



Delhi High Court Leads Way for IP Protection, Enforcement

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Earlier this year, Delhi High Court enacted the IP Rights Division Rules, 2022 (IPD rules) to regulate the practice and procedure of the IP Division, which replaced the IP Appellate Board (IPAB).

The IPD rules are noteworthy for reflecting both the court's expeditious transfer of IPAB cases and establishing procedure for myriad disputes the rules seek to cover.

Specifically, the rules recognise: traditional knowledge and all associated rights in common law; tortious actions related to privacy and publicity that involve IP issues; and matters pertaining to data exclusivity and data protection, intersecting with IP rights.

It is evident that the IP Division shall adjudicate all aspects of IP and its intersection with various laws, with the wide definition of IP rights subject matter reflecting the court's expertise to deal with such issues.

The fact that the IP Division shall hear original IP rights lawsuits, appeals from various IP rights registries, and entertain original petitions shows that it seeks to introduce uniformity and consistency in IP rights jurisprudence, as the breadth of decisions shall cover both registrability and enforcement of IP rights.

CASE STUDIES

For instance, clarifying when a patent application is abandoned in *European Union v Union of India*, Delhi High Court observed that to hold a patent applicant had abandoned its application, it was important to examine the facts ascertaining if the applicant truly intended to abandon the patent or not.

In ascertaining this intention, the court could consider negligence by the patent agent, docketing errors, and whether the applicant was able to establish full diligence. If it found no intention to abandon the patent, the court approach ought to be liberal. But failure of the applicant to follow-up



inferred intent to abandon the patent.

In this case, the patent application was restored, and the court also noted that only the writ court was empowered to restore an abandoned patent application by exercising its writ jurisdiction. This power did not lie with the controller of patents.

Balancing the interests of IP rights owners while appreciating the nuance of business trade channels and concept of commonality to the trade, in *Frankfinn Aviation Services v Tata Sia Airlines*, Delhi High Court vacated the injunction and denied interim relief to the plaintiff for its mark “Fly High” that sought to restrain the defendant’s mark “Fly Higher”.

The court held that the term “Fly High” is common to the aviation sector, with over 20 active registered companies incorporating the phrases “Fly High”, “Highflyer”, or “Highflyers”. It also held that the term “fly high” was widely used in the airline sector and coaching institutes. It therefore ruled that the defendant’s intended use of “Fly Higher” was descriptive in nature, and not used as a trademark, which was in fact “Vistara”.

Modifying its approach to protect IP rights with the evolution of infringement on the internet, Delhi High Court’s Division Bench enjoined a defendant – not present in India but infringing the plaintiff’s IP rights – for using the familiar Indian trademark “Tata” as part of their cryptocurrency, merchandise, website and domain name.

The court specifically observed that the mere looming presence of a website in a geography, and ability of customers in that geography to access a website, can also qualify as targeting.

In a design infringement action, the court’s Division Bench reversed the order of a learned single judge, thereby granting an injunction in favour of a plaintiff’s design rights to a slipper. The bench clarified that the existence of products with similar designs was not material for ascertaining design piracy. Relevance was whether the design in question was indistinguishable from designs known at the time of the registration.

BOLSTERING IP LAW

These illustrative decisions by the IP Division, along with the Division Bench, clearly highlight the myriad disputes and holistic ways that IP rights jurisprudence is being shaped by the court.

Creation of the IP Division and enactment of the IPD rules – along with the existing framework of the Commercial Courts Act, 2015 and Delhi High Court Rules, 2018 – bolsters Delhi High Court’s expertise in dealing with IP law issues, highlighting how the judiciary perceives this specialised area of law,



and giving it the attention that it richly deserves.

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