



Wearable Technology



Awanika Anand
awanika@fiduslawchambers.com

It will govern human interaction, it will run our lives. Wearable technology, a subset of Internet of Things (IoT), is the next big revolutionary innovation set to take over the world. As of today, it is more popular in the fitness, wellness and the healthcare industry. Research suggests that demand for wearable technology has taken over a significant percentage of the market for the Internet of Things.

As wearable technology becomes more common place, a question to ponder is: what happens to user privacy, security and consent, given that product utility and function depend on the historic data of the user. A worldwide debate is prompting calls for policy intervention. In particular, there have been questions as to how much data is collected, how long the data will be retained and who can access it. Several concerns regarding data collection practices have been raised and there is a fear that data collection manipulation is likely to trigger consumer vulnerability and discriminatory practices on the part of companies.

The Indian Government, in the year 2000 introduced the IT Act, to regulate electronic commerce and protect personal data of an individual. However, these laws are silent on issues of data protection and regulation. After the Supreme Court of India firmly accepted the

Right to Privacy as a Fundamental Right highlighted “the need to examine and put into place a robust regime for data protection”, the Government set up a Committee of Experts (the Srikrishna Committee) in August 2017 to advise on the issue and propose a data protection regime. The Committee thereafter released a white paper on data protection, discussing the scope of what constitutes personal data, the exemptions allowed to entities that are included under the framework, grounds for data processing, obligation on entities, rights of individuals, and regulation and enforcement. The paper talks about the challenges faced in defining ‘personal data’ due to the unique and evolving methods of data capture by smart devices affecting the degree of anonymity of a user. An additional concern that has been raised is that the data collected by smart devices is likely to fall outside the scope of traditional principles of privacy.

The underlying fear with user data dependent technology is its misuse. When devising a policy for wearable technology, policy makers must keep in mind the continuous growth in this sector and look to establish regulations that are cognizant of innovation. A restrictive or precautionary approach to policy making may therefore prove to be unsustainable. Reliable standards for data identification and the spectrum of protection for different categories of data must be recognized. There is an imminent need for regulations that are mindful of ethics, technological advancements, economic impact and entrepreneurship trends.

Branding in the sharing economy



Astha Negi
astha@fiduslawchambers.com

The advent of the sharing economy has probably been the greatest disruption in a traditionally service-focused industry such as hospitality, especially impacting its twin pillars of travel and accommodation. As the sharing economy is heavily reliant on consumers and the community, this community armed with a powerful social media, can make or break a brand. Consumer likes and dislikes constantly reshape the market, so much so that branding

strategies of most companies in a sharing economy have to be aligned with what is ‘trending’. Social media and customer reviews play a significant role in how a brand is perceived and rarely does a brand owner have complete control over this. Unsurprisingly, negative reviews and trolling can tarnish the goodwill of a brand. Therefore, it is important for brand owners seeking a piece of the sharing economy pie, to have a robust online content monitoring and policing strategy.

Unlike traditional offerings in the hospitality sector where the perception around the brand was directly proportional to the quality of the real estate, today’s e-service providers build their brand on consumer perception and behavior which is both dynamic and

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unpredictable. In order to survive in a sharing economy, a brand needs to be bigger than the community itself. The key to this would be ensuring the right brand positioning through meaningful advertisement campaigns that express the brand philosophy, history and future of the brand while keeping the community as the focal point, keeping customers engaged by rolling out relevant products and offerings and enhancing customer experiences.

As businesses reconfigure, so must lawyers and legal strategy. Traditional notions of 'goodwill of a trademark' were linked to the quality of services on offer under the trademark. When such goodwill is perceived through the lens of a platform which neither owns the properties, vacations or other services on offer nor is legally liable for infringing content on the said platform (since Under Indian law infringing content can now only be blocked by a Court order: Shreya

Singhal v Union of India) it is far harder to pin it down to a measurable yardstick. As the 'perception' of the brand in the 'eyes of the community' becomes key, consumer surveys are bound to assume far greater evidentiary value in trademark disputes of the future.

The balance is a fine one. A successful brand mantra necessitates an arm's length relationship with the community to stay within the 'safe harbour' and yet the brand's goodwill is ultimately an aggregate of the service offerings of the community.

While some say that sharing economy postulates absence of trademarks and brands or exclusivity or monopoly, companies like AIRBNB or LYFT are paving a way for something phenomenal, proving that trademarks and brands are not only here to stay in a sharing economy, but in fact, will play an even more crucial role in the future.

Indian IP Offices – A progress report



Shreya Ganguly
shreya@fiduslawchambers.com

Over the last few years, there has been a clearer recognition of the need for transformation in the office of the Controller General of Patents, Designs and Trademarks (CGPDTM). From the introduction of a National IPR Policy to embracing digitization, the IP offices in India are getting future ready.

The multidisciplinary approach that business will need to take on to survive and thrive is leading to new start-ups, transforming businesses and a greater concern for IP and its protection. Consequently, there has been an increase in IP related activity, from increased trademark filings to demands for faster turnaround times for hearings and clearing backlogs.

The earlier time-consuming and almost sluggish pace at which the Indian IP offices used to function is giving way to brisker pace of work. There is still a long way to go; digitization has been a critical component in this improvement.

The Trademarks Office has made some welcome changes over the last few years. Beginning with consolidating the number of forms to be filed, to graded fee structures depending on organisation size, the office is aiming to reduce its carbon foot print with video conferencing as an option for future hearings and permitting evidence in opposition and cancellation proceedings to be filed electronically.

Pendency in trademark examination has already been brought down from 13 months to just 1 month, and qualitative improvement of examination has resulted in the acceptance of over 40% applications without office actions at the first instance in 2017-2018, as against 7% in 2016-17.



Tanuj Chandra
tanuj@fiduslawchambers.com

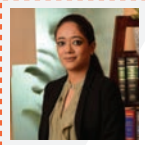
Patent practice has also witnessed some major improvements. Start-ups now have access to patent filings at a discounted fee as well as access to patent agents empaneled with the government at no cost. More than double the number of patent applications have been examined in 2017-18 compared to 2016-17. The Patent Office has set an ambitious goal of bringing down the time taken to examine applications from 5-7 years to less than 18 months.

Not to be left behind, the Copyright office has commenced publication of particulars of copyright applications, corrections and rectification orders monthly apart from making the data in relation to each copyright application publicly accessible.

The Protection of Plant Varieties and Farmers' Rights Authority no longer needs plant breeders to seek 'No-Objection Certificates' from patentees for genetically modified traits used by the breeders for developing new plant varieties for which they seek registration under the Plant Variety and Farmers' Right Act.

Ultimately, the most welcome development has been the increased interaction between stakeholders and the IP Office in the form of regular meetings and feedback sessions.

As compared to the last decade, the recognition that IP and its protection is critical to not only building indigenous business but creating a safe space for global businesses has been the fuel for change. The challenges still exist, as they are bound to with an economy this size, but the fact that change is being pushed from a policy level and is aligned towards ensuring a more transparent and participative regime is what will hopefully help maintain momentum.



Tanya Varma
tanya@fiduslawchambers.com

SUMMARY

Glaxo Group Limited & Ors.



Rajiv Mukul & Zee Labs.

CS (COMM) 1620 of 2016.

BACKGROUND

Various companies of the GSK Group have been historically filing oppositions against trademark applications filed by Zee Labs for a variety of marks that closely resembled GSK trademarks, since at least 2008. In December 2016, alleging creeping conspiracy on the part of Zee Labs on account of their acts of repeated

and continuing trademark infringement and passing off, a joint and composite lawsuit was filed against them by three companies of the GSK Group before the High Court of Delhi, claiming injunction and damages. At the outset the lawsuit was vehemently contested but eventually the matter was amicably resolved.



MARKS INVOLVED



CONCLUSION

Eventually, after several rounds of arguments and with the active intervention of the Learned Judge, Zee Labs withdrew all of the above marks, ceased their use,

acknowledged GSK Group's rights in their underlying trademarks and undertook not to use the deceptively similar marks for their products in future.



POST SCRIPT

In a hat tip to Fidus Law Chambers' strategic advise, a decree was passed that effectively concluded 12 proceedings (11 oppositions and 1 lawsuit) that spanned 10 years.

Fidus Snapshots



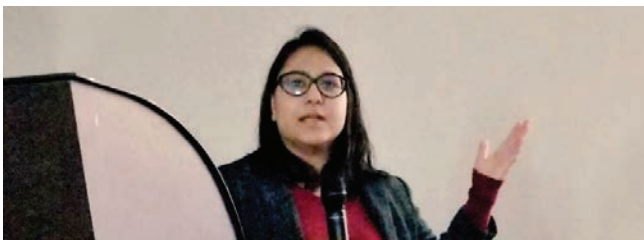
Shwetasree Majumder at the CBEC and REACT workshop on the "Role of Customs in Protecting India's Consumers and Economy from Counterfeits".



Tanya Varma training law enforcement on IP law issues at the Rajasthan Police Academy in Jaipur.



Prithvi Singh addressing the trainers of Agastya International Foundation on IP Rights on behalf of CIPAM.



Asha Negi conducting a session on Trademarks & Counterfeiting at a 'Training of Trainers' Program by CIPAM & Rajasthan Government.



Shreya Ganguly teaching students of Kendriya Vidyalaya, Vigyan Vihar about IP Rights in a CIPAM programme.



Members of Fidus Law Chambers at the annual firm retreat in Dubai in January 2018.

Contact us:

Fidus Law Chambers

F-12, Ground Floor, Sector – 8, Noida – 201301, Uttar Pradesh, India

T: 0120 – 4847550 F: 0120 – 4847551 E: legal@fiduslawchambers.com

www.fiduslawchambers.com