



# TRADEMARK PROTECTION FOR THE SIGNATURE POSES/MOVES OF CELEBRITIES

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## ABSTRACT

Trademark protection since time immemorial has been granted to goods and services to distinguish one product/service from the other. Section 2(1)(zb) of the Trademarks act 1999, describes a trademark as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.<sup>1</sup>

One uncharted territory in the realm of trademarks is the trademarks protection of the signature poses of celebrities or famous personalities. Most of the celebrities have a pose or a move and the public identifies it with them. Celebrities are known for their unique identities, including their names and recognizable traits such as mannerisms, speech patterns, and voices, which can be considered a form of intellectual property. Their popularity and public recognition often stem from their talents and skills.

In today's media-driven world, there is considerable value attached to utilizing a celebrity's image, characteristics, and behaviour, as these aspects contribute to their marketable appeal. They have personality rights protection as a common law remedy but the problem arises when the celebrities want to commercialize that pose or move, by making it a brand logo or mark, that is when the question of the trademark protection of the pose arises. Celebrity rights encompass various aspects such as advertising, personality, privacy, reproduction, and merchandising rights, among others. While there aren't specific laws dedicated solely to protecting these rights, they are typically safeguarded under trademark and copyright laws. When celebrities begin to commercialize their unique appearances or distinctive bodily features by incorporating them into merchandise, a strong argument can be made for establishing trademark rights for those specific goods.

Through this research paper the problem of trademark protection of the signature poses/moves of celebrities will be analysed. The protection of moves also raises the requirement of motion marks protection which will be analysed in this paper as well.

**Keywords-**Signature poses, personality rights, celebrities, trademark, publicity rights

## 1.1-INTRODUCTION-

Christiano Ronaldo's 'Siuu' celebration, Usain Bolt's dab or Turkish chef Nusret Gökçe's unique style of putting salt are some of the famous trademarks which have been granted protection under various trademark laws worldwide. Celebrity "branding" has become a multi-billion dollar industry.<sup>2</sup> The inherent nature of body parts as integral components of human anatomy typically renders them ineligible for trademark protection due to their generic characteristics. Nonetheless, there are exceptions to this rule. Certain body parts of

<sup>1</sup> Section 2(1)(zb), The Trade marks Act, 1999

<sup>2</sup> See Dorothy Pomerantz, Oprah Winfrey Tops Our List Of The Highest-Paid Celebrities, FORBES, Aug. 27, 2012

celebrities become distinctive elements of their persona, serving as a means through which fans directly relate to them. As a result, these features can be considered trademarkable assets. Celebrities are frequently recognised by their distinctive stances and vocal styles. For example, the famous Moonwalk instantly evokes images of Michael Jackson, while Mr. Morgan Freeman's rich baritone voice is instantly recognisable around the globe. The question which arises is that is it possible for signature postures and voices to be protected under trademark law when they serve as source identifiers as well? The protection of celebrity persona can be done under the publicity rights and trademark protection, but the jurisprudence is still developing in this regard.<sup>3</sup>

Publicity rights or personality rights are common law remedies which protect the mannerisms of a person, which includes the voice, name, signature, face, silhouette, gestures, expressions etc. They are considered as property rights of an individual. It falls into the realm of tort of passing off. A question then arises of the need of a separate trademark protection for the signature poses of celebrities. Trademark protection is generally associated with brand names, logos, and other identifiers used in connection with goods or services. However, in some cases, celebrities may seek to trademark their signature poses, catchphrases, or other distinctive elements as a way to protect their personal brand and commercialize their image.

There are certain reasons such as-

- Commercialization and Merchandising
- Endorsements and Licensing
- Brand Recognition
- Protection Against Unauthorized Use
- Preserving Image and Reputation

Unconventional trademarks, like conventional ones, are expected to fulfill three key functions: firstly, they should differentiate the product and link it back to its owner; secondly, they should assure the quality of the goods; and thirdly, they should be utilized in product advertising. The first function is achieved through a visual representation of the distinctive aspect of the celebrity's body or personality, which distinguishes the celebrity's products from others, as required by Article 15(1) of the TRIPS Agreement. The latter two functions are typically handled by the manufacturers, packagers, and distributors of the merchandise endorsed by the celebrity.<sup>4</sup>

## 1.2-THE NEED FOR SEPARATE TRADEMARK PROTECTION WHEN PERSONALITY RIGHT ALREADY SUBSISTS -

The term "right of publicity," or "personality rights," refers to the legal protection of an individual's use and commercialization of their distinctive qualities, including appearance, voice, signature, face, silhouette, features, gestures, expressions, and mannerisms. When a well-known celebrity or public figure exercises this right, celebrity rights are created, giving them the sole authority to manage the commercial use of their unique personality qualities. Additionally, personality rights encourage the general public to associate a certain person with a brand, which in turn encourages the use of trademark laws.

The personality rights protection and trademark protection of the signature moves both aim to protect a celebrity's identity and public image. Personality rights prevent unauthorized use of a celebrity's name, likeness, or other aspects that make them unique. Similarly, trademarking a signature move prevents its unauthorized use in a way that could mislead consumers or damage the celebrity's brand.

But on the other hand personality rights are generally broader, encompassing various aspects of a celebrity's persona. Trademark protection for a signature move, while specific, focuses solely on that particular movement or gesture. Personality rights also prioritize preventing misrepresentation or association with negative content. Trademark protection primarily concerns unauthorized commercial use that infringes on the celebrity's brand value and potential revenue streams. Proving infringement of personality rights can be

<sup>3</sup> SS Rana & Co, Celebrity Rights: Body Movements and Signature Poses as TradeMarks, Lexology, 2023

<sup>4</sup> Dhargalkar Ganesh Kedar, Trademarking Signature Poses/Looks – A Progressive Protection of Individuality, Spicy IP, 2022

complex and involve demonstrating a likelihood of confusion or damage to reputation. Trademark registration requires meeting specific criteria like distinctiveness and clarity of the mark. Personality rights rely on common law and are enforced through civil lawsuits. Trademarking offers statutory protection with potential remedies like injunctions and damages.

### 1.3-TRADEMARK PROTECTION OF SIGNATURE POSES/ MOVES:-

#### POSITION IN THE EUROPEAN UNION-

Under EU law, a trademark can encompass various elements such as words, designs, colours, shapes of goods, packaging, or even sounds. Following the amendment of Regulation (EU) 2015/2424, the requirement of a "graphical representation" as a prerequisite for trademark consideration has been eliminated. As a result, the key requirements for trademark registration with the EUIPO are:

1. Distinctiveness: The trademark should be capable of distinguishing the goods or services of one business from those of others.
2. Non-descriptive: It should not simply describe the goods or services applied for.
3. Association with the proprietor: The trademark should be uniquely associated with the proprietor.

This means that the signature poses of celebrities could potentially be protected as trademarks in the EUIPO if they meet the criterion of being distinctive, which could be achieved through factors like extensive usage, promotions, or attaining a well-known status.

- Some examples are-
1. The trademark for the iconic pose of the renowned Turkish chef Nusret Gökçe, famously known as Salt Bae, sprinkling salt, has been officially registered.
  2. Usain Bolt has also registered his "lightning pose/ Bolting"
  3. Cristiano Ronaldo's "Siuuu" Celebration
  4. Gareth Bale's Eleven of Hearts

#### POSITION IN THE USA-

Under US law, there is no specific statute dedicated to the legal protection of celebrities' personalities. Typically, celebrities rely on state privacy statutes or the law of unfair competition for legal recourse in such matters.

Regarding trademarks, Section 43(a) of the Lanham Act of 1946 defines a "trademark" as any word, name, symbol, or device, or any combination thereof. This mark can be used by a person or intended for use in commerce, with the intention of registering it on the principal register established by the chapter. The purpose of such registration is to identify and distinguish one's goods, including unique products, from those manufactured or sold by others, thereby indicating the source of the goods.

Examples of registered trademarks-

1. Lleyton Hewitt, an Australian tennis player registered 'Vicht salute'.
2. Jesse Lingard, an English midfielder, has registered his 'Jlingz' gesture.
3. Jay Z's roc hand symbol

#### POSITION IN INDIA-

While the Indian Trademark Act does not explicitly address the protection of celebrities' signature poses, Indian courts have recognized and upheld celebrities' rights to exclusively commercialize their persona and characteristics through various legal precedents. Under the Trademark Act, a trademark is defined in Section 2(1)(zb), while Section 2(1)(m) defines a mark to include various elements such as a signature, word, letter, numeral, shape of goods, packaging, or combination of colours, among others.

In cases such as Shivaji Rao Gaikwad v. M/S. Varsha Productions (2015) (62) PTC 351 (Mad) and Amitabh Bachchan v. Rajat Nagi [CS (COMM) 819 of 2022], the Delhi High Court has affirmed that the right of publicity can extend to an individual's personality traits, including their name, signature, voice, and more. This right can be acquired through the individual's association with events, sports, movies, and other endeavours. These legal rulings acknowledge the importance of protecting celebrities' unique identities and the commercial value associated with them.<sup>5</sup>The Indian trademark act has no specific position regarding the protection of celebrity rights but Section 14 of the Trademarks Act,1999 talks about the use of names and representations of living persons or persons recently dead.

In light of this, trademark laws in India grant protection for characteristic poses and voices as long as they can be visually depicted and the relevant celebrity can demonstrate their uniqueness. In actuality, there has been an increase in international corporations' trademark applications for signature poses in India. Usain Bolt's lightning bolt stance has been submitted for trademark registration in India, while the well-known Jumpman trademark from Nike—which features Michael Jordan's slam dunk—has already been registered there.

But the marks such as Usain Bolt's pose and rajinikanth's flipping of his sunglasses cannot be properly depicted as a 2D mark as it is a move more than a pose and includes a series of movements, which is where motion marks come into the picture. In today's time though India is trying to foray into the uncharted territory of motion marks but still it is in its nascent stages and a lot of statutory compliances need to be looked into. After having looked at the position of trademark laws of various countries, it can be inferred that for the protection of signature moves, we need to also look into the concept of motion marks.

As previously mentioned, the current framework for protecting poses or motions through figurative representation or sequences of photographs may not be adequate for trademark registration. To address this limitation, the European Union's approach serves as an instructive model. By eliminating the requirement for pictorial representation and allowing the submission of video clips illustrating motion marks, the EU has enhanced the ability to understand and register trademarks depicting movement. Prior to the implementation of the EU trademark Implementing Regulation in 2015, trademarks were required to be visually depicted, posing challenges for sound marks. An example of this is the initially rejected Tarzan Yell, which was successfully registered only in 2006. Similarly, in the United States, trademark jurisprudence emphasizes the distinctiveness of a trademark and its association with a particular good or service in consumers' minds, rather than solely focusing on its graphical representation. Drawing inspiration from these approaches could help modernize trademark registration processes and better accommodate dynamic forms of intellectual property such as motion marks.

#### 1.4-MOTION MARKS-

Simply put, a motion or multimedia trademark is a moving trademark. It is usually a clip which is a combination of moving pictures and sound together.

The first country to allow the registration of motion trademarks in 1996 was the United States of America, initially for the famous Columbia picture's multimedia logo of women carrying a torch and later for Nike's jumpman logo etc. For multimedia mark registration USPTO accepts the following formats of the motion mark firstly animated clips and secondly still pictures in sequence with description.

Motion Trademark in India prima facie falls beyond the scope of definition of trademark under Section 2(1) (zb) of the Trademark Act, 1999 as it talks specifically about graphical representation. But section 2(1)(k) of the Trademark rules 2017 states that “graphical representation” means the representation of a trademark for goods or services represented or capable of being represented in paper form and includes representation in digitized form. Hence, though motion marks are not explicitly mentioned but the addition of ‘digitised forms’ do give a leverage to the trademark holders to register their digitised trademarks.<sup>6</sup>

The first motion trademark application in India dates back to 2003, with Nokia Corporation's renowned trademark "Connecting Hands," filed under application no. 1246341. Interestingly, despite its dynamic nature, the mark was initially registered as a device mark rather than a motion mark. It wasn't until 2019 that Toshiba

<sup>5</sup> Chaudhary Rahul and partners, Trademark protection of signature poses and voices of celebrities in India: An uncharted territory, asialaw, 2023

<sup>6</sup> Section 2(1)(k), Trademark rules 2017

Corporation secured registration for its motion mark, signalling a shift in the recognition of dynamic trademarks within the Indian legal framework.

In the European Union, trademark registration and protection, including for motion marks, are primarily governed by the European Union Trade Mark Regulation (EUTMR), specifically outlined in Regulation (EU) 2017/1001 of the European Parliament. Article 4(1)(b) of the EUTMR permits the registration of non-traditional marks, provided they can be represented in a manner that allows for clear and precise identification of the subject matter of the protection afforded to the proprietor.

Some examples are-

EUTM No. 17 894 400-The words 'WIN WIN' represented with changing letter sizes.

EUTM No. 17 279 712-A round green shape rotating on a black background

EUTM No. 5 338 629-The mark is an animated sequence with two flared segments that join in the upper right portion of the mark.

## 1.5-CONCLUSION-

In India, the absence of provisions allowing for the acceptance of video files for motion marks poses a significant challenge, hindering the accurate representation of such marks and thereby discouraging their application. Consequently, the extent of protection afforded to motion marks remains ambiguous, contributing to uncertainty regarding what can be trademarked within this realm. Establishing the distinctiveness of body poses or movements further complicates matters, as the traditional framework for trademark assessment may not adequately capture the unique characteristics of such dynamic expressions. This uncertainty creates a grey area in trademark law, leaving questions unanswered regarding the recognition and protection of these distinctive forms of intellectual property.

In conclusion, while the legal landscape surrounding trademark protection for signature moves, particularly in the context of video representations, may currently face challenges and ambiguities, it is essential to recognize the evolving nature of intellectual property rights. As society continues to embrace new forms of expression and innovation, it becomes imperative for legal frameworks to adapt accordingly. Clearer guidelines and provisions accommodating dynamic trademarks such as signature moves would not only encourage creativity and individuality but also provide necessary clarity and protection for creators and their unique expressions. Moving forward, it is crucial for lawmakers and stakeholders to collaborate in refining trademark laws to adequately address the nuances of modern branding, ensuring that the rights of innovators and creators are safeguarded in an increasingly dynamic and interconnected world.