



Key Updates

Recent Judgements

[Proprietor of a Trade Mark cannot enjoy monopoly over the entire Class of goods: SC](#)

In the case of M/s. Nandhini Deluxe V. Karnataka Co-Operative Milk Producers Federation Ltd., the Supreme Court bench of Justice AK Sikri and Justice Ashok Bhushan on 26th July 2018, observed that, "The proprietor of a trade mark cannot enjoy monopoly over the entire class of goods and, particularly, when he is not using the said trade mark in respect of certain goods falling under the same class." The Court while restoring the order of the Deputy Registrar granting registration in favour of the appellant, set aside the orders of the Intellectual Property Appellate Board and the High Court of Karnataka. The Karnataka Co-Operative Milk Producers Federation, which is a seller and producer of milk and milk

products, since 1985, obtained registration for the mark 'NANDINI'. Consecutively, M/s NANDHINI Deluxe, which is a chain of restaurants in Bangalore and Tamil Nadu since 1989 under a similar name, 'NANDHINI', sought registration of its Mark 'NANDHINI'. The Hon'ble Court held that there was no deceptive similarity between the two marks and further clarified that the proprietor of a trademark cannot enjoy monopoly over the entire class of goods and, particularly, when he is not using the said trade mark in respect of certain goods falling under the same class. On basis of this explanation, the Hon'ble Court allowed the registration in favor of M/s Nandhini Deluxe, except in the category held by the Karnataka Co-Operative Milk Producer Federation Ltd.



► At Work

► Publications / Accolades / Media

[Right to file Written Statement in a Patent suit claiming huge stakes cannot be forfeited at the outset: Rajasthan HC](#)

The Hon'ble High Court of Rajasthan in the case of Shri Balaji Industrial Products Limited V. AIA Engineering Limited and Ors. has held that, in a patent suit wherein huge stakes are being claimed by the parties, the right to file Written Statement can't be forfeited at the outset. The Court opined that, in such a case, if this right is forfeited at the outset, it will lead to the inevitable consequence of the passing

of an order of temporary injunction and then, a final decree against him/it. Only upon suffering through such disadvantages, the Petitioner-Defendant would be able to attempt to persuade a High Court to reverse it by allowing it to file written statement and then further de-novo trial would follow. In the present case, the AIA Engineering Limited had filed a suit seeking permanent injunction, damages, delivery and rendition of accounts, contending that the Petitioner had infringed its certified patent on April 22, 2017. The Summons was served on May 4th, 2017 and later, the Petitioner had filed an application under Order VII Rule 11 CPC on 17.05.2017, which was dismissed by the Commercial Court on September 1, 2017 stating that it could only permit a WS within 120 days form the institution of the suit and the not the serving of the summons, which contrary to the law. The Hon'ble Court ordered for the Written Statement filed to be taken on record.

Policy Updates

[Union Cabinet approves accession to WIPO Copyright Treaty, 1996 and WIPO Performance and Phonograms Treaty, 1996](#)

The Union Cabinet on 4th July, 2018 has approved the proposal and recommendation by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, regarding accession to the WIPO Copyright Treaty and WIPO Performers and Phonograms Treaty. This would extend the coverage of copyright to the internet and digital environment. The approval is being considered a step towards achieving the objectives laid under the National Intellectual Property Rights (IPR) Policy adopted by the Government on 12th May 2016. The move aims to get value for IPRs through commercialization by providing guidance and support to commercial opportunities of e-commerce through Internet and mobile platforms. The accession would enable creative right-holders to enjoy the fruit of their labor and would facilitate international protection of domestic rights holder by providing them level-playing field in other countries just like India has already been extending protection to foreign works through the International Copyright order. These treaties will also enable Indian right holders to get reciprocal protection abroad which would result in building confidence and distribute creative works in digital environment with return on investment resulting in business growth and contribution towards the development of a vibrant creative economy and cultural landscape.



The contents of this Birbal's Update are intended for information purpose only. The Birbal's Update is not in the nature of a legal opinion or Advice and should not be treated as such. Hammurabi & Solomon does not warrant the accuracy and completeness of this Birbal's Update, and readers are encouraged to seek professional advice before acting upon any of the information provided therein. The Firm will not be liable for any loss whatsoever arising out of the use of or reliance on the contents of this Birbal's Update. This Birbal's Update is the exclusive copyright of Hammurabi & Solomon Partners and may not be circulated, reproduced or otherwise used by the intended recipient without the prior permission of its originator.

Private Circulation Only.