



STATUS AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF FMCG INDUSTRY IN KERALA

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Abstract: Copyright infringement is a trouble connected to information technology. FMCG business in the state has in trouble sometimes due to the IPR regulations and difficulties to protect the same. This paper looks particularly at the relationship between the law implementation and its status. It shows the the schemes implemented by state government in order to curb the unfavorable situations in IPR regimes. This paper covers the traditional intellectual property rights (IPR) laws and new era of IPR in FMCG. Also it takes into consideration some significant challenges faced by industries on IPR. With the advent of Kerala Startup Mission ,the number of application and grant of IPR bring more burden to agencies and thus having some relevant steps taken for the protection of FMCG industry from Copyright issue, Patent issues, Industry design, Product design ,etc.

Keywords: Intellectual Property Right ,Copyright, Patent, FMCG, Industry design, Product Design , IPR law,Kerala startup Mission

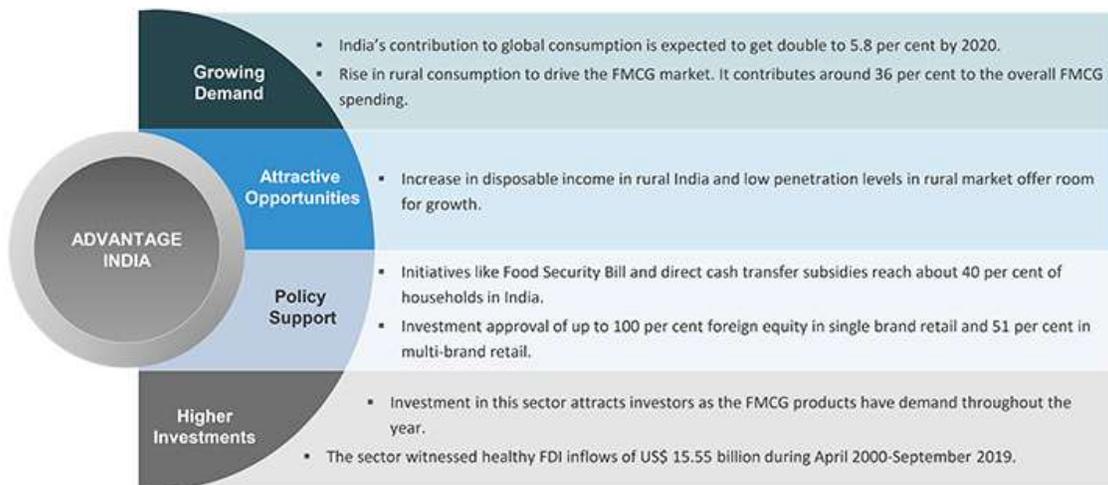
1. INTRODUCTION

Consumer goods are products purchased for consumption by the average consumer. They are divided into three different categories: durable, nondurable goods, and services. Durable goods have a shelf life of three years or more while nondurable goods have a shelf life of less than one year. Fast-moving consumer goods are the largest segment of consumer goods. They fall into the nondurable category, as they are consumed immediately and have a short shelf life. Nearly everyone in the world uses fast-moving consumer goods (FMCG) every day. They are the small-scale consumer purchases we make at the produce stand, grocery store, supermarket, and warehouse outlet. Examples include milk, gum, fruit and vegetables, toilet paper, soda, beer, and over-the-counter drugs like aspirin.FMCGs account for more than half of all consumer spending, but they tend to be low-involvement purchases. Fast-moving consumer goods (FMCG) sector is the 4th largest sector in the Indian economy with Household and Personal Care accounting for 50 per cent of FMCG sales in India. Growing awareness, easier access and changing lifestyles have been the key growth drivers for the sector. The urban segment (accounts for a revenue share of around 55 per cent) is the largest contributor to the overall revenue generated by the FMCG sector in India However, in the last few years, the FMCG market has grown at a faster pace in rural India compared with urban India. Semi-urban and rural segments are growing at a rapid pace and FMCG products account for 50 per cent of total rural spending.

2. THEORITICAL FRAMEWORK

Recent Developments in the FMCG sector

- In November 2019, ITC Ltd acquired 33.42 per cent stake in Delectable Technologies, which is a vending machine start-up.
- India's first kids cooking oil launched by Mother Sparsh in 2019.
- In June 2019, ITC launched dairy beverage range Sunfeast Wonderz Milk in four variants
- In November 2019, Santoor launched Santoor Deo pocket perfumes exclusively for West Bengal.
- Nestle plans to invest Rs 700 crore (US\$ 100.16 million) to open a new plant in Sanand for Maggi.
- ITC to invest Rs 700 crore (US\$ 100 million) in food park in Madhya Pradesh
- Patanjali will spend US\$743.72 million in various food parks in Maharashtra, Madhya Pradesh, Assam, Andhra Pradesh and Uttar Pradesh.
- Dabur is planning to invest Rs 250-300 crore (US\$ 38.79-46.55 million) in FY19 for capacity expansion and is also planning to make acquisitions in the domestic market.
- In May 2018, RP-Sanjiv Goenka Group created an Rs 1 billion (US\$ 14.92 million) venture capital fund to invest in FMCG start-ups.
- In August 2018, Fonterra announced a joint venture with Future Consumer Ltd which will produce a range of consumer and foodservice dairy products.



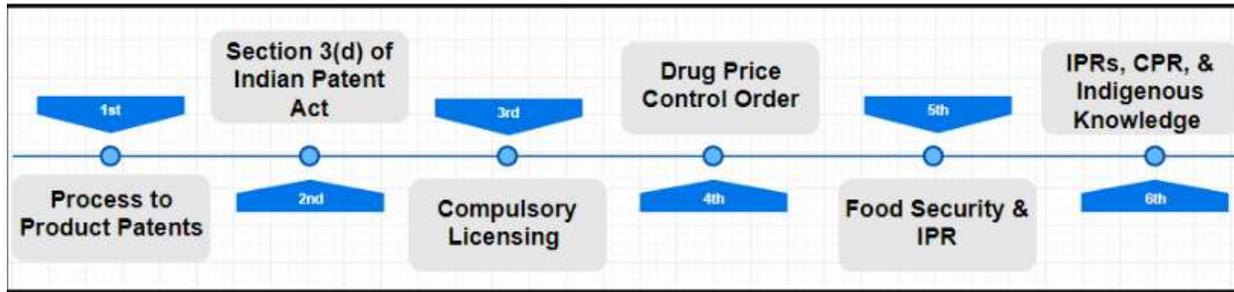
Intellectual Property and FMCG

Intellectual property rights are critically important in the fast moving consumer goods industry because companies operating in this sector rely heavily on brand recognition and brand loyalty for their success. It makes sense for intellectual property rights to be fundamental to the long-term success strategy of any consumer goods company. Thus, consumer goods companies can use numerous intellectual property rights, including copyrights and trade secrets; however, we consider that there are two strategic phases in fast moving consumer goods: the product development and the commercialization and marketing phase. In terms of product development, patents, as well as industrial designs and utility models, represent a fundamental industrial right for product development.

An effective patent protection can represent, depending on the industry, the most important asset of consumer goods, especially in specialized sectors such as pharmaceuticals and electronics, to name a few, where these products require time and investment to be developed and, consequently, longer time to profit. However, patents may be less useful in highly innovative industries with rampant turnover due to the fact that product life cycles are very short, because by the time a company obtains a patent and can legally enforce it through litigation, the product in question may already have become obsolete. As we know, as patents are an exclusive right limited for a period of time, it is important to combine the development of these invention rights with other intellectual property rights, such as trademark or copyrights.

Even long after a patent has expired, consumers can continue to search for a particular product, regardless of similar competitive products in the market, if a company has been diligent in cultivating trademark rights in its products. These trademark rights, the associated goodwill and the connotation of consistent quality that they provide, help establish this brand awareness and loyalty, which enhances the second phase previously mentioned, that is, commercialization and marketing. The brand of the product, including the commercial image of same, is generally the most visible and long-lasting intellectual property right that consumer goods companies must exploit and use. Trademarks are relevant to companies in all sectors of the consumer goods industry and are often the most important differentiator between competitors. Thus, the growing innovation in the methods and distribution channels of the FMCG, involves mainly two threats against the intellectual property rights of this type of goods: the counterfeiting of products and the parallel importation of them.

IPR Challenges in FMCG sector



Current Status of IPR in FMCG

In the last five years, the current government, led by Prime Minister Narendra Modi, has striven hard to bring about perceptible change in the IP landscape. Starting with rolling out National Intellectual Property Rights policy and establishing a Cell for IPR Promotion and Management (CIPAM) to work towards accomplishing IP policy objectives. In addition to clear backlog of patent and trademark applications, the government has undertaken a massive digitization exercise, recruiting a large number of examiners leading to an exponential increase in the examination and grant of patents. To encourage start-ups to seek protection of their IP and to file patent applications, facilitators have been appointed. Despite government efforts, multinational corporations continue to push for better protection of their IP. The expectations appear to be summarized in a Special 301 Report issued by The Office of the United States Trade Representative (USTR) putting India on the "priority watch list". The report mentions "Over the past year, India took steps to address intellectual property (IP) challenges and promote IP protection and enforcement. However, many of the actions have not yet translated into concrete benefits for innovators and creators, and long-standing deficiencies persist. India remains one of the world's most challenging major economies with respect to protection and enforcement of IP".

3. ANALYSIS OF INFORMATION

New Schemes

1: Patent Information Center: PIC-Kerala provides technical and financial assistance to the Government Organizations/ Departments/ Universities/ R&D Institutions / Educational Institutions and well established Non Governmental Organizations/ Professional Bodies, for organizing Seminars/ Workshops on Intellectual Property Rights (IPR). The objectives of such programmes are to create awareness on the various aspects of IPR especially Patents, Copyrights, Trademarks, Designs, Geographical Indications, Patenting System in India, Patent searching and filing procedures, etc., among the Scientists, Researchers, Students, Faculty, Industrialists, Entrepreneurs, Grass root Innovators and General Public. The maximum financial assistance provided for organizing a one day Seminar/Workshop is Rs. 50,000/- and for a two day Programme is Rs.75,000/-. Patent Information Centre – Kerala provides technical support for filing patents by conducting prior art patent database search to determine the patentability status of the inventions, free of cost and generating the search reports. In order to provide technical and legal assistance to the inventors for drafting and filing Patents, KSCSTE has appointed M/s Krishna and Saurastri Associates LLP, Bangalore, as the official Patent Attorney. Also, for providing services related to Copyrights, Trademarks, Designs, GI, etc, KSCSTE has empanelled the firms M/s K&S Partners, Bangalore, M/s Gopakumar Nair Associates, Mumbai, M/s Lex Orbis, New Delhi and M/s Krishna and Saurastri Associates LLP, Bangalore, as the Attorneys of KSCSTE. The patentable inventions from Organizations/ Departments/ Universities/ R&D Institutions and Educational Institutions will be facilitated the filing of Patents through Patent Facilitating Centre/ TIFAC, DST, Govt. of India, free of cost.

2: Patent support scheme: Kerala Government has proposed a new scheme called Patent Support Scheme, in which support are provided to student entrepreneurs who are able to secure a patent. As per the Kerala Technology Startup Policy 2014 (<https://keralastartupmission.wordpress.com/tag/kerala-technology-startup-policy/>), the cost of filing and prosecution of patent application will be reimbursed to the incubated startup companies subject to a limit of Rs. 2 lakh per Indian patent awarded. For awarded foreign patents on a single subject matter, up to Rs. 10 lakh would be reimbursed. The reimbursement will be done in 3 stages during filing, prosecution and award.

3: Kerala Startup Mission: Kerala Startup Mission (KSUM) the nodal agency of Government of Kerala for entrepreneurship development and incubation activities in Kerala. The primary objectives of KSUM was to undertake the planning, establishment and management of Technology Business Incubators/Accelerators in Kerala so as to promote technology based entrepreneurship activities and create the infrastructure and environment required for promoting high technology based business activities. KSUM objectives also include, being an apex body for all other incubators in the state, to co-ordinate their functions to strengthen the entrepreneurship development activities of the state government, promoting knowledge driven and technology based startup ventures by students, faculties, local entrepreneurs etc, planning and implementing industry institute linkages and networking, setting up of R & D facilities and related facilities, encouraging formation of IEDC and TBI's in academic institutions and capacity building programmes for human resources. Government of Kerala, through KSUM, is establishing the Kerala Technology Innovation Zone, a global innovation incubator hub for multiple domains and technology sectors under a single roof.

4:CIPAM: A professional body under the aegis of Department for Promotion of Industry and Internal trade (DPIIT) which ensures focused action on issues related to IPRs and address the seven identified objectives of the policy. CIPAM assists in simplifying and streamlining of IP processes, apart from undertaking steps for furthering IPR awareness, commercialisation and enforcement. <http://cipam.gov.in> CIPAM invites passionate and committed individuals to join hands and make a difference.

4. RECOMMENDATIONS:

The emerging trends in new product launch (FMCG), has seen a wide range of innovations in India. Companies can benefit by adopting certain strategies.

Capturing the Digital Consumer: Growing internet connectivity, new business models and increasing digital media has provided many companies an opportunity to create their product awareness. This can be done by creating effective supply chain, engaging in online retail partnerships. Nowadays, companies are spending around 8-10% of their marketing spend in digital marketing. Creating a personalised E-commerce portal, associating with horizontal E-commerce players or engaging with vertical E-commerce specialists are the three commonly used approaches in E-commerce these days.

Understanding the Right Nerve of the Consumer: In order to create a loyal consumer base for a particular product, it is imperative for the FMCG companies to understand the nature and target of their proposed product. In order to create an effective customer loyalty, the segmentation, target and positioning of a particular product must be emulated. Factors such as geography, income segment, consumption demand, etc., must be looked after.

Increased Focus on TVC for Aggressive Advertising: Advertisement is the main source for FMCG companies to increase their product awareness. FMCG sector was the most dominant sector with 28% share of the total Indian advertising industry in 2015. Indian Television Advertising Market, 2012- 2016 (USD Million) Source: PMAR Six out of top ten advertising companies in India are FMCG companies. Television advertising holds the maximum market share of 40% in Indian advertising market wherein FMCG contributes a significant 52% of the revenue share. This shows the significance of Indian TV advertising market. Small as well as growing companies must focus on advertising through TVC to create maximum awareness.

Analysing the most Efficient Sales Channel: In order to maximise their volume sales and product penetration the companies need to identify the most feasible sales channel route. Both national or multinational companies, give importance to supply chain management system to enhance their business especially in rural areas. Indian FMCG Market 2020 35 Indian FMCG Market 2020 Ineffective supply chain can lead to significant losses for the companies, many offers and schemes launched by the companies are unable to cause a significant impact on the market as most of these schemes are unable to reach the end consumer due to inefficiency in supply chain. To prevent such losses, FMCG companies in India have to ensure that they exercise greater control over their distribution channel and not just leave it to the market forces.

Prevention of Counterfeiting: In Indian FMCG sector, counterfeiting has been a major issue which has a potential to significantly affect the market in a negative way. Since India is an attractive prospect due to low-cost of manufacturing, it also becomes an attractive base for the production of counterfeit goods both for domestic sale and export. Counterfeiting leads to brand dilution and losses to companies. One of the key reason for the growth of counterfeiting in India is the inability of current supply chain systems to counter this activity. It is imperative of Indian FMCG companies to collaborate with the retail industry to offer greater visibility, traceability. Measures such as, regular spot checks, proper monitoring system, collaboration with local and national law enforcement agencies can be taken to curb counterfeiting.

FDI and its Implications: Implementation of FDI in various sectors such as food processing, retail, etc. has been largely beneficial for the sector. Various multinational companies have now entered India's retail and FMCG sector thereby increasing the competitiveness of the sector. Companies in order to remain profitable in this competitive environment need to focus on innovation and untapped markets.

Focus on innovation & Volume Sales Rising income levels, continuously growing demands has led to the development of new FMCG products. This continuous demand for new innovative products has led to growth in breakthrough innovation of FMCG products. To meet this demand, FMCG companies need to focus on R&D and innovation as a means to grow the business. Strategies such as innovation in packaging, rebranding of products, product innovation etc. are some of the innovation strategies adopted by the companies to cater the demand market.

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