

## Legislative & Judicial Perspective on Character Merchandising in India

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### ABSTRACT

The character merchandise can be defined as an alteration, or secondary use by a real individual or by a third party authorized for production, in order to create an acquisition desire by young customers, of important characteristic features (such as name, photos or appearance) of the person with regard to specific goods and/or services. In the past years, the industry of so-called "trademark application," which is probably a billion-dollar market in the Western world, has increased rapidly by names and locations of celebrity and historical figures. Yes, the trademark is approved for the selling and distribution of the goods of the consumer. The aim is to reflect the essence and the durability of the service if possible, and over time the mark may become recognized. When the title is well known, others are inclined to carry on the products as the owners of a well-known brand. The paper discusses the various ways of trade in character, the trading laws of character and the current situation in India.

### Keywords

Character merchandising, copyright, Intellectual Property and Legislation

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### Introduction

The prospective of using intellectual works, a benefit derived from the sale, production or innovation of acts, may also cover the creative rights. While the name does not imply, the merchandising of the character is an example of sustainable intellectual property rights. The technology can be viewed as an increased advantage allowing the right-wingers to be using the well-known personalities of fictional or real life characters, sell and deliver services to someone who might be pleased with their success. In the modern era, Character merchandising is a effective means of broadening the use of intellectual property and is sometimes when used to attract attention to a particular sales area as a marketing gimmick. In other words, income generating merchandising potential cannot ever be removed.

Character merchandising actually means exploiting a famous personality to raise money by selling its named product or image or catch phrase. Merchandising can range anywhere from t-shirts, cups, bottles, toys, 3D cartoons to postcards. Merchandising might well be done whether by the character owner, i.e. by the character IP guy, or by a corporation of the whole of the. In the place of an enterprise these businesses have certain rights of character and then in exchange, the business provides shareholders a source of revenue as royalties. The name of well-known actors or their popularity profits as well from the licensee's and the contractor's character merchandising. The forms of order to fall within the control of a recommitment over the years were not paperwork. For multiple causes. This is why. Firstly, the transformation is directly connected to the developments upon on markets and relies on them. Character merchandising in its formalized and powerful shape can be directly linked to Walt Disney, by using character for secondary trade manipulation, producing cars for all of its works, which include posters, T-Shirts, toys etc. Lately, it has expanded rapidly in creating a world wide

variety of character merchandising by implementing feature features and many of them.

### Discussion

#### Types of character merchandising

The merchandising of hero may include three kinds: fictitious merchandising, ticket sales of personalities and merchandising of images. The word "merchandising identities" or "merchandising credibility" represents and use of celebrity or well-known entities to advertise them. To promote goods and service, it involves the use of the main features of the celebrities, such as that image, voice, name or other features. The famous examples are 'Sah,' a brand named after Sachin Tendulkar, 'Sauravs,' a restaurant at Kolkata identified after Saurav Ganguly, with David Beckham's signature.

And animated trade includes imaginative works also including Cindrella and Pinocchio, films along with Mickey Mouse, Batman or Donald Duck, too. When you apply these features and their key aspects to a product, consumers seem to be more attracted than for the commodity itself to those components.

Lastly there was the use of the image merchandising, mostly in marketing of products and services in fiction or TV programs represented by actual players. This is intentional to be a distinction between fictitiousness and also the merchandising of characters. For these cases the character recognition is achieved by incorporating the most well-known or signature features of the real-life individual with its fictitious equivalent. Image merchandising styles include Harry Potter, Daniel Radcliffe, James Bond, tom hanks, Captain Jack Sparrow, etc. Such situations give states a dual identity, in which the same personality will have his own identity and has a reputation also for person he portrays.

### Protection for character merchandising

Character merchandising is regulated not by one specific strain, but rather by trademarks, copyrights, designs, and several other IP laws. In the case of comics, animated images and videos, any artist making the their maker is permitted to get them in the form of merchandising of the characters or of a section of their works, for example. Copyright gives authors those most substantial rights also for sponsorships of products.

Although the character's copyright skill depends on his personality, it's been discussed and created for Arbaaz Khan v. Northstar movie Pvt. Ltd (2016) Bombay High Court. Ltd (2016) While examining whether the "Chulbul Pandey" nature of Dabangg's Franchise exists as copyright, the court decided that: "I think that I can understand it without doubt as regards its general idea that the person is special and representing that identity, and even the" writing "in a literary article influencing that character"

As regards the matter than whether or not 'the copyright shouldn't ever reside in creative work but even in character.' that's really the opinion of the court ... a person who now has iconic appearances and distinctive features. If a citizen with legal rights to maintain copyright creates and acknowledges such a character, then it's no problem to accept that such copyright exists in that respect. All individuals with better of this are the on-screen person including its Rocky franchise, James Bond (specific from his/ her literary character), definite storylines from Star Wars (Darth Vader, Obi Wan Kenobi, Han Solo, Chewbacca and others). John McClane, of the Die Hard movie series and a characters in Star Trek (mainly the Kirks, Spock, and McCoy).

Now if it really is a real person playing the lead then there is the question, "Who is the owner?" "Come into play. It comes into play, since every person has a right to privacy and a right to penalties. Thus, the question arises whether he loses all of socrates right to confidentiality just because a person is a political official?

In the first place, an actor should have had the right to much the same policy as an author, so that the copyright and exploitative right which it entails shares his work and labor is granted to him. Secondly, it's time and energy for an action star who plays the character to make his purpose his own and to give him a different individuality, so he has freedoms.

Another concern is that for other reason or to help products, the creator used an actor's image. The actor may claim that it is indeed a photographer but instead though he has the right to police and so the manufacturer has given up his advertising rights, since the actor signed a contract only for film.

There has been no sui generis legislation on the right to advertising in character until now. Furthermore, it is not covered by an obvious international convention. Therefore, a person or individual must rely on various types of security and that on various legal texts.

The intellectual property law, as mentioned above, was among the most important areas of law in the legal strategy of merchandising of character. The merchandise of character is protected by various heads of intellectual property that sometimes eventually led to overlap. For example, a literary

character is particularly covered by copyright law. Most films or series of common books comprise historical figures with various copyrights, including Harry Potter Characters or Game of Thrones Characters, whose protection is controlled by copyrighted material if an artist draws the character again; All superhero films, for instance, are copyrighted but has comic book characters.

### Ownership of rights for character merchandising

The character's rights are generally conferred on the author. If the creator has authorized or sold his rights to someone, the person is the owner. If this character is established at the correct time of employment, the employer is the owners of this work. When image merchandise takes place, i.e. merchandising relying on the picture of the certain actor known for portraying that same character on screen, the protections are tethered to and placed by such an individual (the actor).

### Case studies

- **In Chorion's case, V. Ishan Apparel and Ors. Limited.** (2010)ILR 5Delhi481, The plaintiff claimed that this is the proprietor of a fictitious hero universal trademark and merchandising privileges called NODDY, a protagonist cartoon and show broadcast a number of times a day on the Pogo channel on Tiny TV, seeking to stop the accuser from placing commercial clothing under the NODDY trade name. Although, in 1995, the defendant successfully registered a mark when the complainant made a claim on the mark in 1997, the court recognized that the value of patrolling against by the ill effects of merchandising. Request of the plaintiff on the name. The applicant, therefore, will be the first party to receive an authorisation in India, although he was each rightful owner in most jurisdictions. This is a representation of fictional or animated merchandising.

- In the latest Disney Enterprises Inc. & Anr event Vs. Kumar Santosh & Anr. CS (OS) 3032/2011, The high court in Delhi held that only the respondent will have the responsibility to sell merchandise composed of portrayals such as Hannah Montana, Winnie the Pooh ... of which the defendant had merchandising rights. The Court held that the relationship between some of the applicants' representations and the aforementioned characteristic was indeed incredible, which is the only reason why the applicants are solely reminded of consumers by any mention of such characteristics. It's another exemplar of imaginary or parody merchandising.

- In the case of D.M Entertainment Pvt, The alleged identity merchandising was extensively discussed by the Court. Ltd. Tight. Ltd .. Ltd .. The plaintiff here was a company supporting popular singer Daler Mehndi. CS(OS) 893/2002 Baby Gift House and Ors Vs. We decided to remove selling dolls to the respondent which might attract parts of Mr. Mehndi's songs. The Court recognized that Mr. Mehndi's name was incorrectly dolls, which led consumers to believe Mr. Mehndi really endorsed the dolls. The Court also found that the complainant was greatly affected by such a profit-making manipulation and ruled that he was eligible for the dismissal.

### Current scenaeion in India

The "1957 Copyright Act" in India appears to be the only guerrilla assistance to copyright owners. In common law therapies, such as passing off, that mostly appears to be too misleading and not revisioned by fast-paced market dynamics, the Indian courts took the old Constitutional terms. The publisher of cinematographic cinema under the Copyright act of 1957 is specifically acknowledged in Section2(d)(v), whilst the owner is granted in section14(d) the right to make copies of any section including its film including images. Section 38(4) states that once the actor has gave consent and include his work in a film, he loses his rights to his artists. And it can be seen here that the authors have a wider variety of rights than the artists.

Article 21, in line with the constitution of India, concerns the right to life rights, one of its aspects being privacy. In compliance with Trademarks Act, the registered owner of a trademark can, despite authorization to market his products and services for advertising, prohibition or penalty for another person to use a disappointment-like trademark.

The protection of trade marks or even unfair practices can go beyond the copyright period as light as possible as even the character retains its secondary meaning and public misinterpretations are possible, thus providing a relatively long life and better character protection. It can therefore be well understood in the above discussion that, while a number of measures are in place to prevent merchandising character, without a clear law on this issue even without its harsh compliance the harmful effects of merchandising cannot ever be curbed. The parties can not, in distress at best, support all these indirect laws.

### Conclusion

Merchandising of character has increasingly become common in india because of its business presence. Simply put, it suggests that the character (image, person who plays a character or whatever) is sold to make cash, and that is achieved with their fame or notoriety. The scope of trade in character is comparatively extensive, and the existing intellectual property law might not even be sufficient to secure the legitimacy or liability of the definition. Although the trademarks legislation protects a name or a particular image, and the copyright law protects entity creation, it does not prohibit unauthorized commercial use of a person's identity or fictionality. The juridical risks do not only hinder commercial interests and furthermore cause the legitimate copyright owners unanticipated harm. The time is appropriate to manipulate current laws in a new way and create a way at which celebrity can benefit from their fame without interference and at the same time making full use of the material by the copyright owners.

In some countries the training of merchandising fundamental personalities (primarily names and figurations) of a fictional character or of a real individual has developed rapidly from a subordinate transaction to a significant, individual income source, and in some cases into an assimilation force, despite the existence and degree of previous types of legal defense. India has a growing market in merchandising, with unprecedented results for girls. The comics of India have ample space to work commercially.

Clearly it practice must always be preserved in accordance with the balance between there's a need to promote competition on one side and the security of individual intellectual property rights the other, despite the product interest of good merchandising, in the light of positive models and concepts of character merchandising.

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