



**CENTRiiK**

Centre for Intrinsic & Intellectual Knowledge

## CENTRiiK'S NEWSLETTER



*As the holiday season is upon us, we find ourselves reflecting on the past year. It's been quite a year for us all! We hope that 2019 has been just as memorable for you, your colleagues and your loved ones.*

*Let's go back and revisit all that happened and made 2019 memorable.*



## **CENTRIK'S FLASHBACK 2019**

- **In January,**

1. The Supreme Court set aside the judgment of a Division Bench of the Delhi High Court which had revoked Monsanto's patent and remanded the matter to the trial court. The issue of patent validity remains open and has not been decided by the court, as has been wrongly reported by the media.
2. A Draft Amendment to the Cinematograph Act can put a person in Jail the Next Time a person record an end-credits Scene in a Movie Hall.

- **In February,**

1. Calcutta High Court in a GI and Certification TM infringement case filed by the Tea Board of India against ITC for use of 'Darjeeling' as part of the name of a refreshment lounge called the Darjeeling Lounge in one of its hotels. In his analysis of the decision, he focused upon the interpretation of the Court with regard to limitation under Section 26(4) and passing off under Section 22 of the GI Act. He further delved into the interpretation of certificate trade mark rights under the Trade Marks Act.
2. In Samsung Electronics Company Limited and Another v. Lakhan and Others - Delhi High Court [February 28, 2019]. The Court granted a permanent injunction restraining the Defendants from infringing and passing off the Plaintiff's mark "SAMSUNG" by using an identical mark in respect of mobile phones, accessories and allied products. In arriving at the decision, the Court noted that the Defendant No. 8 had no real prospect of defending the claims, and had failed to appear before the Court. Moreover, the Court noted that though Defendant No. 21 had entered appearance, it had no prospect of defending the claims.

- **In March,**

1. Delhi HC Dismisses Passing off Suit By Crocs Inc claiming that Design Cannot Constitute Trademark.
2. "See You Later, Alligator!" The Delhi High Court Rejects Crocs' Suit for Passing Off of Registered Design.



- **In April**, World Wrestling Entertainment, the American media and entertainment company, popularly known as WWE, has filed a new trademark application for the term Eat Sleep Conquer Repeat. The mark has been filed under class 25 for clothing. The mark is a popular catchphrase used by WWE's wrestler Brock Lesnar. WWE has also filed several other catchphrases which have been made popular by the wrestler such as Suplex City, Brock Party and Beast in the Bank. It is interesting to note that WWE's decision to file for the phrase has come as a bit of a surprise as the same has been in use by Lesnar for the past several years and has also later been hanged by him.
  
- **In May**, Bollywood superstar Amitabh Bachchan is facing Rs 1-crore legal action for a copyright violation on the social media. He is accused of sharing a poem on his Facebook timeline and tweeting it on May 24 without taking consent of the writer while crediting a person who had sent it to him.
  
- **In June**,
  1. The Ministry of Agriculture had, through an Office Memorandum (OM), set forth the characteristics of "Basmati" rice variety. They had further stated through another OM that in order to ensure the linkage between the variety and the GI, only such Basmati varieties which were grown in Indo-Gangetic area would come under the "Basmati" GI. This was later challenged by the Madhya Pradesh Government.
  
  2. Adidas loses three-stripe trademark battle in European court. Adidas has been unsuccessful in an attempt to expand its trademark three-stripe design in the EU after a court ruled it was not "distinctive" enough. The company did not "prove that that mark has acquired, throughout the territory of the EU, distinctive character following the use which had been made of it", the general court of the EU said
  
- **In July**,
  1. Hindustan Unilever Limited v. Vijay Vishwakarma – Calcutta High Court [July 10, 2019]. The Court granted a decree of interim injunction restraining the Defendant from infringing and passing off the Plaintiff's mark "SURF EXCEL", and copyright in its packet by using an identical mark and packet for selling detergent. The Court noted that the Defendant's product was sold in a colorable and deceptive imitation of the Plaintiff's mark and label which gave rise to a prima facie case against it.



2. Sports giant Nike seems to have hit a snag with its new advertisement campaign as a North Carolina court has issued a preliminary injunction against its “Sport Changes Everything” advertising campaign. The injunction has been granted as the court feels that there is a likelihood of confusion amongst the consumers with the trademarks ‘Running changes everything’ and ‘Sports change everything’. The phrases are registered trademark of the apparel manufacturer and retailer Fleet Feet, Inc.’s. Nike has filed an appeal against the order.
- **In August,**
    1. Like Darjeeling Tea, 'Indori Poha' May Soon gets Geographical Indication Tag, Global Recognition. Also, Khola/Canacona chilli is the famous variety of spicy chilli grown in Khola village and surrounding areas of Canacona taluk in Goa. This chilli is characterized by attractive red in color having a mild pungent taste and thus widely used in making papad. The application was filed by the Khola/Canacona Chilli Cultivator’s Group Association (TKCCGA) and the Department of Science & Technology (DST), Government of Goa in 2018.
    2. USV to acquire JALRA trademark for 200 crores USV Pvt Ltd, Mumbai based drugmaker is in advanced discussions to acquire the trademark ‘JALRA’, the anti-diabetic drug from Novartis, for a deal valued at over 200 crores. JALRA in isolation or in combination is used to treat type II diabetes in patients. JALRA contains Vildagliptin; the patent for the same, owned by Novartis is set to expire in a month. Thus we can expect to see a flood of branded generic versions entering the Indian market. With this brand acquisition, USV will now own the trademark and it can further augment its already strong foothold in the Indian oral anti-diabetic product segment. Eris, Piramal Healthcare and USV Pvt Ltd are a just few of the drug makers that Vildagliptin is licensed to.
  - **In September,**
    1. Dailymotion to pay Mediaset €5.5m for copyright infringement. Dailymotion to pay €5.5m in damages to Italian broadcaster Mediaset.



2. Flipkart declared as a well known Trademark In the matter of Flipkart Internet Private Limited v. Somasundaram Ramkumar [C.S.No.848 of 2017], the Madras High Court on 13 September 2019, Granted permanent injunction in favor of Plaintiff regarding the mark “FLIPPINGKART”. In the decision given by Madras high court, it was stated “the Defendant had adopted the registered trademark of the Plaintiff only with a mala fide intention to spoil the immense goodwill and reputation earned by the Plaintiff among the consumers/general public and therefore, the same would not only amounts to infringement of the Plaintiff’s registered trademark, “FLIPKART”, but also it would amounts to passing off their goods or business or services as those of Plaintiff.” Also Flipkart was declared as a well known Trademark.
  3. Patent Rules Amended - Expedited Examination alternative now accessible to female applicants, Government institutes and others. The Central government originally notified the draft Patents (Amendment) Rules, 2018 on the 4th December 2018, the Patents (Amendment) Rules, 2019 have now happened through a warning by the Central Government on the 18th September 2019 in its official gazette.
- **In October,**
    1. World Intellectual Property Indicators: Filings for Patents, Trademarks, and Industrial Designs Reach Record Heights in 2018. Asia accounted for more than two-thirds of all patent, trademark and industrial design applications in 2018, with China driving overall growth in demand for intellectual property (IP) rights as the United States of America (U.S.) maintained its primacy in patent applications filed in export markets.
    2. The IPO on 25 October 30, 2019 published the Draft Designs (Amendment) Rules, 2019 for open remarks and recommendations. The amendments proposed in the warning which is to be presented in the Designs Rules 2001 will be considered by the administration after the expiry of a time of 30 days from the date on which duplicates of the Gazette of India in which the notice is distributed has been made accessible to the general public for review. Intrigued people can bring up criticisms or give recommendations to the Indian Patent Office by means of an email to or post to Dr. Ashish Kumar, Senior Development Officer, DPIIT.



- **In November,**

1. CISAC Global Collections Report 2019. CISAC is the largest global network for creators, representing 239 authors' societies in over 120 countries. CISAC champions the rights and interests of millions of creators, lobbying for legislation across the world, providing licensing and technology services to societies and ensuring best practice and good governance.
2. Hamidul Misbah appointed global trademark body member. He is the first Bangladeshi to be appointed in a committee of ITA. The International Trademark Association (ITA) on Thursday appointed Bangladesh Intellectual Property Forum's Founder Barrister ABM Hamidul Mishbah as a member to the INTA Emerging Issues Committee for the 2020-2021 term. He is the first Bangladeshi to be appointed in a committee of ITA, according to a press release. Barrister Mishbah will serve for two years, along with other committee members selected from different countries. He will propose policy recommendations and advocacy programs to the Board of International Trademark Association.

- **In December,**

1. In the judgment in Google India Pvt. Ltd. vs. M/s Visakha Industries, delivered on December 10, 2019, the Supreme Court denied to quash defamation proceedings against Google for its failure to expeditiously remove allegedly defamatory material from its 'Google Group' service. The case is significant for online intermediaries operating in India, as it holds that online intermediaries may be liable as a 'publisher' in criminal defamation proceedings under the Indian Penal Code in certain circumstances.
2. Bangladesh has received the certification for *khirsapati* (a certain type of mango) as her third geographical indicator (GI) product. Intellectual property rights have important implications for Bangladesh. We can identify the impacts of these rights from two points of view: economic and non-economic. Economic impacts include potential advantages have long-term impacts on economic wellbeing. Intellectual property rights are essential for maintaining sustainable economic growth.