

TRAILBLAZER  
ADVOCATES

**INDIA**

**INTELLECTUAL  
PROPERTY  
LAW  
UPDATE 2021**

**BI-ANNUAL** (JANUARY - JUNE 2021)

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## **INDIA AGAIN ON “PRIORITY WATCH LIST’ IN THE “SPECIAL 301 REPORT” PUBLISHED BY USA**

The Office of the United States Trade Representative, USA on 30th April 2021, released the 2021 edition of “Special 301 Report”. Like past few years, it again placed India along with 8 other countries on the “Priority Watch List”.

The US Trade Representative Katherine Tai states that India has been consistent in its progress in the field of IPR. But India is the world’s largely exigent economies in relation to fortification and enforcement of IP, the challenges for the innovators exist, that do not have them enjoy their benefits.

Some of the challenges and concerns expressed by the report are concerning slender patentability criteria under the Patents Act, be short of effectual mechanism to protect the applicant from unfair trade practices and even though India has limited IP protection to promote access to technologies, it has not devised any solution to the high custom duties paid to IP intensive products.

The Report further points out that India’s IP enforcement, even after being digitized, is not adequate. It noted the increasing trends in piracy & counterfeit in India. It also mentioned that India has been ranked as one of the top 5 economies for fake goods in the OECD’s Trends in Trade in Counterfeit and Pirated Goods (2019) which highlights, weak IP enforcement by courts, police officers, lack of investigation techniques, no coordination between state and national level, etc.

The lacunas in the Trademark Act are also dealt with. The report talks about excessive delays in trademark opposition proceedings and a lack of quality in the examination.

The report further talks about trade secret protection. It states that Companies also continue to face uncertainty caused by insufficient legal means to protect trade secrets in India.

India’s 2016 National IPR Policy identified trade secrets as an “important area of study for future policy development.” However, as of 2021, no civil or criminal laws in India specifically address the protection of trade secrets.

Further, concerns have been raised concerning published work not being afforded meaningful copyright protection. A very limited number of Commercial Courts have been established to diminish stoppages and augment knowledge in judicial IP matters.

Developments, progress, and actions taken are as follows, India’s accession to the World Intellectual Property Organization (WIPO) Internet Treaties in 2018 and the Nice Agreement in 2019 were positive steps. In the Nice agreement, 2019, the Cell for IPR Promotion and Management (CIPAM) continues to promote IP awareness. Further, the Memorandum of Understanding signed between USPTO and DPIIT in the year 2020 was also highlighted upon. Further, the partnership between US, India, Australia and Japan concerning the COVID-19 vaccine was also shed light upon.

However, it needs to be noted here that the 2021 edition has once again has not pointed out anything different from the previous 301 Reports. Though, the Report still carries the weight of acting as a pressuring tool to stimulate changes in the intellectual property regimes of concerned countries. It particularly affects bilateral relations between two countries as can be seen from the private assurance given by the Indian government to the US-India Business Council in 2016 of not invoking compulsory licensing for commercial purposes following criticism in earlier Special 301 Reports.

1. <https://spicyip.com/2021/05/special-301-report-2021-copyrights-enforcement-and-the-same-old-complaints.html>

## **BOMBAY HIGH COURT: PREVENTING SERUM INSTITUTE OF INDIA FROM USING 'COVISHIELD' MARK WILL AFFECT VACCINE ADMINISTRATION PROGRAM OF GOVERNMENT**

The Bombay High Court in the suit titled Cutis Biotech v. Serum Institute of India Private Limited refused to grant interim relief against the Serum Institute of India (SII) from using the trademark "COVISHIELD" for the COVID-19 vaccine.

The dispute arose in 2020, when both Cutis Biotech and Serum Institute of India applied for trademark registration for their mark "COVIESHIELD" on April 29, 2020, and June 6, 2020, respectively. While the application was pending, Cutis Biotech filed a suit before the Commercial Court at Pune against SII to restrain them using the trademark "COVISHIELD". The application was rejected by the Pune Bench by stating that the applicant did not qualify for the "Classic trinity" test of passing off a trademark. It was noted by the Pune Bench that 'both Cutis Biotech and Serum Institute do not have registration for the trademark 'COVISHIELD'. Thus, the grievance of Cutis Biotech would be termed as an allegation of passing off by Serum Institute. The Court considered the law on the subject and the tests required for grant of injunction in case of passing off. The Court held that Cutis Biotech had earned no goodwill in a short time. There was no dishonest deception by Serum Institute for passing off or to divert the business of Cutis Biotech. The products of Cutis Biotech and Serum Institute were different. The trade channels were different.

There was no evidence of any confusion caused in the mind of the consumers. The products of Cutis Biotech and Serum Institute were used for different purposes, and the visual appearance of the products was different

The Court also considered the implications of the grant of such injunction. The Court noted the situation brought about by the pandemic and the importance of the vaccine for the general public.

Thereafter, Cutis Biotech appealed to Bombay High Court under Section 13 of the Commercial Courts Act, 2015. It placed reliance on Sub-section 1 and 2 of the Trade Marks Act, 1999.

Cutis Biotech contended that since they were the first one to coin the term "COVISHIELD" and applied for its trademark registration earlier and also that their products are sold in various states of India, it is a distinct product, and thus, SII has infringed their trademark.

On the other hand, SII argued that they were the ones who discovered the mark "COVISHIELD" in March 2020 only and thus, produced an inter-office communication dated March 26, 2020, to their purchase department that contained the mark "COVISHIELD". They also contended that since they have received a virus seed and cell bank from Oxford University and permission is also been taken by the DCGI, a lot of money has been spent on the "COVISHIELD" vaccine.

The Bombay High Court held that no adequate details were to establish a prima facie case in favor of Cutis Biotech. On the other hand, a detailed reply is filed by Serum Institute, placing on record the prior user and adoption of the mark by the Serum Institute and how the claim of Cutis Biotech that it is the prior user is erroneous. Further with regards to goodwill also the Court held that there was no sufficient material on record to hold that Cutis Biotech has established sufficient goodwill regarding trademark 'COVISHIELD'. From this evidence produced on record, the failure of Cutis Biotech to substantiate its assertion that it was a prior user of the mark and had acquired goodwill is more than clear.

There is no perversity in the finding of the District Court that Cutis Biotech has not established this test for granting an injunction.

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2. <https://www.wordstream.com/google-ads>

On the question of likelihood of deception, the Court held that we do not agree with the contention of Cutis Biotech that there is a likelihood of confusion between the products of Cutis Biotech and Serum Institute.

The administration of vaccines through injection is well known. It will be too farfetched to hold that there will be confusion in the average consumers' minds between the use of a trademark in a Government administered vaccine at designated places and over-the-counter sanitizer products.

It is also pertinent to mention here that while rejecting the injunction application, the Court noted that 'COVISHIELD' is a vaccine to counter Coronavirus is now widely known. A temporary injunction directing Serum Institute to discontinue the use of mark 'COVISHIELD' for its vaccine will cause confusion and disruption in the Vaccine administration program of the State. In this case, thus, the grant of an injunction would have large-scale ramifications traversing beyond the parties to the suit.

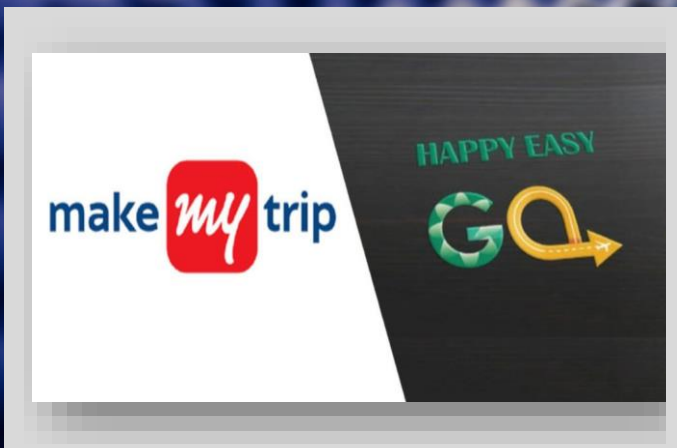
## HAPPYEASYGO RESTRICTED FROM BIDDING KEYWORDS OF MAKEMYTRIP IN GOOGLE ADS

Google ads are considered as one of the prime sources for advertisement and are seen as a money minting tool for the search engine giant. Google Ads works on an auction-based system, wherein the companies choose a list of keywords to target that are relevant to their business offerings, then they bid on these keywords to appear in the "top" to the search results in Google. These days a trick that businesses often do is they often bid on the rival companies' keywords so that the latter has to spend more money to win that bid to ensure their visibility for their trademark.

In 2018, a trademark infringement lawsuit was filed by MakeMyTrip (MMT) against HappyEasyGo (HEG) wherein MMT accused HEG of bidding for MMT-related keywords to appear at the top of the search results. Back then the Court granted an ad-interim injunction and directed HEG that till further orders of the court on Google's AdWord program or any other AdWord Program it should not bid on MMT-related keywords.

Industry sources said in situations like these, MMT ends up spending more on the Ad Words program to bid for its trademark to come on top of the search result. The competitive bidding on the brand's wordmark raises the on Google platform by up to three to four times, people aware of the matter added.<sup>3</sup>

However in December 2020 when the travel market started opening up after COVID, MMT noticed that HEG was violating the order of 2018 and was using MakeMyTrip as the keyword in the adword program which led MMT to file another contempt.<sup>4</sup> The Delhi High Court in the contempt suit granted an interim injunction and directed search engine Google to block or suspend HappyEasyGo's advertising account on the Google ads, where companies bid for certain keywords, to boost their visibility in search results.<sup>5</sup>



3. <https://timesofindia.indiatimes.com/business/india-business/suspend-a/c-for-ad-words-bidding-war-delhi-hc-to-google/articleshow/81302831.cms>
4. <https://www.moneycontrol.com/news/business/startup/makemytrip-google-adword-case-delhi-high-court-issues-bailable-warrant-against-happyeasygo-india-directors-6596241.html>
5. <https://inc42.com/buzz/delhi-hc-directs-happyeasygo-to-stop-bidding-for-makemytrip-keyword/>

## **DELHI HIGH COURT: POINTS OF DISSIMILARITY BETWEEN RIVAL MARKS CANNOT BE REGARDED AS IRRELEVANT – REJECTED BRITANNIA'S PLEA OF TRADEMARK INFRINGEMENT AGAINST ITC**

Recently in the case of Britannia Industries Ltd v. ITC Ltd & Ors., a single judge bench comprising of Justice C Hari Shankar dismissed the petition filed by the Britannia Industries Ltd alleging the infringement of trademark and passing off by ITC with respect to labeling and packaging of Sunfeast Farmlite Digestive Biscuits.

The Court while delivering the judgment interpreted Section 29 (1) and 29 (2) of the Trademarks Act held that the points of dissimilarity are also crucial criteria while determining that whether it is deceptively similar to the other one or not. The court reasoned that if similarity can cause deception then dissimilarity can also lead to such possibility.

Thus, by keeping these criteria into mind, the court held that ITC Sunfeast's Farmlite Digestive Biscuits are not deceptively similar to that of Britannia's Nutri Choice Digestive Biscuits. It stated that having examined the impugned pack vis-a-vis the pack of the plaintiff, I am unable to convince myself that the pack of the defendant is so similar to that of the plaintiff, as is likely to result in deception or confusion.

The Court further added that while determining the substantial similarity between the two marks, the points of view of an "average intelligence" and "imperfect recollection" has to be looked upon and not what an amnesiac will think of the marks in question.



## **DECATHLON INDIA TAKES PENTATHLON TO COURT ALLEGING TRADEMARK INFRINGEMENT**

Decathlon Sports India has filed trademark infringement suits against NCR-based Pentathlon sports. It has claimed that it wants to legally stop the Pentathlon from "illegal and mala fide acts of inter alia of infringement of the registered trademark of the Plaintiff No 1 (Decathlon), selling substandard products in the market and passing them off as goods/products of the Plaintiffs (Decathlon)." <sup>6</sup> Further, they also alleged that the defendant had copied their registered tag line, Sports for All/ All for Sports. They also contend that the defendant used the same color scheme, font, italicized the same letter, and the concept is also somewhat the same. Further, the three stores of the defendant have caused them "irreparable loss".

Pentathlon on the other hand has refuted all the claims. It has contended that font is not at all similar and on the point of A being cursive in Pentathlon, the same is not the case with Decathlon as in it both A and C are cursive and combined. Further, there is a tennis ball in place of O in Pentathlon but it is not in the Plaintiffs' mark. And that tagline is also different as there is "Everyone" in the case of "All". Further, when it comes to Plaintiff's brand image being hampered the defendant contends that they also sell branded items at their store.

Over here it is imperative to mention that Decathlon and Pentathlon are both Greek words and the latter finds its origin from the ancient Greek Olympics and are played with a 5 sports event in a row while the former one is 10 event sports.

The matter is *sub-judice* before the Court of law and it would be interesting to see what course does this trademark infringement suit takes.

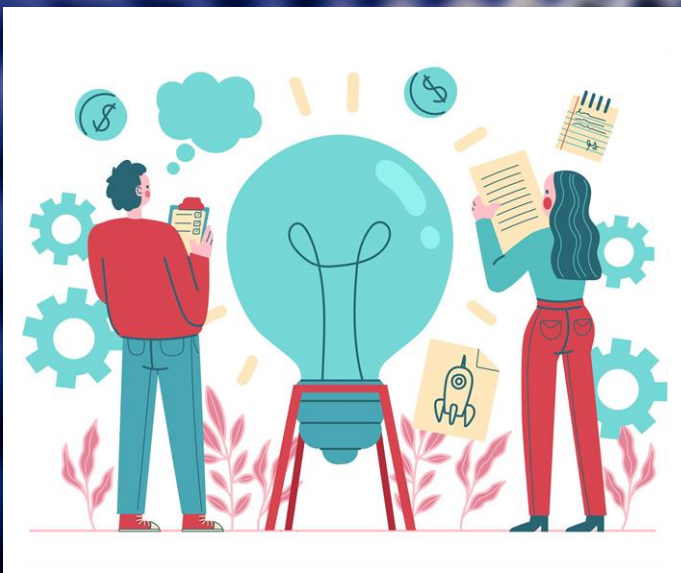
6. <https://bizbehindsports.com/2021/03/28/deathlon-india-sues-ncr-based-pentathlon-for-trademark-infringement/>



## START-UP INDIA: 46% OF TRADEMARK APPLICATIONS BY START-UPS REGISTERED SO FAR; OVER 6,000 FILED IN FY21

According to government data, the number of trademark applications filed by Startups in India under the Start-up India initiative has grown substantially as of March 14, 2021, to 14,252 from only 4 from the year 2016-17. With the years passing by, according to the DPIIT 2020-21 annual report, the trademark applications have been increasing to a great level.

But the sad part is that the start-up trademark filing and registration is only a minuscule part of the overall statistics. As per the Indian Patent Office FY19 report – latest available on its portal, 3,23,798 trademark applications were filed in India by businesses across sizes in comparison to 2,596 startup applications (0.8 percent).<sup>7</sup>





Various steps have been taken by GOI to strengthen the IP regime in India, such as reducing the fee for the filing of the trademark application, a further concession of 10 percent for those going for online filling of applications, etc. And as a result, various start-ups are benefited out of it.

Commerce Minister Piyush Goyal in a written reply to a question on start-up trademark applications in the Lok Sabha recently stated that 'The Government of India has been taking various legislative and policy reforming steps to strengthen the Intellectual Property Rights regime in the country keeping in view our developmental needs statutory fees paid for trademark applications filed by a startup has been reduced to 50 percent vis-à-vis large entities. A further concession of 10 percent in the prescribed fee is provided for the online filing of applications.<sup>8</sup>

The government had also announced the Scheme for Facilitating Startups Intellectual Property Protection in 2016 to help startups in filing and subsequent processing of their applications.

The scheme is not extended to March 2023. The government also bears the costs of those facilitators who assist these startups in filing these applications.<sup>9</sup>

7. *Supra* Note 6.

8. *Ibid.*

9. *Ibid.*

Picture Credits: Startup picture - <a href="https://www.freepik.com/free-photos-vectors/business">Business vector created by freepik - www.freepik.com</a>



## OREO MAKERS ALLEGE TRADEMARK INFRINGEMENT BY PARLE

The US-based brand Mondelez International, maker of Oreo Biscuit, on the grounds of trademark infringement, has taken Parle, maker of Fabio Biscuits, to the Court. It has been alleged by Mondelez International that the design of their biscuit is deceptively similar to that of Parle's Fabio biscuit.

The essential and most crucial part of a trademark is to assure its consumers the guarantee of the identity of that particular commercial product the Trademark is associated with. Distinctiveness here plays an essential role in determining the scope of protection, the enforceability of the same, and the validity of the registration of the trademark.<sup>10</sup>

Trademark protection is vulnerable to be infringed by one or another way. One such way in which it can be misused is by making "deceptively" similar trademarks. Now, what does "Deceptive Similarity" means? It means when two logos or marks are kept in front of you, though they are different in the manner or the design they are made but have the same hidden meaning behind them.

In this case, the similarity in both the biscuits cannot be denied – same blue and white color scheme; two dark cream-filled biscuits. Thus, it will be interesting to watch what will be the decision of the Delhi High Court on whether the two marks are deceptively similar or not.

10. *World Intellectual Property Organization, Introduction to trademark law and practice, The WIPO training manual, https://www.wipo.int/edocs/pubdocs/en/wipo\_pub\_653.pdf.*

## **KAIRA DISTRICT COOPERATIVE MILK PRODUCERS UNION LTD GETS TEMPORARY INJUNCTION AGAINST MAA TARA TRADING CO. RESTRAINING THEM FROM USING THE MARK “AMUL”**

In 2015, Amul got the status of 'Well known mark'. Since then it belongs to the bandwagon of Companies who have been very particular about their brand protection. They have always enforced their trademark and have taken stringent steps against infringers or potential infringers of their mark.

Keeping up with its practice, recently they sued Maa Tara Trading Co., engaged in the business of selling candles at the cake shop, before the Calcutta High Court. The suit was instituted by the proprietors of the trademark "Amul", i.e., Kaira District Cooperative Milk Producers Union Ltd., alleging that the two marks are deceptively similar (similar font and letters) and thus, amounts to trademark infringement.

And since, "Amul" is a well-known trademark and their goodwill was being hampered the Calcutta High Court passed an interim order of temporary injunction against Maa Tara Trading Co., restraining them from using the trademark "Amul" in any of their products.



## **MEGHAN AND HARRY HIT A ROADBLOCK IN BID TO TAKE BRAND GLOBAL AS TRADEMARK REFUSED IN INDIA**

The Duke and Duchess of Sussex - Meghan Markle and Prince Harry in 2020 created a charity organization called Archewell, named in honor of their son Archie Mountbatten Windsor.<sup>11</sup>

They had filed for Trademarks in several countries around the globe as they want to prevent anyone else from selling goods or services under the foundation's name as they set their sights on ambitious post-Megxit projects.<sup>12</sup>

In a recent turn of events and as per recent reports, India has issued a 'total provisional refusal of protection' because the name Arche is already taken by a footwear company.<sup>13</sup>

11. [https://www.insidenova.com/lifestyles/entertainment/prince-harry-and-meghan-dissolve-sussex-royal-foundation/article\\_fd67fb41-743e-580a-bf2a-641a561fd9f4.html](https://www.insidenova.com/lifestyles/entertainment/prince-harry-and-meghan-dissolve-sussex-royal-foundation/article_fd67fb41-743e-580a-bf2a-641a561fd9f4.html)

12. <https://www.express.co.uk/news/royal/1433400/meghan-markle-prince-harry-brand-archewell-foundation-trademark-global-royal-news>

13. *Ibid.*

## T-SERIES GETS MEMBERSHIP IN 'INDIAN PERFORMING RIGHT SOCIETY'

Indian Major Label T-Series is the latest one to join the bandwagon Sony music entertainment, Saregama India etc. and is now a member of Indian Performing Right Society, IPRS.

T-Series is also a leading film production house having more than 200,000 music titles in its name. This deal is a step forward for those best-known authors, composers, music publishers who will now be amongst the 5000 IPRS members and their work will be recognized. It will also help in enhancing the ease of doing businesses and with giving of licenses to various broadcasters, digital services, telecom companies and other such small businesses. Also, it will pave way for a single-window clearance system for licensing the music in a music video or sound recording system.

PRS is India's only copyright society entrusted with the function to, "issue and grant licenses in respect of musical works and literary works associated with musical works assigned to it by its members, as well as to collect and distribute the authors' statutory royalties, for the exploitation of these works either by way of live performances or sound recordings through any medium except when exhibited as a part of a cinematograph film shown in a cinema hall."<sup>14</sup>

16. <https://www.musicbusinessworldwide.com/t-series-joins-iprs-marking-a-watershed-moment-in-the-indian-music-industry/#:~:text=Magazines-,T%2DSeries%20joins%20IPRS%2C%20marking%20a%20'watershed%20moment,in%20the%20Indian%20music%20industry'&text=In%20a%20landmark%20deal%2C%20Indian,for%20songwriters%20and%20music%20publishers..>



## YOUTUBE TO WARN CONTENT CREATORS OF POTENTIAL COPYRIGHT ISSUES

Often creators are not aware of the fact that whether the videos they are going to upload on Youtube violate any copyright or not. To make it easier, Youtube has now included a tool that will automatically review the videos and alert the creators in case of any potential copyright issues. This new tool is called "Checks" and is intended to facilitate the process of uploading videos and receiving advertising revenue for content creators. This will help in reducing the yellow marks that creators often see alongside their videos which signifies that the revenue is being held owing to copyright issues.



"(video name)" This video is no longer available due to a copyright claim by (company).



This tool is based on Content ID. If YouTube's copyright identification system detects an infringement after scanning a video, the right holder's policy will automatically be applied to the video. This could mean that the video could be blocked entirely or that the rights holders will monetize the video instead.

If the ID matches, then a notification will be sent in the form of an alert to the creator so that they can remove the video from the platform. If the copyright issues are detected, you can click "view details" and "request review" to resolve the issue.

Further, YouTube will allow the creators to resolve the dispute by giving few days and thus, creators have to wait until the issue is resolved and then post the video. Thus, a dispute resolution mechanism is also been provided to the content creators.<sup>15</sup>

15. <https://www.theverge.com/2021/3/17/22335728/youtube-checks-monetization-copyright-claim-dispute-tool>.

It is done to lessen down the burden on the applicant who earlier, according to Rule 70 sub-rule 4, was required to surrender the "source and object code" while going for a listing of the software.

- In Rule 2(i) a new sub-rule has been added that requires the publication of Copyright Journal instead of publication in the Official Gazette has been notified and the same will be made available to the official website of the Indian Copyright Office. This is done in the wake of technological advancement by going online and keeping electronic mode as the primary mode of communication to ensure, transparency, flawlessness, in the working of the copyright-related work at the Copyright Office.
- Rule 55(iii) has been amended to add an electronic payment method to collect and distribute royalties has been inserted to deal with undistributed royalty amounts to ensure greater simplicity.
- The period to respond to the copyright society's application sent to the Centre for the copyright registration has been extended to 180 days. It is done to make certain that a thorough assessment of the claim is made out.

## **COPYRIGHT RULES (AMENDMENT), 2021 NOTIFIED BY CENTRAL GOVERNMENT**

The Government of India has notified Copyright (Amendment) Rules, 2021. The Copyright Rules, 2013 were last amended in the year 2016. The key provisions are-

- A new rule, Rule 65 A has been added wherein the Copyright Societies are required to make public an Annual Transparency Report for each financial year within 6 months following the end of the financial year. The motive behind it is to look into the much-needed transparency in relation to works of Copyright Societies.
- Relief has also been sought in the field of software registration. For this, in Rule 70 (5) the compliance requirement is now limited to only the first and last 10 pages of the source code by the applicant and if the source code is not more than 20 pages then all of them, without any blocked out or redacted portions.



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## RISHAB SHETTY V. LAHIRI - COPYRIGHT DISPUTE OVER KIRIK PARTY SONGS

Lahari Audio team applied copyright violation against the “Kirik Party” movie team. Owing to this, a nonbailable arrest warrant was issued against the latter. It was alleged that the music of the song “Madhya Raatrili Highway Rastheli” owned by Lahari Audio was used.

“Kirik Party” movie team on the other hand argued that they released the lyrics of the song one month before the date of release and alleged that Plaintiff has a habit of doing this. He also alleged that they were threatened by Plaintiff even when they tried to reach out for settlement. They also contended that since all the notices were served to their old address, they have now come to know about the matter and are looking forward to filing their reply in court.<sup>16</sup>

It will be interesting to watch whose claims are going to succeed in this court battle.

16.

<https://www.thehansindia.com/cinema/sandalwood/copyright-violation-in-kirik-party-song-rishab-shetty-vows-fitting-reply-to-lahari-681121>



## UNITED STATES SUPPORTS INDIA-SOUTH AFRICA JOINT SUGGESTION AT THE WTO TO WAIVE IP PROTECTIONS FOR COVID-19 VACCINES

In a recent move, the United States has agreed to support the India-South Africa joint suggestion at the World Trade Organization to waive IP protections for COVID-19 vaccines. In a statement, United States Trade Representative Katherine Tai said that this is a global health crisis and the extraordinary circumstances of the Covid-19 pandemic call for extraordinary measures. The administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports the waiver of those protections for COVID-19 vaccines.<sup>17</sup>

Though USTR thinks that IP protections should be the priority but owing to this unprecedented situation due to the COVID pandemic, it is ready to participate in text-based negotiations to provide a waiver to COVID-19 vaccines. The motive behind the IP waiver proposal is to provide for timely affordable medical products to supply essential products and to escalate research in this area.

The IP waiver proposal was conveyed in October 2020 which seeks a waiver for all WTO members of certain provisions of copyrights, industrial designs, patents, and protection of undisclosed information in the Trade-Related Intellectual Property Rights (TRIPS) Agreement for prevention, containment, or treatment of Covid-19.<sup>18</sup>

The proposal is actively supported by over 100 countries including China while the EU, the UK, Switzerland, Japan and Australia continue to oppose it on the account that it will create "severe complications" for future vaccines and that patents were not the "limiting" factors in production. Also, they believe that waiver alone may not be fruitful unless there is a tech transfer.

17. <https://www.businesstoday.in/coronavirus/us-to-support-india-south-africa-wto-proposal-to-waive-off-patent-protection-rules-on-covid-19-vaccines/story/438368.html>

18. <https://economictimes.indiatimes.com/news/international/world-news/us-announces-support-for-covid-19-vaccine-patent-waiver-as-proposed-by-india-south-africa/articleshow/82422977.cms>

\* Picture Credits: <https://www.freepik.com/free-photos-vectors/medical> Medical vector created by almutazza - [www.freepik.com](https://www.freepik.com)



## CENTRE TO SUPREME COURT: ANY EXERCISE OF STATUTORY POWERS EITHER UNDER THE PATENTS ACT 1970 OVER COVID VACCINES, DRUGS COUNTER-PRODUCTIVE AT THIS STAGE

In a recent update, in the matter concerning In Re-Distribution of Essential Supplies and Services During Pandemic, bench composed of Justice D Y Chandrachud, L Nagewshwara Rao, and S Ravindra Bhatt in its order dated April 30, 2021, raised a query asking the Central Government to consider using its powers under Sections 92 (Special provision for compulsory licenses on notifications by Central Government), 100 (Power of Central Government to use inventions for purposes of Government) or 102 (Acquisition of inventions and patents by the Central Government) of the Patents Act to increase production of essential drugs to ensure that it is commensurate to the demand. To this, the Central Government filed an affidavit on May 9, 2021, and has replied negatively.

The Central Government further added that in these unprecedented times, there is a scarcity of resources like raw materials thus, imposing these additional licenses is not going to result in increased production. But, it was also added by CG that if any manufacturer wants to apply for a compulsory license, there is no constraint towards it but they had to do this before the Controller of Patents. As a sign of relief, it stated that it is continuously engaged in diplomatic talks with foreign nations to make available vaccines and medicines.

## **NATCO PHARMA APPLIES FOR COMPULSORY LICENSING TO PRODUCE THE DRUG 'BARICITINIB'**

Indian generic drug manufacturer Natco Pharma Limited has applied to the Controller of Patents seeking a compulsory license to produce the drug 'Baricitinib' which is used for the treatment of COVID-19.

The application was filed under Section 92 (1) and 92 (3) of the Patents Act to have the compulsory license so that the production of the vaccine can be done at an affordable rate during these unprecedented times.

They further alleged that the Remdesivir is not inadequate quantity and a vast majority of the public is not able to procure it. On the other hand, Baricitinib will help in tackling this situation as it will increase production and will broaden the distribution network.<sup>19</sup>

It is pertinent to recall that Natco is the first pharma company in India to be granted compulsory licensing for a drug in India. Concerning 'Baricitinib', Natco offers to pay a 7% royalty on net profits to the patent holder. It undertakes to give preference to patients in the economically weaker sections of the society and other remote areas of the country and that too "free of cost".

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19. <https://www.livelaw.in/news-updates/natco-pharma-files-application-seeking-compulsory-license-for-covid-drug-baricitinib-173627>.

Picture Credits <https://www.freepik.com/free-photos-vectors/background>>Background vector created by pikisuperstar - [www.freepik.com](https://www.freepik.com)</a>



## **RUSSIA SUED BY GILEAD FOR GRANTING COMPULSORY LICENSE TO A COMPANY FOR MAKING REMDESIVIR**

Gilead, Sciences filed a suit for infringement against Russian pharmaceutical company Pharmasynthez on the ground of compulsory license being issued to a company making generic doses of the COVID-19 drug, Remdesivir.

Remdesivir was approved by the US Food and Drug Administration in November 2020. And in November only, the Russian company started the work to make the generic drug. Kremlin agreed to have a new law that will allow the government to limit the IP rights in the “public interest”. Thus, the Russian government was permitted to make use of obligatory medicine licensing on the ground of defense, national security, and the health of the public. But it has to be kept in mind that this authorization was given without taking permission from Gilead.<sup>20</sup>

Now, that medicines and vaccines are costly to develop and had to go through a series of lab testing. Thus, with no incentive to produce it into the market and investing so much in its production is not a good investment at all. Owing to all these reasons, the patent is given to important drugs and medicines.<sup>21</sup> But when a patent waiver is granted, IP rights are done away with and the cheaper version of the medicines and put before the sale in the market to increase the production.

But when we talk about the recent permission granted by the Russian government, various questions emerge as to whether eliminating IP protections would “undermine the global response to the pandemic” and the efforts to tackle the virus or whether confusion will be created amongst the public about the safety of the vaccine and a barrier will be created in front of the information sharing and many more.

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20. <https://www.livelaw.in/news-updates/natco-pharma-files-application-seeking-compulsory-license-for-covid-drug-baricitinib-173627>.

21. <https://www.firstpost.com/world/vaccine-patent-waiver-what-are-ip-rights-and-which-nations-stand-for-and-against-us-proposal-9601781.html>.



## JAMMU & KASHMIR SEEKS GEOGRAPHICAL INDICATION (GI) TAG SOUGHT FOR GUCCHI, ONE OF THE COSTLIEST MUSHROOMS IN THE WORLD

Jammu and Kashmir's Doda district grows Gucci aka internationally known as Morel mushrooms or Morchella Esculenta which is one of the costliest mushrooms in the world and costs around 20,000 per kg. Mainly found in temperate forests, the medicinal and anti-inflammatory properties of these mushrooms are worth talking about. They are a rich source of protein, carbohydrates, and Vitamin B. More popularly, Gucci mushrooms are valued for their aphrodisiac properties.<sup>22</sup>

A Geographical Indication (GI) tag has been sought for Gucci Mushroom. The organization which is responsible for such an application is the Jammu-based NGO which is known as the "Border World Foundation". The application was facilitated by the Director of Agriculture of J&K.<sup>23</sup>

The GI tag will create branding and commercial interest for these mushrooms which will help the local farmers get higher prices for their efforts.<sup>24</sup>

GI conveys the distinctiveness that is typically attributable to the place of origin. Once the GI is given to any product, it signifies that a particular product cannot be misused in the name of similar products.

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22. <https://www.dailyo.in/variety/gi-tagging-gucchi-mushroom-kashmiri-rice-kashmiri-honey-kashmiri-chilli/story/1/34250.html>  
23. <https://www.latestlaws.com/intellectual-property-news/gucchi-mushroom-of-jammu-kashmir-seeks-gi-tag/>  
24. <https://blog.nextias.com/gi-tag-for-indias-costliest-mushroom-gucchi>

## HIMACHAL PRADESH GOVERNMENT TARGETING GEOGRAPHICAL INDICATION (GI) TAG FOR 'SALOONI MAIZE'

Himachal Pradesh government is planning to obtain Geographical Indication (GI) Tag for Salooni Maize. The Salooni White Maize Organisation has sent an application to the Patent Information Centre of the Himachal Pradesh State Science, Technology and Environment Council for granting GI tag to three varieties of Salooni Maize including, Hatchchi Kukdi, Ratti and Chitku.

White Maize is the traditional variety of Maize grown in Salooni and is rich in Protein and Crude fibers making it easy for digestion.

DC Rana, Deputy Commissioner of Chamba district, has said in a statement that the matter has now been referred to the Chennai-based office of the GI Registrar and it is expected that farmers in the valley will get GI tag for maize shortly. The varieties include white maize, red maize and chitku (popcorn maize).<sup>25</sup> Stating that the Chamba administration was hopeful of getting GI status, the deputy commissioner further said a scientific study on the three varieties of Salooni maize had already been carried in which it had been found that this was the crop which was unique to Salooni and had very different characteristics.<sup>26</sup>

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. A GI tag is given to those products that are agricultural, natural or a handicraft or industrial goods that are specific to a definite geographical area.

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25. <https://www.tribuneindia.com/news/himachal/salooni-maize-to-get-gi-tag-229530>  
26. <https://timesofindia.indiatimes.com/city/shimla/himachal-pradesh-salooni-maize-may-get-gi-status-in-near-future/articleshow/81665486.cms>

## MAHARASHTRA GOVT ISSUES “BREAK THE CHAIN” ORDER FOR E- COMMERCE & FOOD DELIVERY COMPANIES

In its effort to curb the rising COVID cases, the Maharashtra Government released a “Break the chain” order. The order provides that every e-commerce personnel or food delivery services personnel is required to get vaccinated or carry a negative COVID-19 report (RT-PCR) with them whenever they are out for delivery. The certificate is to have a life span of 15 days. As per the current rules, a penalty for non-compliance for food delivery companies will attract a fine of INR 10K on the establishment and INR 1,000 on the delivery agent. Their business licenses may be withdrawn for repeat offenses.<sup>27</sup>

The order is posing some complicated issues like:

- Though the vaccine is open for all people above 18 years after 1 May 2021, still, those who are not vaccinated need to get themselves tested repeatedly.
- With the rising number of cases, testing in itself is getting difficult with waiting time running up to 48 hours.

However, as they say, extraordinary times call for extraordinary measures. This stringent measure is taken to ensure that the food deliveries and other essential commodities are delivered to people keeping them safe from getting any COVID infection. Further, e-commerce sites like Amazon and Flipkart are also contributing to the same by ensuring that their personnel follow each guideline seriously and take all preventive measures for an efficacious delivery.

27. <https://inc42.com/buzz/ecommerce-food-delivery-cos-seek-leeway-in-maharashtras-lockdown-rules/>

Picture Credits: <https://www.freepik.com/free-photos-vectors/food>>Food vector created by mamewmy - [www.freepik.com](https://www.freepik.com)

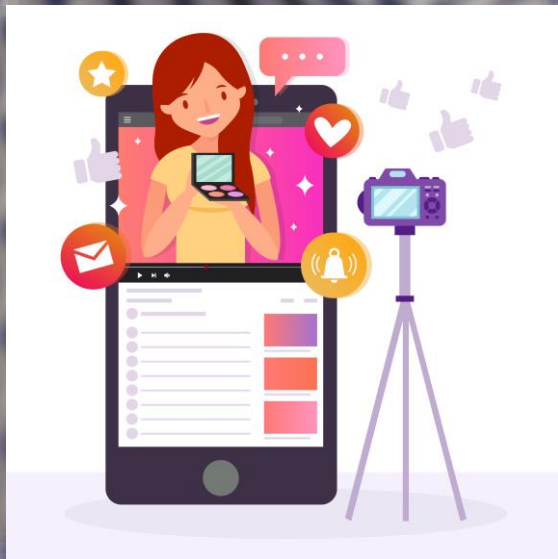
Also, food delivery platforms like Zomato and Swiggy etc. are asking their employees to carry RT-PCR reports with them whenever they are out of their house for delivery to ensure the guidelines issued by Maharashtra Government are complied with.



## NEW GUIDELINES FOR SOCIAL MEDIA INFLUENCERS

The advertisement standards council of India (ASCI) in the light of rising social media issues, released a set of draft guidelines for influencers on social media.

ASCI is the self-regulatory authority that lays down various rules and regulations that social media platforms, TV channels, and even influencers are required to follow. Thus, to help customers better understand their rights and not get misled, recently in the year 2018, it released a comprehensive set of guidelines to minimize the rising social media issues and also to protect social media influencers from IP rights violations.



According to draft guidelines, influencers are required to include certain hashtags like #sponsored #ad at starting of their post or in the last line of the content in which they are telling about the description of the product or any brand. In the case of audio content, disclosure is to be announced either at the beginning of the end of the content.<sup>28</sup> Further, they are required to exercise due diligence while giving assent to any technical promotional event. The use of filters on the images and the videos is regulated by the guidelines.

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28. <https://gadgets.ndtv.com/social-networking/news/ascii-social-media-influencer-advertising-guidelines-introduce-implementation-june-14-2451421>.

Picture Credits: "<https://www.freepik.com/free-photos-vectors/camera>">Camera vector created by freepik - [www.freepik.com](http://www.freepik.com)"



## **GOVERNMENT NOTIFIES DESIGN (AMENDMENT) RULES, 2021**

The Design (Amendment) Rules, 2021 came into effect on January 25, 2021. A few key changes are as follows:

### **RECOGNITION TO START-UPS**

The new rules give recognition to start-ups by making them a new category of applicants. To enjoy these benefits, a business corporation is required to meet the criteria given under the Start-up India initiative. Further, foreign start-ups also need to fulfill the same criteria.

### **REDUCTION OF FEES**

The new rules provide for a reduction of fees of all-natural persona, small entities recognized under the MSME Act and for all the Start-ups, they will get rebates up to 50% or even more for fees payable for different applications and claims under the First schedule.

### **E-SERVICE OF DOCUMENTS**

According to amended rules, you can now do the full service of documents through email and mobile phones. This is will be done by keeping a record of all the mobile phones and the addresses for effective service.

### **ADOPTION OF LOCARNO CLASSIFICATION SYSTEM**

The new rules provide for the adoption of the latest Locarno Classification system. In addition to this, Class 32 and a proviso to Rule 10 have also been added. The proviso added states that any registration of the design is subjected to Section 2 (a) and 2 (d) of the Designs Act, 2000 which provides for the definition of "article" and the criteria to be seen while applying design to the "article".

Thus, with the Locarno Classification and the proviso, it will be good to see whether the confusion regarding how the registration of the design is to be done.

**TRAILBLAZER**  
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