Delhi High Court Intellectual Property Rights Division Rules, 2022: The Delhi High Court Leads the Way for Both IPR Protection and Enforcement

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By Shrawan Chopra and Vibhav Mithal

Earlier this year, the Delhi High Court, enacted the Delhi High Court Intellectual Property Rights Division Rules, 2022 ("The IPD Rules 2022"). These rules were enacted to regulate the practice and procedure of the Intellectual Property Division, which had been created by the Delhi High Court in July 2021 pursuant to the abolition of the Intellectual Property Appellate Board. The IPD Rules are noteworthy not only for the fact that they reflect the expeditious way the Delhi High Court has led the way in terms of creating procedure and absorbing the cases that were transferred from the erstwhile IPAB, but also for myriad disputes that the IPD Rules seek to cover.

Specifically, the IPD Rules 2022 recognize Traditional Knowledge and all associated rights in common law; tortious actions related to privacy and publicity that involve intellectual property issues; matters pertaining to data exclusivity and matters relating to data protection and its intersection with intellectual property as "Intellectual Property Rights (IPR) subject matter"[1]. It thus becomes evident that the Intellectual Property Division shall adjudicate on all aspects of Intellectual Property and its intersection with various laws, and the wide definition of the IPR subject matter reflects the expertise of the Court to deal with the same. The fact that the Intellectual Property Division shall hear original IPR lawsuits, appeals from various IPR registries, entertain original petitions such as a revocation to a patent, amongst other proceedings, shows that the IPD seeks to introduce uniformity and consistency in IPR jurisprudence, as the breadth of the decisions shall cover both the registrability and enforcement of IPRs.

For instance, clarifying when a patent application is abandoned, the Hon'ble Court in the European Union v. Union of India[2] observed that to hold that a patent applicant abandoned its application, it was important to examine the factual position to ascertain if the Applicant in fact intended to abandon the patent or not. The Court held that while ascertaining this intention, it could consider negligence by the patent agent, docketing error and whether the Applicant has been able to establish full diligence, and if it was found that there was no intention to abandon the patent, then the Court ought to be liberal in its approach. However, if the applicant failed to follow-up, then the same may lead to an inference that the applicant intended to abandon the patent. The patent application was restored in this case and the Court observed that only the Writ Court was empowered to restore an abandoned patent application in this manner by exercising its Writ Jurisdiction and that this power did not lie with the Controller of Patents

Balancing the interests of IPR owners, and appreciating the nuance of business trade channels, and the concept of common to the trade, the Delhi High Court in Frankfinn Aviation Services Private Limited v. Tata Sia Airlines Ltd[3] vacated the injunction and denied interim relief to the Plaintiff for its mark 'FLY HIGH' who sought to restrain the Defendant's mark 'FLY HIGHER', where both parties operated in the aviation sector. The Hon'ble Court, in a prima-facie finding, held that the term 'FLY HIGH' is common to the aviation sector, especially since there were over 20 active registered companies incorporating the phase FLY HIGH/HIGHFLYER/HIGHFLYERS. It also held that the term 'FLY HIGH' was widely used both in airline sector, as well as in coaching institutes, and that the Defendant was not the only and first user of the phrase FLY HIGHER. Based on the same the Hon'ble Court held that the Defendant's intended use of FLY HIGHER was descriptive in nature, that FLY HIGHER was not used as a trademark by the Defendant and acknowledged the Defendant's trademark was "VISTARA".

Modifying its approach to protect IPR, with the evolution of how infringement takes place on the internet, the Delhi High Court Division Bench injuncted a Defendant, who was not present in India but was infringing the Plaintiff's IPR sitting in some corner of the globe, by using the trademark TATA as part of their cryptocurrency, merchandise, website and domain name. The Court specifically observed that '*mere looming presence of a website in a geography and ability of customers therein to access a website*' can also qualify as targeting.[4]

The Hon'ble Division Bench of the Delhi High Court in a design infringement action, reversed the order of the Learned Single Judge and granted an injunction in favour of the Plaintiff, upholding that the Plaintiff/Appellant's design rights in its slipper, and clarified that the existence of products with similar designs in the market was not material for ascertaining design piracy, but what was relevant is whether the design in question was *indistinguishable from designs that were known at the time of the registration*.[5]

The above illustrative decisions passed by the Intellectual Property Division of the Delhi High Court, along with the Division Bench, clearly highlights the myriad disputes that are coming up before the IPD and the holistic way IPR jurisprudence is being shaped by the Delhi High Court. The creation of the IPD and the enactment of the IPD Rules 2022, along with the existing framework of the Commercial Courts Act, 2015, Delhi High Court Rules, 2018, has only *bolstered* the Delhi High Court's expertise to deal with Intellectual Property law issues and highlights how the Judiciary is perceiving this specialized area of law giving it the attention it deserves.

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[1] See Rule 2(i)

[2] W.P.(C)-IPD 5/2022, decision dated 31st May, 2022

[3] CS(COMM) 54 of 2022, decision dated 28th October, 2022

[4] Tata Sons Private Limited v Hakunamatata Founders & Ors., FAO(OS)(COMM) 62 of 2022, decision dated 19.09.2022

[5] Relaxo Footwears Ltd. v. Aqualite India Limited and Anr., FAO(OS)(COMM) 145 of 2019, decision dated 27.10.2022

KEY CONTACT

Shrawan Chopra

Partner

View Bio of Shrawan Chopra

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