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TRADE MARKING SPORTSPERSON CELEBRATION: THE APPLICATION OF TRADEMARK LAWS IN THE ARENA OF SPORTS

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INTRODUCTION

Abstract:

Sports celebrations indicate successful moments. Sportsmen's trademark victory dances and joyful motions, which subsequently take over our televisions and newspapers, define them. In today's consumer-focused society, these actions frequently help a sportsperson establish his brand among the general public, which is crucial for a player to make his mark among the public. The question of whether athletes' signature gestures are protected by trademark law has been discussed, nevertheless. This essay investigates the point to which trademark rules, both locally and internationally, permit the trademarking of a sportsperson's hallmark move. After briefly discussing the many categories of unconventional marks under trademark law, the study analyzes the significance of trademarks in sports. Building on this foundation, the study explores the necessity and potential of trademark registration for a sportsperson's celebration action.

The difficulties in registering a trademark for a sportsperson's celebration move are examined in relation to the three standards of pictorial representation, distinctiveness, and statement of source or origin. Finally, the paper makes the case—based on an examination of the several non-traditional marks that are protected by trademark law—that a sportsperson's signature or celebratory gesture could potentially qualify as a trademark.

Introduction to the title:

A fundamental component of human civilization has always been sports. The first records of modern sports date back to 2000 BCE, which is when they were first documented. The initial Olympic Games were held in Greece in 776 BC, which aided in the globalization of competitive sports. Sports have become more and more important over the ages. For example, the Greeks placed such a high value on the Olympic games that the Greek capital of Athens struggled to muster an army during the Persian invasion because so many of its citizens were preoccupied with competing in the games. Sports have evolved significantly from their historical forms in the modern era, and in the last century alone, numerous different sports have been created. A growing amount of attention has been paid to sports, some more than others, due to the ease with which information can now be shared through newspapers, radio, television, and the internet.

Competitive sports are now a platform for marketing, merchandising, franchising, and brand promotion due to the corporatization of contemporary sports. The athletes or participants in various sports have experienced the same thing. Athletes that win championships gain immense popularity among the general public and establish themselves as well-known sports figures, with a sizable fan base that supports them in both their personal and professional life. They have a similar amount of public impact as a well-known celebrity. Among the most well-liked athletes of today are still Maradona, the late Michael Jordan, Sachin Tendulkar, Usain Bolt, Muhammad Ali, and so forth. Plenty to the point that people start to link their name with being the best within the discipline that they play. But the most significant difference between modern sports and those of a few centuries ago is the completely different role that money now plays in sports. In today's sports, branding, franchising, and merchandise play major roles.

Businesses will shell out enormous amounts of money to be linked to a specific sporting event or athlete. For instance, the Board of Cricket Council of India (BCCI) and the Chinese mobile manufacturer Vivo reached an agreement whereby Vivo would pay a staggering 2,199 crore rupees over the course of five years to have its brand name linked to the Indian Premier League (IPL), a well-known cricket competition. Companies nowadays aim to boost the value of their brands by using sporting events and having athletes promote them. The former FIFA president may have captured the essence of contemporary sports in general when he said, "Football is not just a game but it's also a product."

Research Questions:

- ✚ What are the legal criteria and requirements for trademarking sportsperson celebrations?
- ✚ Whether/How do they differ from traditional trademarks in other domains?
- ✚ How do trademark laws apply to gestures and actions performed by athletes within the context of sports, and what are the key challenges and ambiguities in their application?

Research Objectives:

- ✚ To know about the legal criteria and requirements for trademarking sportsperson celebrations.
- ✚ To identify and find out on the differences of these trademarks from traditional trademarks in other domains.
- ✚ To learn the application of trademark laws to gestures and actions performed by athletes within the arena of sports.
- ✚ To understand the key challenges and ambiguities upon their application.

Research Methodology:

A thorough analysis of the body of research, including scholarly works, legal texts, case studies, and industry reports, will be conducted with an implied theoretical methodology in order to establish a theoretical framework and pinpoint important ideas, theories, and patterns pertaining to intellectual property rights, sports culture, and trademark laws.

BRAND VALUE:

The entire amount that a consumer would be willing to pay more for one brand than another is known as "brand value." Sport stars like Michael Jordan, Sachin Tendulkar, Sania Mirza, and many more have been able to engage with the public on a far bigger scale—even with individuals who do not follow their sports—thanks in part to their brand value. In addition to being well-known and successful in their sport, brand value is developed through product launches bearing the athlete's name, showcasing them, or incorporating their most well-known catchphrases. Nowadays, athletes are brands unto themselves. The ability to receive endorsements from other businesses is the main advantage of building a brand. Sportspeople can also make money through endorsements. In actuality, endorsements account for the majority of the income for well-known athletes like Tiger Woods and (84%) Roger Federer (97%). Therefore, sponsorships aid in a sportsperson's financial gain as well as their personal brand-building. When someone develops a brand around themselves, they frequently look for opportunities to profit from strategies that

will guarantee increased sales or serve as a source of extra income. In addition to endorsements, trademarking well-known slogans, signatures, names, or even just the first letters of their names is another way that athletes and celebrities alike do this. Another method for athletes to profit from their individual brand value is to trademark their dance techniques.

Every player has an own style of celebrating a win. This celebration includes dances, gestures, yelling slogans, etc. In actuality, a player's celebration style frequently reveals so much about their character. This increases public awareness of the athletes and fosters greater public interaction with them, which enhances the value of their brand. However, in order to register one's moves and acts as a trademark, one must have an in-depth knowledge of exactly what marks are and the many kinds of trademarks that are legally permissible for registration.

TYPES OF TRADEMARKS

Since ancient times, trademarks were adopted to identify and demonstrate the ownership of a good. For instance, Roman bricklayers would stamp their own mark on their bricks to distinguish them. Sword makers in medieval Europe were required to affix their own identifying marks on their products in order to track down and penalize the maker of a faulty sword. Trademark protection in medieval Europe was limited to common law protection in the absence of any specific legislation. The requirement that trademarks be registered in order to be protected from infringement is the foundation of modern trademark law, having originated in Britain. The British Trademark Act of 1975 was this.

However, trademarks are sometimes misinterpreted to mean merely a phrase or a logo. This is a somewhat limited interpretation of the term, for trademark may encompass any word, symbol, phrase, or insignia that designates and sets one thing apart from another. Trademarks are beneficial because they safeguard a mark's uniqueness when connected to an item or service. They also function as consumer-facing badges of origin for the specific commodity or service. A "trademark" in India is defined by Section 2 (zb) of the Trademark Act, 1999 as a mark that can be visually displayed and that can be used to differentiate the products or services that of one party from those of another. Moreover, the definition of a trademark might encompass headers, signatures, labels, and names.

Therefore, trademark is a symbol that helps us to identify a specific good or service with another. A trademark, however, can also be as unusual as a color, scent, tone, shape, or even a video, in

addition to the words, emblems, symbols, etc. mentioned above. These marks are referred to as non-traditional marks, and while they can be difficult to register, they will be accepted if they meet the trademark requirements of having a pictorial representation and differentiating the product from other similar products. There are roughly nine different non-traditional mark kinds that have been successfully registered on a global scale.

TRADEMARK IN THE ARENA OF SPORTS:

Nowadays, athletes are their own brands. Just like any other prosperous brand, they too require safeguarding their brand identity. Many people try to profit from the notoriety and appeal of well-known athletes. They accomplish this by releasing merchandise with the player's image, name, autographs, jersey number, or other identifiers. This gives rise to the misconception that the specific athlete is connected to or has supported the product. As a result, athletes are ready to trademark anything that they can market as distinctive about themselves and that will bring in money. Names, their initials, a player's jersey number, well-known catchphrases, or even a player's iconic stance are all trademarked in order to profit from the mark's commercial use on apparel, shoes, and other accessories like toys, posters, video games, and so forth.

In addition, players in sports like tennis, cricket, football, and so on are linked to different teams. These groups are identifiable by their unique taglines, logos, and other marks. These teams are now worth more because of the enormous business potential in sports. Dallas Cowboys are the greatest valuable sports club according to Forbes' 2019 estimations, with a franchise value of more than \$5 billion. As a result, even teams try to copyright their names, logos, and other distinctive identifiers.

Therefore, it's become crucial for athletes to trademark a unique feature of their identities. Famous football player Lionel Messi has successfully registered his surname for jewelry, apparel, and sporting goods, and he currently has over 76 registered trademarks in his name. The trademarks for Cristiano Ronaldo's name, initials, and player number are CRISTIANO RONALDO, CR7, and CR9. So are the initials "HK" of English football player Harry Kane.¹ In the sport of football, David Beckham's signature is arguably among the most well-known. In addition to trademarking his name on a number of goods, Beckham also possesses a trademark for the emblem that appears

¹ Beliraya, N. (2022) Application Of Trademark Laws In The Realm Of Sports - Trademark - India. Khurana and Khurana. Available at: <https://www.mondaq.com/india/trademark/1163186/application-of-trademark-laws-in-the-realm-of-sports> (Accessed: 1 April 2024).

on Adidas Predator Boots.²

Sportsmen own a variety of website addresses and internet domain names that are registered as trademarks. A sportsperson's reputation, brand, or company may suffer if their domain name is used in a way that suggests or implies a fraudulent affiliation with them. A sportsperson's names and brand persona should also be protected as a website's trademark because, in the event that it is not, cybersquatters may profit monetarily from the confusion caused by registering a very identical or similar domain name.

In an administrative panel ruling, the WIPO determined that the respondent's registering of the domain name <msdhoni.com> violated the rights of the petitioner, a well-known Indian cricket player, M. S. Dhoni, because it bore an uncanny resemblance to Dhoni's registered trademark for his own name.

Famous batsman Sachin Tendulkar has registered both his name and signature as trademarks in India. His signature appears on a variety of apparel, sporting goods, and stationary products (pens, pencils, books, etc.).³ The names, logos, and slogans of sports teams like the Mumbai Indians and Chennai Super Kings are trademarked.

TRADEMARKING OF CELEBRATORY AND SIGNATURE

MOVES BY SPORTSPERSONS:

From silly dances to basic hand gestures to win over their followers, sportsmen and well-known players have created genuinely original and occasionally popularized borrowed routines on the field throughout the contemporary history of sports. Nonetheless, the majority of these maneuvers lack trademarks. This is due to the requirement that an action or gesture be so distinctive and one-of-a-kind that it can only be reasonably linked to one specific person and not to other people or businesses in order to be eligible for trademark protection. Famous athlete Usain Bolt's signature celebratory position, known as the "lightning bolt," which entails Bolt posing with his legs extended and his arms and fingers pointing diagonally towards the sky, is an example of such a distinctive style. The well-known "Mobot," a victory move used by British long-distance runner Mo Farah, has already been trademarked in the UK IPO.

² Ibid.

³ Trademarking Sportsperson Celebration Moves (no date) Khurana and Khurana. Available at: <https://www.khuranaandkhurana.com/2022/06/30/trademarking-sportsperson-celebration-moves/> (Accessed: 1 April 2024).

There are numerous instances in football where athletes have trademarked their celebrating motions as a "device" or a visual mark. The "Eleven of Hearts" celebratory move, in which the well-known Welsh football player Gareth Bale curves his hands into the shape of a heart with the number "11" in between, is his personal trademark. The mark may now be found on jewelry, headgear, purses, shoes, and umbrellas. England striker Jesse Lingard has registered his trademark for his well-known "JLingz" celebration motion, in which he touches his forehead using his fingers to form the letters "J" and "L" from his name.⁴ The trademark is authorized for usage on accessories, footwear, and apparel.

The "Vicht" is a well-known trademark issue regarding a sportsperson's maneuver. The tennis player Niclas Kroon was the one who copyrighted the "Vicht" symbol, that involved folding the hand like a duck beak.⁵ Nevertheless, Kroon neglected to file an extension of trademark registration, and his trademark lapsed. Another tennis star, Lleyton Hewitt, took advantage of this fortunate circumstance and registered the identical trademark in his very own name.

Unfortunately, the writers did not find any examples of movements or actions that Indian athletes had trademarked at the time they were writing this article. While many Indian athletes have signature moves—like the well-known "helicopter shot" from M. S. Dhoni or the cricketer Sachin straight drive—none of these are solely the product of Indian players; other athletes have executed them repeatedly, frequently even before them.⁶ As we'll see below, one of the prerequisites for obtaining registration for an unusual mark is distinctiveness.

TRADEMARKING CELEBRATION OF SPORTS PERSON AND ITS POSSIBILITIES:

Although several sports personalities have copyrighted their celebratory moves, it is difficult and complex to navigate the legal system when it comes to trademarking these athletes' hallmark or celebratory moves.⁷ For a sportsperson to trademark a celebration move, there are three key conditions. If these conditions are not satisfied, they may become obstacles.

⁴ *Supra* Note 1.

⁵ Agarwal, R. (2023) Copyrightability Of Sports Celebration Moves Under The Indian Law - Copyright - India. Intellect Law Partners. Available at: <https://www.mondaq.com/india/copyright/1392362/copyrightability-of-sports-celebration-moves-under-the-indian-law> (Accessed: 1 April 2024).

⁶ *Ibid.*

⁷ Laxmi, 2023. Copyrightability of Sports on-Field Celebration Moves. Issue 2 Int'l JL Mgmt. & Human., 6, p.58.

GR (GRAPHICAL REPRESENTATION)

The need for pictorial representation is the first prerequisite. This can be accomplished by using a pictorial medium, such as a picture or drawing, or by providing an exact and detailed description of the maneuver. When registering a celebration action as a trademark, other factors may need to be taken into account, including the graphical representation's intelligibility, precision, clarity, durability, accessibility, and objectivity. Graphical depiction, however, presents more of a logistical than a legal challenge when documenting athletes' celebration motions.

The question of trademarking a brand's dry cleaning pad color came up in the United States case of *Qualitex Inc. v. Jacobson*.⁸ The matter was taken to the US Supreme Court, which dismissed the petition for the color's trademark but held that a color may, under some circumstances, satisfy the legal criteria for a trademark. It is noteworthy, nonetheless, that the Court clarified that a mark's source distinguishing ability—rather than its name, sign, shape, color, or fragrance—is what permits it to get as an officially recognized trademark.⁹ Any "device" or "symbol" that falls within the Lanham Act's (The Trademarks Law of the US) statutory definition of a "mark" The court took note of this and stated that practically anything that is capable of having significance can be used by humans as a "device" or "symbol," and that the statutory language is not restricted.

In 2003, the European Court of Justice (ECJ) rendered a significant ruling in the case of *Ralf Sieckmann vs Deutsches Patent- und Markenamt*¹⁰, addressing the matter of the applicant's scent mark trademarking. The court established a number of rules that would permit non-traditional marks (including fragrance and sound marks) to be registered as trademarks even though it denied registration for the same. In this instance, the ECJ decided that a trademark does not have to be visually appealing. The capacity to graphically describe the contested mark is the only prerequisite for an effective registration (emphasis provided).

A mark is much clearer and more accurate when it is visually depicted, and it is also easier to defend under the relevant trademark laws. Article 15 (the TRIPS Agreement), 1994, on the other hand, somewhat stray from this condition and emphasize "visual perceptibility" in its place. However, if one wishes to trademark their celebration move, they would still must agree to the the need of representing the act/move graphically, given that the majority of TRIPS nations only set guidelines for every signatory country to follow and the fact that the majority of countries

⁸ 514 U.S. 159, 159 (1995)

⁹ Trivedi, S. and Buch, N., 2024. Protecting Sports Moves As Motion Marks Under Trademark Regime In Special Reference To India. *Gaming Law Review*.

¹⁰ Case C-273/00 ECJ

concentrate on the the need of graphical representation instead of the wider term, "visual perceptibility." Graphical depictions of celebration motions are frequently found as image marks on a variety of products, including toys, apparel, accessories, footwear, and headgear.¹¹ Usain Bolt, for instance, has authorized the usage of his celebratory mark on garments and sporting goods.

It might be difficult for unconventional marks, that are intangible by nature, including smell and sound marks, to graphically portray themselves in order to be registered as trademarks. It has been made clear that registration does not result from simply noting the chemical composition of the odor. Furthermore, a sound sample or an odor sample cannot be referred to as a graphical depiction. Such unusual marks can only be registered by including a description that is so specific that it cannot be mistaken for any other sound or scent when the applicant is attempting to register a trademark. Just describing this unusual mark can lead to misunderstandings. Similarly, in order to trademark a sportsman's move, in addition to a graphical depiction, a clear explanation of the mark must be provided such that, upon careful examination, the move cannot be mistaken for one that is identical to or similar to one that is carried out by another person.

In India, registering a trademark is considered impossible without pictorial representation. Rule 25(12)(b in this case) from the Trademark Regulations, 2002 states that a trademark that is intended to be registered in connection with products or services has to be able to be graphically represented.¹² Rule 28 also states that the trademark must be able to be shown on paper. Rule 30 further specifies that the mark's graphical representation must be reliable and long-lasting. The application for the registration concerning a trademark must comply by the Trademark Rules of 2002, as per 18th section from the Trademarks Act of 1999.

CHARACTER OF DISTINCTIVENESS

The ability of a celebratory motion to demonstrate its originality and distinctive nature in the class of products or services it seeks to monopolize on is the second prerequisite, or barrier, to its registration as a trademark. The action need to set one product or service apart from another. Only if it can be demonstrated that this celebration move is so distinctive enough to be considered traceable exclusively to particular sportsperson and not to any other person or brand will trademark registration be granted.¹³ It must be demonstrated that the aforementioned action

¹¹ *Supra* note 3.

¹² *Supra* note 1.

¹³ *Ibid.*

would not lead to consumer confusion with other goods or services that fall under the identical trademark classification that it is intended to cover. Thus, the second prerequisite for trademarking a sportsperson's celebratory action is distinctiveness that may be used as source finder and also the inability to mislead or confuse the audience.

For instance, Gene Simmons, the main vocalist of the rock group Kiss, tried to register the well-known hand signal known as "Devil's Horns" as a trademark in June 2017. But the singer withdrew the application in response to harsh public criticism and an opposing application from another individual. The primary reason for this is that rock artists have been using this gesture for a very long time; it was not created by the lead vocalist and was not only connected to him.¹⁴ Because the mark is general and not distinctive, even if Gene Simmons had relocated the application for registration, it wouldn't have proven successful. According to Sec 9(1)(a) from the TM Act of India, 1999, which deals with the absolute grounds for rejecting a mark's registration, a mark that lacks any unique quality and cannot be used to differentiate one commodity or service from another is not eligible for registration. The caveat to Section 9(1) makes it clear that a mark cannot be denied registration if it has developed a unique character through usage. Additionally, a mark wouldn't be qualified for registering if it is of a character that confuses or deceives the public, according to Section 9(2)(a). The Calcutta High Court considered whether or not the appellants' cigarette mark, "Simla," had gained uniqueness in *Imp Tobacco Ind Ltd. vs Registrar Of Trade Marks*¹⁵ because the term "Simla" is also the name of a major town in Northern India. The Court rejected the request in registering, stating that proof of uniqueness in trade is a prerequisite for registration. The fundamental requirement for registering the trademark through the Registrar is distinctiveness.¹⁶

Being distinctive takes time to develop. It takes more than a brief time to demonstrate individuality. In a case involving infringement or passing off, it is also necessary to demonstrate that the mark has become distinctive and that the public connects it with the owner's products or services. Therefore, if there is no prior use of a motion or action that can be linked to a sportsperson exhibiting the mark's distinctiveness, it would be very difficult for such motion/move to get registered as a trademark. While this condition of uniqueness is easier to meet when trying to register traditional marks, like word marks or device marks, for non-traditional

¹⁴ Bhaissare, G.P., 2021. Intellectual Property Rights in Sports and Personality Rights among Sportspersons. *Jus Corpus LJ*, 2, p.351.

¹⁵ AIR 1968 Cal 582.

¹⁶ *Supra* Note 1.

markings, it must be created gradually with a demonstrated usage of the mark.

Nothing that says IP Office of India's official website indicates that a move or an action can be registered as a trademark. Furthermore, the website cites international agreements, treaties, court rulings, and textbooks authored by scholars and industry professionals as references for addressing the question of where trademarks originate. As seen by the aforementioned instances, trademarks have been applied to marks that are essentially the acts of athletes. This implies that, provided the desired trademark satisfies the first two conditions, the potential of registering a celebration action as a trademark cannot be ruled out in the instance of India.¹⁷

ORIGIN SOURCE AND INDICATION

Anything that is used to identify a certain commodity or service and that our senses are able to detect is covered by trademark protection. The significance of this comment increases in the wake of the Qualitex ruling.¹⁸ The fact that scent, sound, touch, shape, and other markings can all be successfully registered serves as evidence that this claim is true. A noteworthy study on this topic is by Skott Keiff, Karmer, and Kunststadt, who contend that triumph celebrations and other sporting behaviors ought to be protected as trademarks in theory. As a matter of fact, they inform us of the third prerequisite for sporting moves to be listed as trademarks, which is the ability to identify to the general public a specific good or service that has become connected to such a move.¹⁹ Under trademark law, a move would not be protected if it could not be used to identify the point of origin or source of goods or services.

But the largest obstacle to trademarking a sportsperson's celebratory gesture is this third criteria. This is because the celebratory move seems to be unattached to a product or service. In what way may a move in sports be used to identify the origin or source of specific goods and services? We can get a lot of assistance from modern technologies in addressing this query. To get customers to associate the specific motion and the celebrity doing that with the service or product, a footage of the celebratory move, for instance, could be aired during an advertisement for a product or service. A product on an online store may also have a video attached to it so that the product's celebration move plays in unison each time a user clicks on the good to see or order it.

¹⁷ Trivedi, S. and Buch, N., 2023. *Intellectual Property Protection for Sports Performances and Sports Moves: An Analysis Under the US, EU, and Indian Laws*. *Gaming Law Review*, 27(4), pp.164-172

¹⁸ *Supra* Note 8

¹⁹ *Supra* Note 3

Athletes may also use their trademark dance or move to demonstrate how to use a brand's goods while promoting it in an advertising.²⁰ In essence, what this accomplishes is assist in forging a mental connection between the particular service or product and the athlete's trademark move, which produces the second impact of the consumer identifying the exact move with only that specific good or service. This footage could potentially be recognized under a multimedia mark for trademark protection.²¹ Several images are projected as a single moving picture using multimedia markers, also called moving marks. The images are shown together quickly. Moving marks used to be registered by applying every image individually as a trademark separately.

This was due to the fact that moving marks were previously exclusively protected by copyright laws, and trademark law did not recognize the idea of registering a movement as a single mark. This has altered, though, as trademark laws have grown. Multimedia and moving mark registration has been pioneered by the United States office of Patent and Trademark. These include Lamborghini's registration of its doors opening, that spin vertically rather than externally, and Microsoft's registering their motion with the three primary colors whirling to create the Microsoft logo. The animation that appears when two hands reach out to each other on Nokia phones is another recognized multimedia mark. The fundamental component of TM laws in India is identifying the origin of a commodity.

HINDRANCES

The three requirements listed above aren't the only obstacles in the way of registering a celebration motion as a trademark. For instance, we must acknowledge that a sportsperson's action is not being branded when registering it as a multimedia mark. It would instead be the entire footage of the athlete making his celebratory move that would be registered. It is clear that a bodily/Physical move cannot be branded based on the current international trademark laws. The only way to trademark physical movements is implicitly. Examples of athletes who have registered their bodily/physical moves as an image marks for use on apparel, accessories, footwear, and other items include Jesse Lingard and Usain Bolt.²² These athletes demonstrate an enlightenment of trademarking of the bodily/physical move as a trademark.

As demonstrated by the aforementioned examples, we are able to trademark a signature motion in the form of multimedia markings and 3-D marks thanks to modern technology. Take Michael

²⁰ Laxmi, 2023. Copyrightability of Sports on-Field Celebration Moves. Issue 2 Int'l JL Mgmt. & Human., 6, p.58.

²¹ *Ibid.*

²² *Supra* note 1

Jordan, one of the greatest basketball players ever, as an example. The "Air Jordan" slam dunk, a characteristic action of Michael Jordan, is now utilized as a device mark on Nike merchandise.²³ It wouldn't be difficult for basketball fans to surmise that, should another player attempt to imitate Michael Jordan's motion, they may also suddenly be connected to Nike or perhaps Michael Jordan's brand identity.

The majority of IP offices worldwide also concur that giving a trademark to a physical movement or action carries the risk of giving the trademark holder a monopoly on particular elements that are easily copyable by rivals, whether on purpose or not. Consider Usain Bolt's "Lightning Bolt" position. Usain would have been able to sue hundreds or maybe thousands of people who had copied his stance throughout the years if the actual move had been protected by a trademark.

CONCLUSION:

The possibility of registering a sportsperson's celebratory move is restricted by trademark rules in India. Sadly, there are insufficient legal provisions in India for the registration of non-traditional motion marks. In contrast, the EU had significantly stronger legal frameworks in place to support the trademarking of unconventional marks. In India, a mark can only be registered as a trademark if it is pictorial in nature. Although this requirement restricts what is eligible to be trademarked, this serves as a necessary prerequisite to prevent the registration of meaningless marks. Therefore, in order for a joyful gesture, action, or other movement of the body (or object) to qualify for registration as a trademark, it must invariably satisfy the specifications of pictorial representation, distinctiveness, and identifying the source or origin of the same.

There is a belief that registering a non-conventional mark as a trademark is more of a marketing ploy than a true means of keeping a brand's reputation or image safe from exploitation. However, protecting of any mark that is naturally distinct gets crucial due to the internet's rapid growth and the emergence of social media platforms, where information is readily shared in a matter of seconds. Furthermore, given how quickly the landscape of the digital world is changing, it shouldn't surprise us if registering of non-distinctive marks becomes more common in the future. In the end, these marks provide the mark holder the chance to generate and create an asset that may be sold or licensed for a profit.

²³ Matty, L., 2006. Rock, Paper, Scissors, Trademark-A Comparative Analysis of Motion as a Feature of Trademarks in the United States and Europe. *Cardozo J. Int'l & Comp. L.*, 14, p.557.

BIBLIOGRAPHY

- Beliraya, N. (2022) Application Of Trademark Laws In The Realm Of Sports - Trademark - India. Khurana and Khurana. Available at: <https://www.mondaq.com/india/trademark/1163186/application-of-trademark-laws-in-the-realm-of-sports> (Accessed: 1 April 2024).
- Trademarking Sportsperson Celebration Moves (no date) Khurana and Khurana. Available at: <https://www.khuranaandkhurana.com/2022/06/30/trademarking-sportsperson-celebration-moves/> (Accessed: 1 April 2024).
- Agarwal, R. (2023) Copyrightability Of Sports Celebration Moves Under The Indian Law - Copyright - India. Intellect Law Partners. Available at: <https://www.mondaq.com/india/copyright/1392362/copyrightability-of-sports-celebration-moves-under-the-indian-law> (Accessed: 1 April 2024).
- Laxmi, 2023. Copyrightability of Sports on-Field Celebration Moves. Issue 2 Int'l JL Mgmt. & Human., 6, p.58.
- Trivedi, S. and Buch, N., 2024. Protecting Sports Moves As Motion Marks Under Trademark Regime In Special Reference To India. Gaming Law Review.
- Bhisare, G.P., 2021. Intellectual Property Rights in Sports and Personality Rights among Sportspersons. Jus Corpus LJ, 2, p.351.
- Trivedi, S. and Buch, N., 2023. Intellectual Property Protection for Sports Performances and Sports Moves: An Analysis Under the US, EU, and Indian Laws. Gaming Law Review, 27(4), pp.164-172.
- U., Preetha, 2021. Intellectual Property Rights with Special Reference to Sports: An Analysis. Glob. Sports Pol'y Rev., 2, p.80.
- Laxmi, 2023. Copyrightability of Sports on-Field Celebration Moves. Issue 2 Int'l JL Mgmt. & Human., 6, p.58.
- Matty, L., 2006. Rock, Paper, Scissors, Trademark-A Comparative Analysis of Motion as a Feature of Trademarks in the United States and Europe. Cardozo J. Int'l & Comp. L., 14, p.557.