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RAJA POCKET BOOKS VS RADHA POCKET BOOKS

DELHI HIGH COURT

1997(40) DRJ791

AUTHORED BY - KOOMAR BIHANGAM CHOUDHURY

"Intellectual property is the armor that defends originality against imitation."

ABSTRACT

The case Raja Pocket Books v. Radha Pocket Books exemplifies the critical role of copyright law in protecting creative works from unauthorized use. In this landmark decision, the Delhi High Court addressed issues of copyright infringement, unfair competition, and trademark violations arising from the alleged imitation of a popular comic character. The court's ruling underscored the importance of safeguarding intellectual property rights to preserve the originality and economic value of creative works. By asserting the plaintiff's rights to the unique character and storyline, the decision reaffirmed the principle that copyright law aims to protect the fruits of intellectual labour and grant creators exclusive control over their works. This case serves as a significant reference for understanding the application of copyright law and its impact on both creators and competitors in the creative industry. The aforementioned case study of the lawsuit involving the Nagraj comic series is significant for students of Intellectual Property Rights (IPR) for several reasons. First, it provides a concrete example of copyright law application, particularly in the context of creative works such as comic books. Understanding the nuances of copyright claims, including character design and the protection of literary and artistic elements, is crucial for IPR students. This case illustrates how intellectual property rights can be asserted and defended in practice, highlighting the role of copyright in safeguarding creative outputs. Second, the case underscores the importance of distinguishing between originality and derivative works. It offers insight into how courts assess the originality of characters and storylines, and how copyright infringement is evaluated. By analysing this case, students can learn about the criteria used to determine copyright ownership and the legal protections available for creators of fictional characters. Third, the case provides a practical example of trademark law in action. The Nagraj character's name being considered a trademark was junction between copyright and trademark protections in intellectual property law. This

aspect of the case helps students understand the broader scope of IPR, where different forms of protection can overlap and complement each other. Lastly, the case study highlights the commercial aspects of intellectual property. The substantial investment in advertising and the significant revenue generated by the Nagraj series emphasize the economic value of intellectual property rights. This is thus author's motivation that this case study of a real-world scenario shall assist students grasp the financial implications of IPR and the importance of protecting and managing creative assets effectively.

KEYWORDS: Raja Pocket Books, Copyright, Trademark, IPR, Nagraj, Infringement

FACTS

The lawsuit is based on the assertion that the plaintiff (Raja Pocket Books) has been engaged in the publishing and distribution of paperback novels, books, and comics for many years. Among their various publications, the plaintiff has released a popular comic book series entitled "NAGRAJ," which has garnered significant popularity, particularly among younger readers. The series made its debut in March 1986, and since then, the plaintiff has published 22 issues, selling approximately 1,521,500 copies of the comic series under this title. A comprehensive list of these issues is included as Annexure-A to the plaint. The plaintiff estimates that the total revenue from sales of the Nagraj comic series from its inception in 1986 up to the filing of the lawsuit amounts to around Rs. 50,00,000. This figure, according to the plaintiff, reflects the series' widespread appeal. Additionally, the plaintiff has invested approximately Rs. 8,00,000 in advertising and publicity through various media channels, including television, radio, and magazines. The central figure of the series is a fictional character named NAGRAJ. This character, depicted in the comics, is portrayed wearing a green body suit resembling serpentine skin and red trunks with a belt that resembles a snake. *"The design of Nagraj was created by the late Shri Jagdish Pankaj in June 1985,"* who assigned the copyright of the character to the plaintiff. Subsequently, Shri P. Mullick, a professional artist, continued to develop the series, focusing on the adventures of the NAGRAJ character on behalf of the plaintiff. The plaintiff claims *"ownership of the copyright for both the Nagraj comic series and the character itself"*, including its visual appearance. This ownership extends to the situations, incidents, and overarching themes featured in each episode of the Nagraj series. Consequently, the plaintiff holds exclusive rights to print, publish, and distribute the series in any material form. Furthermore, the name of the Nagraj character is considered a trademark, with the plaintiff

being recognized as the common law proprietor of this trademark.

The plaintiff discovered that the defendant (Radha Pocket Books) is publishing and distributing a new comic series titled “Nagesh”. The defendant's promotional materials, including cover jackets and stickers, reveal that the central character in “Nagesh” is a fictitious figure with snake-like magical powers, depicted in a green body suit and red trunks. This design closely resembles the plaintiff’s character, “Nagraj”. The plaintiff alleges that this proposed series infringes on their copyright, as the character “Nagesh” is a substantial reproduction of “Nagraj”, thus constituting a direct violation of their intellectual property rights.

ISSUES

1. Has Radha Publications unlawfully copied Raja Publications' intellectual property, including the design, layout, and content of their pocket-sized books and thus infringement on their part occurred?

JUDGEMENT ANALYSIS

In *Raja Pocket Books vs Radha Pocket Books*¹, section 51 and 55 of the Copyright Act, 1957 was referred. The Former provides the circumstances in which infringement can be deemed to happen and the later gives right to the aggrieved party to sue the infringer on violation of his copyright. The facts of the case were as such that Raja Pocket Books was publishing comics character by the name of “Nagraj” in various series. They were the first to design the character, give it a storyline which involved multiple characters essential to its background. The sale of comics had almost reached 5 million Indian Rupees and it was a popular character among the fans of comics who could identify the character due to its originality and unique features. Radha Pocket Books created a character “Nagesh” in the meanwhile and surprisingly all the unique characters of “Nagraj” were found in him. This not only include his physical appearance but also the background story of inception of “Nagesh” was similar to that of “Nagraj”.

The court referred to the judgement of the Supreme Court in *R.G. Anand*² case where test for infringement was provided. It was held that, “there can be no copyright in an idea, subject matter, themes, plots or historical or legendry facts and violation of the copyright in such cases

¹ *Raja Pocket Books v. Radha Pocket Books*, AIR 1997 Del 6 (Dec. 6, 1996).

² *R.G. Anand v. M/s Delux Films & Ors*, AIR 1978 SC 1613 (Aug. 18, 1978).

is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.”

Thus, although mere depiction of a human having superpowers of snake cannot be copyrightable but the arrangement and expression of this idea in form of a character having unique dress, a background story and powers which were creativity of the comics artist can be copyrighted. Another very good test can be used that if a reader of original “Nagraj” comics will read comics of “Nagesh” whether or not he will form an opinion that the latter is a copy of the former. The court also applied the Doctrine of Fading Memory, i.e. whether the alleged infringed work can cause confuse and deception in the minds of a person of “average intelligence having imperfect recollection”. The court found that Radha Pocket Books was creating such confusion and it allowed the injunction appeal.

REASONING AND CONCLUSION

I have gone over the facts of case in details and I have concluded that it was true that Raja Publication was the first to establish the characters. They had reputation in the market and Radha Publication in attempt to use this reputation to their own benefit copied the covers, designs and layout of the comics of Raja Publication. This implies infringement upon Intellectual Property of Raja Publication. By copying the contents of Raja Publication, Radha Publication intended to confuse the public at large and ensured that a person of average intelligence having imperfect recollection will not be able to differentiate between the two. Thus, this amounts to passing off of one’s own good as that of others because Raja Publication having established as reputed and popular comics was not only being copied and being infringed but they would also suffer economic loss and damaging of reputation on account of Radha Publication. Radha Publication is getting profit from market reputation and market share of Raja Publication but any negative impact is being bore by Raja Publication. Action of Radha Publication amounts to infringement.