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Sports Law and Its various aspects related to Intellectual Property Rights (IPR)

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Sports have become a significant global industry, with the sports sector playing a crucial role in bridging economic and cultural divides. Intellectual Property Rights (IPRs) are essential for creators to protect their creative work. India's sports sector is one of the largest, with some sports receiving more attention and financial support due to commercialization and investment interest. The Indian government introduced the Sports Bill in 2011 to streamline the sports business but it was ultimately rejected. The National Sports Ethics Commission Bill 2016 aimed to enhance the integrity of sports in India¹. Sports have evolved from being a hobby or profession to a substantial business opportunity, and protection of these creative elements becomes imperative once they have been conceived and implemented in the commercial realm. There is no single piece of legislation that comprehensively protects all proprietary materials and resolves any issues that may emerge from them. A collection of various legal frameworks is implemented to protect the financial interests of the sports industry, with intellectual property laws being the most common. Individuals' original ideas and creative expressions are protected under copyright law. Sports events have copyrights for artwork, advertising materials, commodities, and software. The 1957 Copyright Act in India covers sports and other copyrights, whereas the 1906 Berne Convention in 1999 protects literary and artistic works.² Patents prevent theft or unauthorized use of innovative ideas. Internet gaming has changed since the late 19th century, and sports ambush marketing is rising.

¹ Suryaprabha Sadasivan and Aashna Kothiyal, 'Transforming India's sports landscape' *Hindustan Times* (29 August 2023) <<https://www.hindustantimes.com/ht-insight/governance/transforming-indias-sports-landscape-101693295212530.html>> accessed 05 February 2024

² Indian Copyright Act 1957

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INTRODUCTION

Sports have become an integral aspect of people's lives. They have been so ingrained in our daily routines that we cannot imagine life without them. It has always been a very important and significant field, from ancient times to the modern period of science and commercialization. It has transformed from a pastime to a source of income for individuals and global economies due to its inherent characteristics. Investing in facilities, employing millions of people globally, and entertaining many more—sports is today thought of as a multi-billion-dollar worldwide industry. As a massive global industry, sports have played an important role in bridging economic and cultural divides throughout the last century.

The most recent example of North and South Korea competing as one team in the Olympics is what finally brought them together after a long time of animosity. Because of the importance of marketing, advertising, franchising, merchandise, and brand building to the success of professional sports teams, these organizations have sought out partnerships with international corporations to expand their reach and impact.

The economic and ethical considerations surrounding the exploitation of intellectual endeavors make Intellectual Property Rights (IPRs) an important issue in today's business-oriented society. Anything that can be reproduced—an idea, concept, name, method, procedure, expression, etc.—that is the product of creative, technological, or artistic human endeavors is known as intellectual property³. The term 'intellectual property' was used by Bill Cornish to describe the commercially valuable uses of ideas and information. The term 'intellectual property rights' refers to a body of legislation that grants a creator or inventor certain legal protections for their creative work.

³ P. Kanagavel, 'Intellectual Property Rights: A Comprehensive Overview' (2003) 85 Journal of the Patent and Trademark Office Society 663

Indian law does not define sport, but Webster's dictionary⁴ defines a sport as 'any activity or experience that gives enjoyment, recreation, or diversion.' Also, it has been called 'a human activity that involves the specific administration of a particular set of rules and regulations that define the objective and limit the pattern of human behavior involving competition and a definite outcome primarily determined by physical skill.' Intellectual property is increasingly significant in sports, technology, art, science, and more. IPRs give creators the right to regulate how their work is utilized, promoting innovation. Intellectual property rights (IPRs) are vital to the sports sector due to their promotional value. Sports promotion and development can benefit from law, particularly IPRs. This profession has always had legal disputes. IPRs are a powerful legal area that could benefit sports.

CONFLUX OF INTELLECTUAL PROPERTY AND SPORTS

The sports sector is one of the largest sectors in India. Some sports are receiving significantly more attention and financial support compared to others because of commercialization and investment interest. The expansion of the sports sector has revealed various prospects in areas such as broadcasting and sponsorship. As the Indian economy grows faster and India becomes more involved in global sports, numerous Intellectual Property concerns need to be dealt with. These include matters related to trademarks, broadcasting rights, sponsorship, and licensing. In India, the government attempted to streamline the sports business by considering the interests of all parties involved, including teams, sponsors, and the public. They introduced the **Sports Bill in 2011** with this goal in mind. However, the cabinet ultimately rejected the bill. The parliament introduced the National Sports Ethics Commission Bill, 2016 in early 2016.

The objective of this Bill was to enact legislative reforms to enhance the integrity of sports in India. If this Bill had been enacted, it would have had the capacity to exert some level of control over the administration of sports. The successful organization and flawless execution of the inaugural Formula 1 race in India has elevated the country's status, highlighting the significance of sports legislation and intellectual property rights. These rights can be utilized to establish

⁴ David Bernard Guralnik, *Webster's New World dictionary of the American language* (Simon and Schuster 1984)

branding, resulting in substantial value creation. Cricket is a highly popular and cherished sport in India. It has transformed into a commercial game that is currently attracting substantial financial investments and generating significant profits.

The T20 format and various Indian sports leagues, including the Indian Premier League, Indian Badminton League, Hockey India League, Indian Super League, ProKabaddi, as well as traditional sports like Gatta Gusthi, Goti, and Lagori, have emphasized that commerce now plays a prominent role in sports. As a result, the protection of intellectual property rights in sporting events is becoming increasingly significant. From a legal standpoint, intellectual properties such as copyrights, trademarks, industrial designs, and patents have gained significant importance in safeguarding the commercial aspects of athletes and athletic events, as they are being more commercialized and exploited.

Since sports have become more commercialized and developed economically and industrially, many intellectual properties made by sports franchisees, professional athletes, sports management companies, and other groups have been turned into valuable assets. To make money, these intellectual properties are turned into merchandise, ads, licensing agreements, virtual and online games, database rights, and other things. As valuable assets, intellectual property rights are being used to sell games and events, as well as clubs, teams, and athletes.

As both the national and foreign economies grow, it is more important than ever to protect the interests of both individuals and teams. Intellectual property rights are a big part of the business sports industry, so they need to be protected from any problems or disputes that might come up. The sports business is full of intellectual things that are made by both athletes and sports organizations. Since these elements are used for business purposes, they are worth a lot of money, so protecting them is very important. Since a lot of money is at stake, it is not surprising that there are a lot of lawsuits. These lawsuits cover a wide range of claims, such as sponsorships, endorsements, television personality rights, merchandise, and more.⁵ Logo abuse, copyright

⁵ Vijay Kumar Singh, 'Issues in Emerging Areas of Sports Law: Lex Sportiva' (2009) 1(1) Indian Law Review 114-147

infringement, design use without a license, brand abuse, audiovisual recording theft, use of patented technology without permission, and other legal issues are at stake.

The growing usage of trademarks and copyrights in the sports business is a new trend in the intersection of intellectual property rights (IPR) and sports law. Athletes and sports organizations are increasingly relying on intellectual property rights to protect their brands and assets. For example, the NBA's efforts to trademark club logos and player likenesses demonstrate how important IPR is in protecting sports businesses' identities. Furthermore, the emergence of virtual sports and esports has resulted in legal disputes over the ownership of in-game assets and intellectual property rights, underlining the changing nature of IPR in sports law. It's amazing to see how these two professions are collaborating to solve new issues and opportunities in sports! There are a lot of opportunities in the sports business, but they can only be fully used if the intellectual property is protected. This is where sports and the law meet, specifically when it comes to protecting intellectual property. Different types of intellectual property are connected to the commercialized world of sports, and these will be explained in more detail in the next part.

ROLE OF INTELLECTUAL PROPERTY RIGHTS IN SPORTS

The fundamental concept underlying an intellectual property right is to grant an individual or legal entity the authority to protect their intellectual labor for a specified duration. Sportsmen, teams, societies/clubs affiliated with the sports activity, and event organizers all devote a substantial amount of labor and effort to the athletic world. In the current era, sports have evolved from being a hobby or profession for athletes and sports organizations to being recognized as a substantial business opportunity. Upon the establishment of a sports squad, its name is typically adopted. To facilitate recognition, a multitude of imaginative and artistic logos as well as elaborate taglines are developed. In the realm of business, athletes engage in endorsements and advertisements off the pitch, while sports associations are involved in sponsorship, branding, licensing, merchandising, and other comparable endeavors.

Protection of these creative elements becomes imperative once they have been conceived and implemented in the commercial realm. For example, in the present day, intangible assets, including renowned events like the US Open, IPL, and Manchester United, as well as team names and events such as the Kolkata Knight Riders and Manchester United, possess substantial commercial value and require legal protection to prevent infringements by third parties. Conversely, safeguarding the rights associated with licensing and sponsorships, broadcasting rights, and numerous other significant revenue streams entails minimal legal obligations.

A collection of various legal frameworks is implemented to protect the financial interests of the sports industry. Intellectual property laws constitute most of such legislation and are frequently employed to address a wide range of legal concerns. A comprehensive term for properties created by human intellect, the intellectual property encompasses patents, trademarks, trade secrets, designs, and more. The following are the various types of intellectual property that are inherent to sports and generate off-field drama in the form of lucrative business transactions and intriguing legal disputes:

1. Copyright: Copyright law safeguards the intellectual property of individuals, encompassing their original ideas and creative expressions. Copyright can be granted to individuals who have made original contributions in the domains of literature, music, art, drama, photography, and cinema. Copyright is automatically secured from the minute the work is generated. This grants the copyright holder the authority to create duplicates, produce copies of the work, offer it for sale, create derivative works, modify the work, authorize others to use it, and transfer ownership to another individual if necessary. The ownership of copyright in sports is held by numerous elements of a sporting event, including artwork related to logos, trademarks, slogans, marketing, and photos of players and events.

For a copyright to exist, the work must be unique. In the case of **Ladbroke (Football) Ltd. v William Hill (Football)**⁶ Ltd., it was determined that the term 'original' encompasses two conditions: the work must not be copied, and it must come from the author. To assert copyright

⁶ *Ladbroke (Football) Ltd. v William Hill (Football)* [1964] 1 WLR 273

protection, the author or creator must demonstrate that their own expertise and mental capacity were employed in the creation of the work.⁷ Certain sports primarily serve as showcases for athletes' skills and cannot be considered 'original' creations.

However, other sports such as gymnastics and ice skating include athletes creating original routines that can also be replicated. Rhythmic Gymnastics and Figure Skating share similarities with choreographic and acrobatic performances, which can be replicated and thus eligible for copyright protection. When events are transferred to a different location, the highest quantity of Intellectual Property is produced in the form of copyright. The artworks, promotional material, goods, and software are all subject to copyright protection.

In India, the **Copyright Act of 1957** safeguards copyright in sports, as well as other forms of copyright. The progress in communication technologies, such as cable, broadband, satellites, and readily available mobile internet, has transformed the way broadcast and sports coverage is conducted. Consequently, it has allowed individuals worldwide to actively engage in the thrill of major sports events. The images included in logos, items, and the narrative depicted in the commercial, as well as the software utilized in online computer games and other such entities, all fall under the purview of copyright protection. Currently, there is a significant frenzy surrounding many types of video games. The avatars, characters, visuals, and other similar elements utilized in these games are likewise protected by copyright.

In 1999, India ratified the **Berne Convention of 1906**, which aims to protect literary and artistic works, as well as the International Copyright Order. While copyright registration is not obligatory in India, it is recommended to register it as the copyright registration certificate serves as conclusive evidence of copyright ownership in legal proceedings and by law enforcement agencies. In India, the copyright law offers civil remedies such as compensation, permanent bans, profit accounts, destruction of infringing material, and reimbursement of legal expenses. It also treats copyright infringement as a serious offense, punishable by a prison term of at least

⁷ *Interlego AG v Tyco Industries Inc.* [1988] RPC 34

six months and up to three years, along with a fine ranging from INR 50,000 to INR 200,000.⁸ In India, the Copyright Act grants the police the authority to file a First Information Report (FIR) and independently take action to apprehend the accused, search their premises, and confiscate any infringing material, all without requiring court approval.

2. Trademarks: Trademarks are recognizable symbols, logos, or designs that serve as indicators of the unique services or products provided by a specific source, distinguishing them from those of others. Trademarks are crucial for the recognition and value of brands worldwide. Currently, sports events frequently utilize taglines, slogans, and logos for branding purposes. An example of this is the tagline 'Champions Rise', which was used for FIFA 2019.⁹ These taglines and phrases help to establish a global brand value for the sports event. After a brand has been established, significant earnings can be achieved through live streaming and advertising. Occasionally, trademarks have been registered using the names of players, taking into account their widespread recognition and reputation. An instance of this may be seen in the case of the renowned football star 'David Beckham,' who has applied for a trademark on his name and generated substantial revenue through numerous sponsorship agreements and endorsements.¹⁰

Sports teams use trademarks to safeguard not only the jerseys worn by their teams during competitions but also other items that are associated with or display the team's trademark or logos. For example, the Kolkata Knight Riders in India utilize their trademark, represented by their team badge, to sell t-shirts, caps, and other merchandise. To attract and retain customers such as fans and TV broadcasters, a professional sports team, sports association, or event organizer must demonstrate a consistent level of goodwill and reputation that has been

⁸ Monika S, 'What is the Punishment for Copyright Infringement in India?' (*Vakil Search*, 9 October 2023) <<https://vakilsearch.com/blog/what-is-the-punishment-for-copyright-infringement-in-india/>> accessed 05 February 2024

⁹ Adarsh Tripathi, 'AN ANALYSIS OF THE NATIONAL SPORTS CODE 2011 AND ITS IMPLEMENTATION- Part 1' (*Global Sports Policy Review*, 26 June 2023) <<https://www.g-spr.com/post/an-analysis-of-the-national-sports-code-2011-and-its-implementation-part-1>> accessed 05 February 2024

¹⁰ LOUISE DIXON, 'David Beckham reflects on his soccer career, mental health and meeting Posh Spice in Netflix doc' *AP News* (04 October 2023) <<https://apnews.com/article/david-beckham-netflix-documentary-interview-a8ff8abbe9a7d8765dab6dacc19f09b4>> accessed 05 February 2024

cultivated over time.¹¹ This reputation is based on the quality of the brand, which encourages consumers to consistently engage with its offerings.¹²

The courts said in **Elida Gibbs Ltd v Colgate Palmolive Ltd**¹³ and **Stannard v Reay**¹⁴, among other things, that a company could still use passing off even if it had only been in business for a short time. It is easier for people to connect with teams and players when they have names and symbols like Barcelona, Real Madrid, Chennai Super Kings, etc. This makes the teams, clubs, and players more famous. Athletes' picture rights have become more important as sports have become a global business.

As the number of people who play games online has grown, it has become very important to protect the brand name by keeping an eye on the latest trends in online games. People think that online games are one of the best ways to make money. A lot of these games are based on real-life sports leagues that are played all over the world. For example, FIFA, the most popular game, was based on and created by FIFA, the real-life football team. Because of this, teams in these sports groups need to file for trademark protection so that they don't have to deal with intellectual property rights issues later on. The way football teams make money now is through ads and the right to show games online. On the other hand, it wouldn't be surprising if different sports groups around the world used online games to make a lot of money.

3. Domain Name: Domain names and their use as company identifiers have recently received a lot of attention due to the rise of the internet and related advertising activities. Because of the widespread dissemination of information and the widespread availability of online broadcasts of sporting events, these mediums have become extremely valuable in the branding industry. All sporting clubs nowadays have their websites where they promote themselves.

Examples of sports personalities with their websites include Sachin Tendulkar (www.sachintendulkar.in) and others. In the Indian context, there is not a specific way to

¹¹ S. Kalamadi Intellectual Property and the Business of Sports Management

¹² *Trego v Hunt* [1895] AC 7

¹³ *Elida Gibbs Ltd v Colgate Palmolive Ltd* [1983] FSR 94

¹⁴ *Stannard v Reay* [1967] RPC 589

register domain names. Indian courts view sports domain names as trademarks. It is very important for the preservation of sports-related intellectual property rights. Brand recognition, mobility, and SEO are all aspects of domain names. A fast system for resolving disputes over domain names for websites is in place through organizations like WIPO, which follows internationally recognized standards.¹⁵

The internet helps spread the word about sporting events, athletes, and other related topics at little expense and in a wide variety of formats. As part of their public relations efforts, sponsor companies host a variety of online events, including contests, shopping portals, and ticket sales. In addition to serving as a platform for advertising, these websites and the exclusive domain names linked to them can help establish brands. There is a chance for cyber squatters to profit from the confusion caused by domain names, and events broadcasted via the internet, including online games about sporting events, have also captured a large portion of the branding and value creation market.

To evade cyber squatters and safeguard sports fans and others seeking information online from making mistakes, it is crucial to register domain names with multiple permutations and combinations. Registration of several permutations of trademarks and phrases, including common and humorous spelling mistakes, is another guideline for domain name registrations.

4. Patents: If there is a new invention or innovation, the person who came up with it will typically get it patented so that they can protect their product from being stolen or used without permission. The term 'patent' refers to an exclusive right that is distributed to an inventor or assignee for a specific amount of time in exchange for the inventor's innovation being disclosed in detail to the public. Utility patents and design patents are the two types of patents that are most used. Design rights, whether patents or specific intellectual property rights protect them, will be explored in a separate section below. With the former, functional aspects of an invention are protected, whereas with the latter, ornamental aspects of the invention are protected. This approach has proven to be an effective incentive for innovation, and it has the additional benefit

¹⁵ 'Sport and Branding' (WIPO) <<https://www.wipo.int/web/sports/branding>> accessed 05 February 2024

of expanding the common pool of knowledge and encouraging others to build on and improve the existing state of the art, which is a virtuous cycle that the system has set in motion. There are varieties of sports techniques that are currently being considered for patent protection.

The process of obtaining patent protection for sports method inventions has begun. These inventions include methods for putting a golf ball¹⁶, methods for fitness training, methods for training baseball pitchers, methods for training swings, and so on. For example, Fitbit, the company that manufactures popular fitness trackers, has approximately 90 utility patents in the United States, including those that have been issued and those that are still ongoing. These patents describe various technological features of the tracker. These exclusive controls over a technique that gives a player, team, or league an advantage over other competitors are extremely beneficial to the player, team, or league in question. Industrial design rights, on the other hand, are given to protect the aesthetic value of a product or the visual design of the object. Either by using their invention to dominate sporting competitions or by licensing their idea, owners have the potential to make a significant amount of money. Consequently, the protection of discoveries through patents not only safeguards against infringements committed by third parties but also strengthens business interests. Patent rights are awarded for twenty years, and the Patents Act, of 1970 is the legislation that governs patents in India. Unlike the procedure of registering trademarks and copyrights, the process of registering patents is not an easy one. It is essential for the owner(s) who are registering for a patent to begin the process of locating a competent patent agent or attorney who is both technically and legally competent.

Additionally, patent rights are granted for twenty years in India, as well as in many other countries throughout the world. The progress of technology has made it possible to bring new games and sporting activities into existence, which was previously only a notion. Most recently, inventors have started to initiate the process of obtaining patent protection for their inventions of sports methods. Some rather frequent examples include the following: a method for fitness

¹⁶ 'Method of putting - USA PATENT NO.5616089' (*Patent Buddy*)
<<http://www.patentbuddy.com/Patent/5616089>> accessed 05 February 2024

training, a way for putting a golf ball, a multiple-type target game, a ball rolling game, a body ball tag game, and so on.

Furthermore, before the late 19th century, there was no concept or love for internet gaming. This was the case until the late 1990s. On the other hand, by the time the 20th century ended, the concept of games underwent a revolutionary shift as a result of the advent of computers and other electronic devices. One example of the application of the augmented reality concept in the realm of mobile gaming is the recently released and extremely well-liked game 'Pokémon Go'. This game is a classic example of the concept. Similarly, a great number of other sports activities, such as bike racing and vehicle racing, make use of cutting-edge safety elements that may be protected by a patent. Bungee jumping and paragliding are two examples of non-traditional sports that have emerged because of the development of patented technology in certain circumstances. In today's world, even games that have been played for generations, such as cricket, are actively utilizing patented devices, such as contact-sensing stumps.

5. Ambush Marketing: When a firm engages in ambush marketing, it is attempting to capitalize on the popularity of a well-known property or event without first obtaining the consent and authorization of the relevant parties. Ambush marketing, as defined by Sandler and Shani, is an attempt by a third party to capitalize on the popularity of a sporting event without the previous agreement and authority of the essential parties (the owner or creator of the event).

As an alternative, Michael Payne, who had previously served as the marketing director for the International Olympic Committee, described ambush marketing by saying, 'Ambush marketing is not clever marketing; it is cheating'. According to the author of this piece, ambush marketing is nothing more than freeriding on the part of corporations. For example, if Etisalat were to assert that they are the official sponsors of the Nigerian Premier League, this would be an example of ambush marketing. This would mean that the telecommunications company would be taking advantage of the popularity of the league, even though Globacom Nigeria Limited is the legitimate and legitimate sponsor of the league. One of the most important features of intellectual property rights in the sports industry is the protection against ambush marketing.

Ambush marketing is a term that has been increasingly prevalent in the realm of athletic events. This marketing strategy involves firms promoting their brands or products by linking them with a team, league, or event without paying for the privilege of doing so. The dispute between Pepsi and Coca-Cola, which took place in the case of **Pepsi Co. Inc. and Ors v Hindustan Coca-Cola Ltd**¹⁷, is a prime example of ambush marketing in India. In this case, the court imposed a permanent injunction on the defendant, which effectively prevented its advertising from being broadcast.

INTERNATIONAL PERSPECTIVE

The laws have been interpreted differently by courts in various nations because the sports industry has grown into a crucial component globally.

China: The law in China that pertains to copyright and sports is not yet completely comprehended. A significant majority of individuals in China think that copyright protection should not be applied to sporting events. There have been several suggestions made that copyright law ought to apply to the protection of sporting events.

United States: It has never been brought before the court that the copyrightability of purposeful sports has been contested. However, in the case of **Baltimore Orioles, Inc. v Major League Baseball Players Association**¹⁸, it was said that games that have artistic worth would be protected by copyright, whereas games such as baseball cannot be protected by copyright. As more games and experiences are gained, the player's performance levels continue to improve.

Under the provisions of Section 102(a)¹⁹ of the Copyright Act, it was ruled in the case **National Basketball Association v Motorola Inc.**²⁰ that basketball games did not qualify as subject matter that may be protected by Intellectual Property Rights. The question that the court was tasked with deciding was whether the unauthorized broadcast of 'real-time' information on matches

¹⁷ *Pepsi Co. Inc. and Ors v Hindustan Coca-Cola Ltd* 2003 (27) PTC 305 Del

¹⁸ *Baltimore Orioles, Inc. v Major League Baseball Players Association* [1986] 4805 F. 2d 663 (7th Cir.)

¹⁹ Copyright Act 1957, s 102(a)

²⁰ *National Basketball Association v Motorola Inc* [1997] 105 F.3d 841 (2d Cir.)

that were currently taking place constituted an infringement of the copyright or property rights of the event organizer.

Australia: The decision that was rendered in the matter of the **Australian Olympic Committee versus Big Fights Inc.** was that any video that was created of the sporting event would not be a dramatic production.

CONCLUSION

With the increased commercialization of sports, clubs, and associations compete not just on the pitch but also to generate significant profits. Most sports clubs have companies that use their intellectual property and engage in merchandising, online gaming, cafés, etc. Intellectual Property Rights and legal protection enhance the economic worth of sports. The protection of different types of intellectual property involves registrations, agreements, and terms and conditions. Merchandising is one of the most successful businesses in which sports clubs invest.

Merchandising has many tiny but important difficulties including IP ownership, income sharing, secrecy, etc. Celebrities are increasingly careful about preserving their personality rights due to global infringements. Also, proprietors must avoid violating the personality rights of any sportsperson. Before launching a firm, it's vital to know what can and can't be used. Intellectual property management is crucial for economic gains. In Sports and Intellectual Property, Prof. De Werra argues that while intellectual property can learn from the sports industry, the sports industry may benefit from incorporating key values of IP law.

To enforce intellectual property rights in cases involving sports conflicts, it is also recommended to implement alternative dispute resolution (ADR) methods and approaches. Because India is a developing nation with the serious intention of attracting and maintaining investments, the country must implement legislation to protect secret information, particularly in the sports business, to serve as a sufficient deterrent for individuals who would commit such an offense.

The government of India must make every effort to pass the National Sports Ethics Commission Bill, 2016, which has the potential to enhance the authenticity of sports in India, despite the

numerous challenges that it faces. The protection and enforcement of intellectual property rights in the sports sector is a crucial issue that must be taken into consideration to guarantee that sporting events will continue to be a viable monetary possibility in India.