continuously and extensively since the year 1903 and that FORD had been selling cars in India since the year 1908.

- FORD had obtained numerous trade mark registrations in various classes in India.

- That FORD had been carrying out various business/activities in India since the year 1952 after the establishment of the FORD FOUNDATION. Some of these activities included manufacture and sale of vehicles and providing superior quality of products and services all of which led to the public associating the trademark "FORD" solely and exclusively with the Plaintiff.

- The extensive goodwill and reputation enjoyed by the plaintiff across the globe was proved by

  i) The vast expenses incurred by them in their promotional and advertising campaigns

  ii) The fact that the trademark "FORD" had been identified by the Guinness Book of Business Records as the 7^{th} most powerful brand name in the world and that "FORD" was consistently listed in the top 100 brands of the world by "Interbrand's Compilation of World's Top 100 Brands"

In light of the above, the Delhi High Court held that the Plaintiffs had beyond reasonable doubt proved that their mark "FORD" was an *extremely well-known mark* amongst members of the trade and the public at large.

The Plaintiffs had filed a suit against the Defendants for infringement of trademarks and passing off among other reliefs as they had dishonestly adopted the Plaintiffs' mark as their trademark/trade name. The matter was settled and the Defendants undertook to not carry out fresh production with the trademark and logo "FORD", to sell of its existing stock within 18 months and to destroy all material, accessories packaging etc bearing the Plaintiffs' mark. The suit was decreed in favour of the Plaintiffs in terms of the prayer for infringement of trademarks and passing off.

Jockey International Inc. and Anr. vs. R. Chandra Mohan and Ors. - CS (OS) No. 253 of 2012 - The Delhi High Court in this case while granting the relief of permanent injunction and damages to the tune of Rs. 3 Lacs to the Plaintiffs has also declared "JOCKEY" to be a "well-known" mark stating that the Plaintiffs have established beyond reasonable doubt that the trade mark "JOCKEY" is an extremely "well-known" mark amongst members and of the trade and of the public at large.

The reason for holding the mark "JOCKEY" to be a well-known mark can be attributed to the long duration for which the mark has been put in use by the Plaintiffs, the wide extent of geographical area of use, the knowledge of the trade mark "JOCKEY" to the general public; its goodwill and reputation due to extensive promotion and advertisements; use of the mark as well as extensive sales made by the Plaintiffs under the mark "JOCKEY" in India and other countries and the numerous registrations obtained of the mark.

Cisco Technologies Inc. & Anr. vs. Santosh Tantia & Ors. – CS (OS) No. 1389 of 2008 - The Delhi High Court in this matter was pleased to grant a permanent injunction against the Defendants restraining them from using the mark CISCO and the Bridge device. The Court was also pleased to award damages of Rs. 5 Lacs and costs of Rs.20,000/-.

Most importantly, considering the overall facts and circumstances of the case and the evidence produced by the Plaintiffs, the Court declared CISCO to be a well-known mark as being used by the Plaintiffs not only in India but in many other countries.

The Court while awarding the damages was also pleased to observe that the Delhi High Court has granted damages in various Intellectual Property cases to the Plaintiffs representing various industries ranging from software to automobiles, chocolates to pharmaceuticals, stationery to luxury brands, etc.

The Indian Hotels Company Limited vs. Ashwajeet Garg & Ors. CS (OS) 394/2012

The Delhi High Court on 1^{st} May, 2014 confirmed the injunction in favour of The Indian Hotels and restrained the Defendants from using the mark ZIVA or JIVA or any other deceptively similar mark in respect of SPA services and any other similar services as that of the Plaintiff.

The principle laid down in *Rajnish Aggarwal Vs. Anantam* is attracted in this case. The said principles states that, in terms of Section 11 of the Trade Marks Act, a mark which is identical or similar to an earlier trade mark cannot ordinarily be registered and, where registration of the Defendant's mark is not correctly granted in accordance with the Trade Mark Rules, 2002, the Defendant cannot take the benefit of Sections 28(3) and 30 of the Trade Marks Act, 1999. Therefore, there is no bar to the suit for infringement.

The Hon'ble Judge upholds the principle that a suit for infringement of a registered trade mark against another registered proprietor is maintainable where the marks are identical or similar. Further, in such a case, interim orders including for injunction restraining use can be made by the Court if it is prima facie convinced of the invalidity of the Defendant's mark.

The Defendants are however, entitled to use the mark JIVAYA in relation to SPA related services as the Plaintiff has no objection to the said use. The Hon'ble Judge has additionally allowed the Plaintiff's application under Section 124 which was filed for the stay of suit to enable the Plaintiff to file a rectification petition before the IPAB challenging Registration No. 1868684 for the mark 'ZIVA' filed by the Defendants.

Jockey International Inc. and Anr. Vs. R. Chandra Mohan and Ors. - CS (OS) No. 253 of 2012-

In this case the Delhi High Court while granting the relief of permanent injunction and damages to the tune of Rs. 3 Lacs to the Plaintiffs has also declared "JOCKEY" to be a "well-known" mark stating that the Plaintiffs have established beyond reasonable doubt that the trade mark "JOCKEY" is an extremely "well-known" mark amongst members and of the trade and of the public at large.

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Philip Morris Products SA & Anr. Vs. Mr. Sameer & Ors. (Bombay) - CS (OS) No. 1723 of 2010 AND Philip Morris Products SA & Anr. Vs. Mr. Anil Kumar Singh & Ors. (Kolkata) - CS (OS) No. 500 of 2010

The Learned Judge decreed the matters in favour of Philip Morris granting an injunction restraining the Defendants from infringing the registered trademark MARLBORO and the 'roof device'.

The interesting thing about these orders is that the learned Judge has also restrained the sale of parallel imports or grey-market goods, which are genuine goods but not meant for sale in India. This is in contrast to the recent Samsung judgment of the Division Bench of the Delhi High Court wherein the Court had held India to follow the principle of 'international exhaustion' of trademarks rights, hence making parallel imports legal.

The learned Judge has clearly struck a distinction in the present case from the Samsung case stating that the genuine non-domestic goods sold by the Defendants do not appear to be "lawfully acquired" and therefore, would amount to infringement of the Plaintiffs' trademark. This would imply the following:

1. Any genuine cigarettes imported into India would have to be "lawfully acquired" by the defendants in order to show they are not infringing.

2. This would require parties to show documents such as bills of lading, invoices, receipts of payment of import duty, excise duty, etc.
3. The Defendants will also have to disclose their Import Licenses, Sales Tax Certificates, etc. and all other licenses required to legitimately import and sell goods.
4. Parties would also require to disclose the source from where they obtained the cigarettes and whether the said sources are legitimate.
5. This would make the burden to prove legitimacy of the imported goods extremely high for the defendants.
6. Even where a party is able to prove that the goods have been "lawfully acquired", the judge has kept the question of "legitimate reasons", such as difference in packaging, quality, prescribed tar content, warning labels, etc., to stop the sale of contraband goods open.
7. Therefore, if a party is found to be selling contraband cigarettes which it claims to have lawfully acquired, we would still be at liberty to agitate the issue of legitimate reasons, such as differences in the goods and non-conformity with the local laws, to prevent the sale of the said goods.

The Court was also pleased to grant damages and costs, although nominal considering the profile of the Defendants. However, it is one of the extremely rare times that any damages have been granted by the Court in a preliminary judgment without the Plaintiff having to lead evidence in a trademark infringement matter.

Louis Vuitton Malletier vs. Arif Khatri CS (OS) 270/2014 - On 31st March 2014- The Louis Vuitton trademarks: the LV logo, the LOUIS VUITTON word mark and the Toile monogram pattern, the sine qua non of the global fashion leader Louis Vuitton Malletier, have been held to be well known trademarks by the Hon'ble Delhi High court. The Hon'ble Court recognized these trademarks to be well-known in an order passed by it in a lawsuit filed by Louis Vuitton against a third party which had been found to be dealing in counterfeit goods bearing its registered trademarks.

Louis Vuitton had sometime in late January, 2014 filed a suit seeking permanent injunction restraining infringement of its registered trademarks, passing off, dilution, damages, etc. against a shop in Lajpat Nagar, which had been found to be dealing in counterfeit Louis Vuitton goods. On the first day of hearing the Hon'ble Court was prima-facie convinced of the Plaintiff's case and was pleased to grant restraint orders against the Defendants. Further the Hon'ble Court was also pleased to appoint Local Commissioners to conduct raids at the premises of the Defendants, in order to confirm that the Defendants were indeed selling counterfeit Louis Vuitton goods.

When the matter came up next before the Hon'ble Court, the Court, upon a statement of the Defendants that they would not in future deal in goods bearing the registered trademarks of Louis Vuitton, decreed the suit granting a permanent injunction against the Defendants, in favour of Louis Vuitton. Though the Defendants had initially insisted that they would not pay any damages, the Hon'ble Judge, imposed damages of Rs. 3 lakhs upon the Defendants. The Hon'ble Court was further convinced that the documents on record and the averments in the plaint sufficiently established the registered trademarks of Louis Vuitton as well known, and accordingly granted a "Well-Known Trademark" recognition to the trademarks, LOUIS VUITTON word mark, the LV logo and the Toile Monogram pattern, of Louis Vuitton.

Hewlett-Packard India Sales Pvt. Ltd.; Samsung India Electronics Pvt. Ltd. Versus Mr. Bharat Bhogilal Patel; Controller of Patents and Designs IPAB - CIRCUIT SITTING AT MUMBAI 7TH MARCH 2014

In this matter, the Board interpreted the stay allowed by the Madras High Court to be a limited stay (which was not to extend further) and allowed the ORAs. Additionally, the Board permitted the Applicants (Hewlett-Packard India Sales Pvt. Ltd.; Samsung India Electronics Pvt. Ltd) to file a petition if aggrieved.

JURISDICTION

Sholay Media and Entertainment Pvt. Ltd. & Anr. Vs. Mr. Yogesh Patel & Ors. FAO (OS) No. 222 of 2010 in CS (OS) No. 1714 of 2001 before the High Court of Delhi

The Division Bench of the Delhi High Court on 13th March, 2014 allowed an appeal preferred by Sholay Media and Entertainment Pvt. Ltd. (hereinafter referred to as "SMEPL") against an order dated 27th January, 2010 of the Single Judge which had allowed the Respondent's application seeking rejection of the plaint. The basic premise of the appeal was whether or not the Delhi High Court had the necessary jurisdiction to entertain the suit as a part of the cause of action had accrued in Delhi.

The Hon'ble Bench took into consideration the arguments of Mr. Pravin Anand, Anand and Anand who represented SMEPL, and held that the impugned order was patently erroneous due to the following reasons:

1. The impugned Order overlooked that the CD Rom advertising the Respondent's website www.sholay.com was distributed along with the December issue of the 'IT' magazine that had extensive circulation in New Delhi.
2. The impugned Order overlooked that the CD Rom when loaded displayed the Respondent's website in prominent detail, such that any user of the same when clicking on the link was transported to this website and in turn could avail of their various services such as E-greetings/E-chat and goods such as DVDs.
3. The impugned Order failed to take into consideration that the Respondent's website is a virtual store with the "essential interactive features" that permit a visitor to order goods or services and communicate with the Respondents via e-mail.

The Hon'ble Bench while taking cognizance of the fact that in the changing business environment, the internet is increasingly coming to be relied upon as a source of information and a mode of conducting business, held that the Respondent's advertising and promoting their website was inherently intended to promote their business actively in Delhi.

This decision also goes onto significantly acknowledge that the presence of an infinitesimal fraction of a cause of action at a particular place is sufficient to confer jurisdiction on the court to entertain the lis.

WRITS

SSTL vs UoI – "MTS-Internet Baby" Case

The Russian conglomerate-backed telecommunication services company Sistema Shayam TeleServices Limited (SSTL) has filed a writ petition before the Delhi High Court challenging the order of the Advertising Standards Council of India (ASCI) which ordered the take down of the popular and trending advertisement "MTS 3G Plus – Born for the Internet" (#MTSinternetbaby). Justice Manmohan of the Delhi High Court who heard the arguments in this matter has stayed the operation of ASCI's order.

The popular advertisement showcases the speed of the petitioner's telecommunication services as well as plays on the concept that the younger generation is amenable to technology at a very young age. The concept is brought to life by an animated new born child who starts using various gadgets such as cellular phones and computers to click "selfies" and access information on the internet, right after he is born. The advertisement produced by Smugglers London and conceptualised by Creativeland Asia has received critical acclaim both from within the industry as well as viewers from across the world. SSTL has spent over US$ 4 Million on this advertising campaign and as per the latest market findings; the advertising campaign seems to be bearing fruits with a 10% jump in the sale of MTS 3GPlus Dongles.

ASCI, acting on the complaints of some of the viewers, had objected to the fact that the advertisement depicts a mother in labour position which was "gross, indecent and offensive especially to women". In furtherance of the same, an order was passed by the Consumer Complaints Council of ASCI to restrain SSTL from airing the advertisement on or after the 7th of April 2014. Aggrieved by the same, SSTL preferred a writ petition to set aside the impugned order of ASCI dated 24th March 2014.

The arguments for SSTL in the case before the Delhi High Court were led by senior counsel Mr. Sudhir Chandra Aggarwal and Mr. Pravin Anand, Managing Partner, Anand and Anand. The team from Anand and Anand consisting of Mr.Shrawan Chopra, Mr. Shantanu Sahay and Mr. Aasish Somasi had briefed the leading counsels in this matter. The counsels for the petitioner argued that the impugned order of ASCI was erroneous and that it was in abrogation of the petitioner's fundamental rights under Article 19(1)(a) and Article 14 of the Constitution of India. It was also pointed out by the learned counsel that the ruling of ASCI was arbitrary especially in light of the fact that popular movies such as 3-idiots and Salam Namaste which are broadcasted on television at prime time depicted women in a "birthing position". The counsels prayed for a stay of the operation of the impugned order given that no alternative efficacious remedy was available to them under the ASCI code.

Mr. Neeraj Chaudhari, appearing on behalf of the Ministry of Information and Broadcasting argued that only the ministry had the powers to issue a takedown notice to the broadcasters and that no such notice had yet been issued with regards to the advertisement under dispute by them. However, after hearing the arguments of both the counsels, the Hon'ble Judge observed that petitioner would suffer irreparable harm and prejudice if an interim stay of the operation of the orders of ASCI were not granted. Consequently, the judge was pleased to grant an ad interim stay order in favour of the petitioners.

Notice has been issued to the Ministry of Information and Broadcasting affairs as well as ASCI to file their replies by the next date of hearing in the matter.

TRADE SECRETS

Star Dental Centre Pvt. Ltd. v. Saurabh Singh & others, CS (OS) 1060 of 2014

The Plaintiff, a healthcare organization operating Dental Clinics under the brand name 'Clove', had instituted this suit to restrain Defendant nos. 1 and 2, who were earlier the employees of the Plaintiff and who had commenced business in the name and style of the Plaintiff. It was the case of the Plaintiff that the Defendants had failed to return the hard disk containing confidential information and intentionally deleted and retained the said information. Further, the Defendants had accessed the confidential information of the Plaintiff even after resignation and visited their office. The Hon'ble Judge was pleased to decree the suit on the following terms:-

- That the Defendants state that they are professionals and that though they do not admit to the allegations of the Plaintiff but for the sake of settlement in the matter and to show bonafide that they do not intend to take unfair advantage of any of the process or material of the Plaintiff to which Plaintiff is exclusively entitled to;

- That the Defendants will return all confidential information which was received from the server of the Plaintiff, within 3 days, through personal email of the Plaintiff;

- The Defendants further state that they will return and will not infringe the rights of the Plaintiff to any of the material;

- The Defendants further state that to dispose of the matter and to be not burdened with the litigation, they are willing to pay the amount of 50,000 INR within 6 months of 17th April 2014;

- Though the Plaintiff has not admitted to the version of the Defendants as aforesaid but the counsels for the Plaintiff under instructions from their client, state that since the aforesaid terms substantially inure to the benefit of the Plaintiff, they are willing to cut short the controversy.

ALTERED VIDEO-CONFERENCING RULE

(Of the plaintiff for recording of the evidence of the witnesses of the plaintiff by video conferencing)

E. I. DuPont De Nemours vs. Jagdish Jain - Order dated April 24, 2014 in IA No.5231/2013

The Hon'ble Judge pushed the envelope with regards to recording of evidence through video - conferencing and laid down the following enhanced guidelines:

(1) Presence of embassy official/notary public unnecessary during videoconferencing if the witnesses have furnished a photographic proof of their identity to the Court and to the opposite counsel;

(2) Video camera at the destination of the witness should capture the entire room in which the witness is deposing and there should be none else in the room, not even any table in front of the witness' chair or any reading material;

(3) The witnesses must make their statement at a neutral venue and not their home or office, preferably a Chamber of Commerce and a certificate to the said effect to be furnished to the Court and the opposite counsel;

(4) The Court commissioner has the power to stop the recording of evidence should the witnesses be found to be indulging in any unfair practice.

DOMAIN NAMES

Dell Inc. has filed INDRP complaints before the National Internet eXchange of India (NIXI) against several cyber squatters that had wrongfully registered domain names comprising of the word "DELL", and successfully obtained orders for recovery of **20** such domain names, till date.