

## **Legal Issues in ‘Personality Rights’**

### **Issue: Does Moment Marketing Violate Celebrities’ Personality Rights?**

## Introduction

- ❖ Moment Marketing refers to marketing in respect of trending topics/events usually undertaken by brands to gain traction and benefit from the popularity that the trending events have garnered. Brands constantly look to create campaigns or post about any current topic to encash on such opportunities to stay relevant and visible to the public. For instance: Brands using PV Sindhu’s name and images for ‘congratulatory messages’, and Amul’s topical advertisements.
- ❖ Personality rights refer to the right of a person to his/her own personality and provide for the right to control the commercial use of one’s human identity. In India, personality rights are considered a part of the Right to Privacy guaranteed under Article 21 of the Constitution of India.
- ❖ While such sort of marketing has been around for a while now, it is only recently that celebrities and their personality rights have come into the picture.
- ❖ While there is no specific legislation in India that protects the personality rights of celebrities, victims of moment marketing have been afforded protection in various forms.

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## Relevant Legal Provisions

### ❖ **Rule 1.3, The Code for Self-Regulation of Advertising Content in India (ASCI Code)**

*“Advertisements shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised or tends to bring the person, firm or institution into ridicule or disrepute. If and when required to do so by The Advertising Standards Council of India, the advertiser and the advertising agency shall produce explicit permission from the person, firm or institution to which reference is made in the advertisement.”*

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## Relevant Case Laws

- ❖ ***D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors.*, [CS(OS) 893/2002, Delhi High Court, April 29, 2010]**
  - Baby Gift House was selling miniature toys of the singer Daler Mehndi.
  - D.M. Entertainment (Plaintiffs) had been assigned all the rights, titles and interest in the personality of Daler Mehndi along with the trademark, Daler Mehndi. The plaintiffs filed a suit alleging that the products were infringing upon Daler Mehndi's 'right to control the commercial exploitation of his persona' and hence it was claimed that the defendants were liable for false endorsement and passing off.
  - The Court held that Daler Mehndi was extremely famous and has an instinctive association in the public's mind and trade alike due to the entertainment he provided and the products he created. Therefore, according to the Court, **his persona had attained great importance as a quasi-property right, which was meant to protect the economic value associated with his identity.** [Emphasis supplied]
  - Since Daler Mehndi's celebrity persona was used in a commercial product without any authorization, the High Court held that Daler Mehndi's right to publicity had been infringed. The defendants were held liable for false endorsement and for passing off. A permanent injunction was granted and Mr. Mehndi was awarded token damages.

## Relevant Case Laws (Contd.)

- ❖ ***Titan Industries v. M/s Ramkumar Jewellers*, [CS (OS) No. 2662/2011, Delhi High Court, April 26, 2021]**
  - The plaintiff filed a suit of injunction, passing off and misappropriation of personality rights as Amitabh Bachchan and his wife Jaya Bachchan were endorsing Tanishq jewellery. The Defendant used images of Mr. Amitabh Bachchan and Mrs. Jaya Bachchan for advertising his outlet.
  - “*When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity but that **the right to control when, where and how their identity is used** should vest with the famous personality. The right to control commercial use of human identity is the right to publicity.*” [Emphasis supplied]
  - “*The defendants use of the personality rights of Mr. Amitabh Bachchan and Mrs. Jaya Bachchan in its advertisement itself contains a clear message of endorsement and the message is false and misleading.*”
  - An order of permanent injunction was passed, restraining the defendants from misappropriating the personality rights of the celebrities.

## Relevant Case Laws (Contd.)

### ❖ *Shivaji Rao Gaikwad v. Varsha Productions*, [2015 (62) PTC 351(Mad)]

- The defendant produced a film titled ‘Main Hoon Rajinikanth’. The defendant contended that the name ‘Rajinikanth’ could not be monopolised and the use of the name did not necessarily refer to the plaintiff who used it as his stage name to great acclaim.
- The Madras High Court rejected this argument on the ground that the public would unquestionably identify the name with the plaintiff. Interim injunction was granted in favour of the plaintiff.
- *“Despite the plaintiff being exceptionally well known and enjoying the adoration and recognition of his fans across the globe, he has deliberately chosen not to authorise any biopic featuring him or create any work based upon his personal self/personality. This is due to the fact that the plaintiff is personally against such gross commercialization of his name and reputation”*
- *“Any use/misuse of the Plaintiff’s name/image/caricature/style of delivering dialogues amounts to infringement of his personality right and copyright arising thereof. The plaintiff being a well known celebrity, has the right to command and control the use of his name, image, likeness or other unequivocal aspects of his distinctiveness. Any misuse of his name/image/caricature/style of delivering dialogues also amounts to infringement of the personality right vested with the Plaintiff besides amounting to acts of passing off.”*

## Relevant Case Laws (Contd.)

- ❖ ***Sonu Nigam v. Amrik Singh and Ors.*, [Civil Suit No. 372/2013, Bombay High Court, April 26, 2014]**
  - The plaintiff, Sonu Nigam (a renowned singer) filed an injunction claim against Mika Singh (another popular singer). The defendants had put up hoardings and billboards containing the plaintiff's photographs to promote an award show. The plaintiff also contended that the hoardings portrayed the defendant as being larger than life in comparison to the plaintiff.
  - The court granted a permanent injunction to the plaintiff on the basis of a compromise agreement between the parties. The defendants were not only restrained from advertising such hoardings in public, but were also asked to pay monetary compensation to different charitable organizations.
  
- ❖ ***Sourav Ganguly v. Tata Tea Ltd.*, [C.S. No. 361/1997, Calcutta High Court, April 24, 2008]**
  - Sourav Ganguly returned from India's tour of England where he had displayed phenomenal skill. Ganguly was earlier employed as a manager in Tata Tea Ltd. The defendant launched an advertising scheme whereby it was offering consumers an opportunity to congratulate Ganguly through a postcard contained inside each tea packet. Upon learning of this, the plaintiff instituted a suit before the High Court of Calcutta, claiming that such an advertisement misrepresented to consumers that he had endorsed this particular scheme. While the dispute ended in an amicable settlement, the Calcutta High Court had found in favour of the plaintiff by holding that his fame, popularity etc. were his intellectual property.

## Relevant Case Laws (Contd.)

- ❖ *Arun Jaitley v. Network Solutions Private Limited*, [(2011) 181 DLT 716]
  - Indian political leader Arun Jaitley filed a suit for permanent injunction to restrain the defendants from misusing the domain name arunjaitley.com, and to get the domain name transferred as he wished to register the domain name, which the defendants had already registered.
  - “...it would not be out of place to say that the entitlement to use one’s own name stands on a higher footing than the entitlement to use the trade mark. This is so due to the reason that the right to use ones own name is a personal right as against the right to use a trade mark which is merely a commercial right”.
  - The Court granted an interim injunction restraining the transfer of the domain to any third party.

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## Relevant Case Laws (Contd.)

- ❖ ***Rajat Sharma & Anr. v. Ashok Venkatramani & Anr.*, [CS (COMM) 15/2019, Delhi High Court, January 11, 2019]**
  - The Plaintiff filed a suit for ex-parte injunction against the Defendant as the latter had used the phrase “INDIA ME AB RAJAT KI ADALAT BAND” in their advertisement.
  - The Delhi High Court recognized the celebrity rights of Rajat Sharma and restrained Defendant from using the name of the Plaintiff in any advertisements whatsoever.
  
- ❖ ***ICC Development International Ltd. v. Arvee Enterprises & Anr.*, [2003 (26) PTC 245 (Del)]**
  - Plaintiff was an organizer of the Cricket World Cup 2003 and had filed a suit for injunction against the Defendant who had created and aired an advertisement with the tagline- “buy a Philips audio system and win a ticket to World Cup”.
  - It was contended that ICC has their persona or identity of their own and has registered their trademark and mascot in several countries.
  - The Delhi Court did not agree that ICC is a celebrity and thus it has not created any persona of their own. In case it would have been a celebrity there must have been infringement or passing off of celebrity rights.

## Conclusion

- ❖ It is difficult to draw the line between mere acknowledgement or congratulatory messages and violation of a celebrities' personality rights.
- ❖ Specifically in cases where the celebrities' names are trademarked, Courts have found it to be trademark infringement. This includes claiming damages from the entity that has illegally used the name and likeness of a celebrity. However, ones that are not trademarked have been decided on a case-to-case basis.
- ❖ Looking at the decided cases, two primary elements have been seen when considering a violation of personality rights:
  - Unauthorised use of identity for commercial gain; and
  - Likelihood of confusion
- ❖ Brands need to be careful and aware, that their eagerness to capitalise on 'buzz' around celebrities with whom they have no endorsement agreement may get them sued, and second, that there are no clear lines defining what they can and cannot do. That the celebrity can be identified by the public is a given. However, brands should also make sure that their own brand identifiers are not too prominent.

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# THANK YOU!

## Questions?

**Tanisha Agarwal, Associate**

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