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Character Merchandising

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Character merchandising started as a secondary source of exploitation in the entertainment industry and soon became the forerunner in terms of revenue generation. The temptation of jumping on this business wagon was too hard to resist for the various stakeholders of the entertainment industry, only to realize that the law in India has not caught up with this jet age business practice. This article aims at highlighting the core legal issues in character merchandising with specific emphasis on personality or celebrity merchandising. The article not only brings out the core conflict between the various existing laws in India that govern character merchandising in their own unique way, but also analyses the various court decisions that have had a far reaching effect on the way the entertainment and allied industries approach this business. Furthermore, the article makes an earnest attempt to suggest a dispute resolution model that tries to balance the interest of not only the celebrities but also the copyright holders.

Keywords: Character merchandising, celebrity rights, copyright, trademark, personality rights, passing off

Almost all of us, at some point, have been guilty of splurging hard earned currency on a 'not so worthy' product just because a favourite celebrity endorses it. While succumbing to the temptation of such purchases one hardly pays attention to the merchandising dynamics that account for a US$ 2.5 billion annual business in India.[1] An entire generation of kids exposed to Ben 10, Powerpuff Girls and Dexter can relate to a pencil, T-shirt, or cup with those characters. They ask their parents to buy it; or parents who know that their kids love these characters end up picking up a licensed pencil or lunch box instead of an unbranded one.[1] Though the contextual meaning of the term 'character' is broad enough to sweep into its contours everything from cartoon characters (like Mickey mouse or Donald duck) to human based characters (fictional characters like Tarzan and real celebrities from entertainment, sports, politics, etc.), it is the merchandising based on real celebrities that opens the Pandora's box. This celebrity based merchandising (also known as personality merchandising) has been a see-saw trying to balance the rights of the copyright owner on one side and the personality's privacy and publicity rights on the other. Personality merchandising is an apt example of age-old legal principles like right to privacy and publicity in direct clash with upcoming business trends like character merchandising. There is considerable inconsistency in not only the way different countries deal with this conflict but even different courts in the same country tend to differ on this point and India is no exception. Lack of a codified law on publicity forces the Indian Judiciary to approach the issue of character merchandising and more specifically personality merchandising from various angles such as constitutional law, copyright law, trademark law and even common law principles. Constant friction between these laws has led to a lot of confusion and complexity for the entertainment and merchandising business, sometimes to the extent of the rightful owner not being able to commercially exploit the right due to the uncertainty of how the judiciary will react. India is proud of its art and entertainment heritage and the country with the second largest film industry in the world has been absolutely clueless about the merchandising business and its legal complexities.

This article makes an attempt to understand the legal contours of character merchandising in India with specific emphasis on personality merchandising. A constant attempt has been made throughout the article to bring about an understanding of how each of

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the legal principles affects merchandising as a business activity. One of the core objectives of this article is to suggest a framework that the Indian Judiciary may be able to use in order to resolve the conflict inherent in character merchandising.

Types of Character Merchandising

The notion of character merchandising simply refers to creating a merchantable product around a famous character, fictional or otherwise. Given the enormous popularity of many fictional and real life characters, businesses today are increasingly associating their new as well as existing products and services with famous characters, to leverage on their popularity. Over the years, the avenues of character merchandising have increased in such varied forms that what was seen as a secondary source of commercial exploitation by the entertainment industry, has become the forerunner in terms of revenue. From the initial days of character merchandising when Walt Disney Studios began licensing their famous characters in the 1930s (ref. 2), to the present day film product placements such as Toy Story where movies are produced around the characters to serve as a medium of promotion of toy characters[3], character merchandising has evolved in such versatile forms that their classification in an organized manner is essential to comprehend the true scope of character merchandising and is an essential precondition to its study.

There are different types of characters that are used in merchandising and the business opportunities of merchandising a character largely depend on its nature. Therefore, merchandising may be classified into the following categories on the basis of nature of characters:

Fictional and Cartoon Character Merchandising

The whole concept of character merchandising and the resultant business model were first created around fictional cartoon characters, with Walt Disney Studios setting up a separate department to license the rights to use its popular cartoon characters Mickey, Minnie and Donald on various consumer products. Cartoon characters are the oldest and perhaps the most popular merchantable characters ever created. Merchandising of fictional/cartoon characters involves use of unique traits of a famous character such as the appearance, name, image, sounds/dialogues on consumer products. Some examples from India include the use of images of Mickey and Minnie on Cadbury chocolates, the images of Spiderman and Superman on apparel and so on. Such use of appearance and other traits may occur in two dimensional or three dimensional forms.

Fictional or cartoon characters may originate through various sources such as:

1 Literary works: From classic children's literature such as The Adventures of Pinnocchio, Alice in Wonderland to cartoon strips like Garfield, Calvin and Hobbs, literary works have been the largest source of fictional and cartoon characters. While some of these legendary literary marvels describe characters in such detail that readers can easily visualise the characters, most of the other literary works are accompanied by their visual art expressions. Tintin, one of the well-known cartoon strips, was created by the Belgian cartoonist Georges Remi, and was first published in 1929 in a Belgian newspaper. The cartoon strips became so widely popular around the world that the character of Tintin was featured in numerous animated movies and television shows. Tintin also appeared on Belgian postage stamps and Euro coins. Today, an all in all merchandising business is structured around Tintin.[4]
2 Artistic works: Artistic works such as Da Vinci's Mona Lisa also form part of merchantable characters around the world. A number of paintings by Raja Ravi Varma, a renowned Indian artist of the 19th century, have found their way into merchandising.
3 Cinematograph films: Cinematographic films or movies reach a greater section of the population across the globe due to their high entertainment value. Characters from popular movies can strike an instant chord with the consumers and hence, businesses across various domains use movie characters to market their products and services. Animated movies such as Shrek, Kung Fu Panda, Lion King and Cars are immensely popular among not just kids but across all age groups. The Star Wars movie franchise alone has earned about US$ 27 billion in revenue for its primary producer Lucas Films.[5] According to a study carried out by a website, Disney's revenues from merchandising and licensing sales accounted for about US$ 28.6 billion in 2010, which is almost 20 times their theatrical revenue.[6] Television and other multimedia commercials produced for advertisement of various products and or services

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also create fictional characters that are used for merchandising. The human character used for promotion of aerated soft drink, 7-up and Zoo Zoo characters that featured in Vodafone ad series are best examples of fictional characters created through ad films.

4 The icons or mascots of famous brands or events: The mascots of various sports and cultural events such as 'Appu' elephant of Asian Games in India and 'Footix' of FIFA World Cup in France provide tremendous opportunity for merchandising during the organisation of the event. The iconic characters representing popular brands such as the Android bot, Kingfisher bird, Kellogg's rooster, etc., are used on products other than the one's they represent, for brand extension purposes.

When a fictional character is created, it automatically enjoys copyright protection. As a general rule, in most legal systems, the author or the creator of a fictional character is regarded as the first owner of copyright over the character. Where the author creates such a character for an employer under a contract of employment or work for hire, the employer becomes the first owner of copyright over such fictional characters.

Celebrity Merchandising

Celebrity merchandising can be further classified under two heads:

Personality Merchandising

Use of the identity of famous persons in marketing of goods and services is known as personality merchandising. Celebrities from different walks of life such as sports, movies, politics, music, etc., allow unique traits of their persona to be used in association with products and services. This form of merchandising is also known as 'reputation merchandising' since such persons normally are well known among a large section of the public. From a business perspective, associating celebrities with consumer goods serves dual purpose: firstly, the consumers can instantly recognize and relate to the products endorsed by their favourite personalities and secondly, consumers tend to buy the products that supposedly form a part of the celebrities' lifestyle. Some well known examples of celebrity merchandises include Denise Richards' collections of cosmetics launched by Christophe Professional, 'Lolavie' range of perfumes for women by Jennifer Aniston and a range of consumer products launched by Future Group in association with Sachin Tendulkar under the brand name 'Sach'. Celebrity or personality merchandising may involve famous personalities who may be either living or deceased. Both have certain advantages and disadvantages in case of merchandising. While a living celebrity is more often in the limelight than the deceased, his/her public image may not remain constant. The reputation and goodwill of a deceased celebrity remains unchanged but the popularity of a deceased is ever dwindling.

Image Merchandising- Fictional Characters Played by Real Life Persons

Image merchandising is a hybrid of fictional character based merchandising and personality merchandising.[2] Fictional characters are in certain cases created under a literary work or for a cinematograph film but the characters are visualized and associated with the actor who plays the particular character. In such cases, the character is identified with the real life person in combination with certain signature traits of the character. The public can easily relate to their favourite character from a film when they see an image of the actor dressed or portrayed in a particular manner. Popular examples include Captain Jack Sparrow played by Johnny Depp, James Bond played by multiple actors, Sherlock Holmes and Iron Man played by Robert Downey Junior, Hannah Montana played by Miley Cyrus, Harry Potter by Daniel Radcliffe and India's very own Vijay Deenanath Chauhan or Raj played by Amitabh Bachchan and Sharukh Khan respectively. The practice of merchandising of fictional characters portrayed by real life actors is of recent origin. In image merchandising, distinctive images of characters from memorable scenes in movies are applied in advertising or marketing of products. It is always debatable whether the resultant market response to the merchandise is due to the character or the person playing the character.

Legal Issues Involved

Character merchandising is not only a battleground for conflicting business interests but also for legal interests at loggerheads. The following analysis of various legal issues inherent in character merchandising will indicate the complex nature of this new age business phenomenon.

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1 The personality rights issue: Jurisprudentially, there are two main personality rights that every individual enjoys viz. the right to privacy and the right to publicity. A celebrity is a real life person with legally recognized rights and obligations. Any commercial application of his/her personality and the traits associated with it should be made with due regard to his/her personal rights. Every person enjoys right to privacy, a common law right, to prevent public intrusion of his private and family life, his home and his correspondence. Any violation of one's privacy constitutes a tort and the victim may seek remedy under common law. Under the US law, appropriation of some elements of one's personality without consent *inter alia* amounts to invasion of privacy.[7] Therefore, one school of thought clearly believes that any unauthorized usage of a person's likeness amounts to invasion of his/her privacy. However, there is another school of thought that endorses the opinion that a person, by virtue of being a celebrity, loses his right of privacy to a certain extent. A celebrity or a public figure, who engages in public affairs to the extent that draws public attention, is deemed to have consented to publication of his picture and actions relating to his public life.[8]

   In order to partially counter this, the proponents of personality rights argue that publication for the purposes of news reporting should be distinguished from use of a celebrity's likeness for commercial gain. By virtue of being popular, a celebrity enjoys the right of commercial exploitation of his popularity and goodwill, which is known as right of publicity. A celebrity may decide whether to allow his persona to be used to promote a particular product, service, cause or agenda.

2 The copyright issue: As a general rule, the author of a work is the primary owner of copyright unless the work is commissioned by another person, in which case the person commissioning the work owns the copyright. The producer of a cinematographic film is considered to be the author of the film. In case of a fictional or cartoon character based film, the producer can freely exploit the character in any manner he deems fit. However, when a real life person plays the character in question, the producer may not be able to exploit the character in all possible manners without the consent of the person playing the character. The principle that drives the notion of copyright is to incentivize the author to contribute further by granting exclusive rights over his creations as a consideration for his labour and effort. Borrowing the same analogy, the advocates of celebrity rights argue that a celebrity also invests his labour and efforts to create this persona and hence he has to be sufficiently incentivized to contribute towards a culturally richer society.[9] The copyright conflict is at its prime in case of image merchandising. On one hand the producer of the film claims exclusive right to exploit the images from the film, while on the other hand the celebrity claims violation of publicity right and false endorsement if the producer uses the image for the promotion of a product.

3 The trademark and passing off issue: A trademark is a name or a mark that is capable of being graphically represented and is used to determine the origin of a product or service. The owner of a trademark holds exclusive rights to associate the mark with his goods and services. Unauthorized usage of a registered trademark amounts to infringement of the statutory rights of the original owner. Where a trademark is not registered, the original owner may seek remedy under common law action for passing off. The owners of characters often register trademarks or resort to passing off actions to prevent someone from using a character's name and other indicia to misrepresent to the consumers that the goods have some connection with the character.[10] As a principle, a product or service is identified through its trademark and the trademark alone represents the goodwill of such product or service. Therefore, it is the trademark that drives a product in the market. However, in case of celebrity merchandising, the popularity of the celebrity also plays an important role in the success of the merchandise. A celebrity's association with a product helps to lend credibility to the product and the popularity of the celebrity allows the consumers to connect to the product instantly. The consumers feel reassured about the utility and effectiveness of a product when they see their favourite celebrity associated with the same. Therefore, it is hard to determine which among the brand name and the celebrity association has a greater impact on the success of merchandise.

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4 Contractual issues: Given the popularity of celebrity merchandising, endorsement conflicts are not uncommon if both the copyright owner and the celebrity are allowed to carry on with merchandising activity. For example, a particular celebrity may be endorsing a specific brand of home décor. The celebrity has a contractual obligation that he will not endorse any competing home décor brand during the subsistence of his endorsement contract. The producer of a cinematographic film, where in the celebrity plays a role, licenses one of the stills from the film to a home décor brand for the purposes of merchandising. These two independent actions by the celebrity and the producer will result in a conflict of interest between the two home décor companies and the one that has an endorsement contract with the celebrity may bring an action against the celebrity for breach of contract.

Indian Perspective

For India, the task of demystifying character merchandising, more specifically personality and image merchandising, becomes herculean given the absence of a specific statute or legal provision squarely governing such merchandising activity. Unlike USA that has a specific 'right of publicity' (state or common law based right[11]), India has to constantly take recourse to either the age old constitutional principle of right to publicity or to the common law principle of passing off, which are both not only vague but also too old fashioned to match the fast paced entertainment industry and its business dynamics. The instances of conflict over character merchandising are plenty, however, only a few see courtroom action in India. While some celebrities vent their anger on social networking sites such as twitter like Amitabh Bachchan did when a certain tobacco manufacturer used his famous baritone voice for promoting the brand without his permission[12], others like Rajnikant adopt more coercive measures such as publishing a legal notice in leading newspapers threatening legal action against the unauthorized use of his persona.[13] However, the conflicts that make it to the courtroom are the ones that steal the limelight as they help shape the law on this otherwise complex issue. An analysis of the legal provisions along with the judicial pronouncements is imperative to understand how the legal provisions in India relate to character merchandising, each in their own unique way.

The Constitution of India

Article 21 of the Indian Constitution relates to the fundamental right to life and personal liberty. The right to privacy is an essential part of Article 21. The Delhi High Court way back in 2003 spelt out that the right to publicity of a celebrity has evolved from the right to privacy that is enshrined under Article 21 of the Indian Constitution. The Court's intent of bringing publicity rights under Article 21 can be best depicted in the Court's following words[14]:

'The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. Any effort to take away the right of publicity from the individuals, to the organizer {non-human entity} of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from it. For example if any entity, was to use Kapil Dev or Sachin Tendulkar's name/persona/ indicia in connection with the 'World Cup' without their authorization, they would have a valid and enforceable cause of action.'

The Indian Constitution seems to absolutely oust the interest of the producers and copyright owners of the cinematographic and other works.

Indian Copyright Act

The Indian Copyright Act, 1957 seems to be the lone warrior supporting the cause of the producers and other copyright owners to a certain extent. Section 2(d)(v) of the Copyright Act clearly identifies the producer as the author of the cinematographic film while Section 14(d) of the Act provides that the owner of a cinematographic film has the exclusive right to make a copy of the film including a photograph of any image forming a part of such cinematographic film. Further, sealing the fate of the performers, Section 38 (4) of the Copyright Act provides that once a performer has consented to the incorporation of his performance in a cinematographic film, the performers' right does not subsist in that performance any more. A cumulative reading of these provisions indicates that once a performance becomes a part of a

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cinematographic film, the performers' rights cease to exist and only the producer has the right over the cinematographic film and any images incorporated therein including the right to exploit these images in the form of merchandising. Copyright in a comic book character came under the limelight when the Delhi High Court was called upon to decide the copyright ownership over the character 'Nagraj'.[15] The plaintiff i.e. Raja Pocket Books had been in the business of publishing and distributing comic series titled 'Nagraj'. The character Nagraj is usually attired in green colour body stocking giving the impression of serpentine skin and red trunks with a belt which appears to be a snake. Defendants i.e. Radha Pocket Books also started publishing comic books comprising of a character called Nagesh bearing a look very similar to that of Nagraj. Both the characters were depicted to possess magical powers of snakes. The Delhi High Court pronounced that the copyright in the Nagraj character rests with the plaintiff and any attempt by the defendant to use the likeness of the character in stickers, posters or any other advertising material will likely be considered infringement.

Indian Trademark Act

The Indian Trademark Act is the most utilized statute for adjudicating character merchandising related conflicts. Most provisions of the Trade Marks Act, 1999 (the Act) are broad in meaning and extensive in their application and therefore are easier to apply to character merchandising disputes.

The Act defines trademark to include any mark that is capable of (a) being represented graphically; and (b) distinguishing goods and services of different persons [Section 2(zb)]. Marks such as name, signature, word, device, letter, shape of goods, packaging or combination of colours are capable of being registered as trademarks if they are distinctive in nature and are not descriptive of the goods and services they represent.[16]

A registered owner of a trademark can prevent others from using an identical or deceptively similar mark without permission on their goods or services for sale, offering or advertisement and can also prevent import of goods with such marks in India (Section 29 of the Act). A registration also grants the owner the benefit of presumption of validity of the trademark. As specified in Sections 102 and 103 of the Act, falsifying a registered trademark or falsely applying a registered trademark on goods and services without the approval of the owner is an offence and is punishable with imprisonment and penalties. Where a person wishes to use a registered trademark in relation to his goods or services, he has to seek permission from the registered proprietor of the trademark or become a registered user of the mark under the Act.

Apart from the protection of a mark's identity in the market, the Act also provides for quality control provisions to maintain the market goodwill of the trademark. Section 50(1)(d) provides for removal of a registered user of a trademark where such registered user does not maintain the requisite quality of goods produced under a trademark in accordance with the agreement he has with the owner of the trademark.

Where an unregistered mark is used by a third party without authorization from the owner to sell any goods or services, the owner may bring an action for passing off such goods or services under the trademark. The common law principle of passing off is a well recognized principle in India and has been applied in a plethora of cases where there are no statutory rights available as in unregistered trademarks. To succeed in an action for passing off, however, it is necessary for one to prove
(a) the goodwill in the trademark;
(b) misappropriation by the defendant; and
(c) resultant loss of trade or damage to goodwill.

In absence of a definite law to protect commercial exploitation of fictional characters and likeness of celebrities, producers and celebrities often resort to trademark and passing off law for legal protection of the names and likeness of their famous characters. Owners of fictional characters can adequately protect the names and likeness of the characters through registration provided under the Act. From a business perspective, a trademark registration also helps the owner to create a tangible package of rights on a character to position it for licensing. Celebrities too can protect their names under the Trade Marks Act in order to commodify their personality rights over which they can hold proprietary privileges.

Courts in India have recognized the rights of the owner of characters in the reputation and goodwill enjoyed by the character, whether such character is fictional or is played by a real life person provided that the popularity of a given character grows beyond the program or series to which the character is associated.[17] The Delhi High Court validated the transfer of trademark on the name 'Daler Mehndi' by the singer to his company DM Entertainment and held

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that the defendant's act of selling dolls that looked, sang and danced like Daler Mehndi, amounted to passing off.[18] Therefore, even where a character or a celebrity's name or likeness are not registered as trademarks, the courts have recognised their proprietary value and granted remedies for passing off.

Trademark protection forms an important step in the protection ladder of a character before such character may be positioned for merchandising. Trademarks can be used to protect the names and likeness of the characters and help build a sizeable intellectual property portfolio around the characters to structure a licensing business on the same.[19]

It is amply clear from the foregoing that resorting to trademarks and passing off or publicity rights violation to adjudge character merchandising disputes solely in favour of celebrities is not only unjust towards the copyright holders but also sends a signal that Indian laws have not been able to catch up with changing business practices. In such a scenario, it is imperative to have a dispute resolution model for character merchandising disputes, that is not only fair to all stakeholders but also provides predictable outcomes to such disputes.

Character Merchandising: Dispute Resolution Model

In the light of extensive discussion over various conflicting rights and legal interests in character merchandising and the fact that the Indian courts have been largely taking recourse to trademark and passing off to resolve character merchandising disputes, this article makes an earnest attempt to propose a dispute resolution model that tries to balance the interests of the various stakeholders.

This dispute resolution model makes endorsement as the basis of adjudging disputes. That is, if the copyright owner utilizes his work in a manner that does not suggest celebrity endorsement then the copyright should prevail over publicity, trademark infringement and passing off claims. For example, if the producer of a cinematographic film utilizes the images from his cinematographic film in a manner that does not suggest endorsement by the celebrity that played those characters in the images, then the celebrity should not succeed in a publicity, trademark infringement or passing off claim against the producer. Various guide posts may be developed to analyse whether a particular merchandising activity amounts to false endorsement or not. Some illustrative guiding factors may be as follows:

1 In case of cartoon or animated characters, the copyright owner controls all rights to permit merchandising activities involving the character.
2 For animated films, the right to exploit images from the films solely rests with the producer of the film. In case the animated film is based upon a comic book series or an earlier famous animated character, then the copyright owner of the animated character should be able to stop any merchandising activity by the producer in absence of a contract providing the producer with such merchandising rights.
3 In case of cinematographic films, where celebrities play the role of a character, otherwise well known to the public, such as Spiderman, Batman, James Bond, Harry Potter, etc., the producer of the film should be permitted to merchandise the stills from the film even if such images depict the celebrity. This is because in the image the celebrity is in the shoes of the character and the association of public is not with the celebrity alone but with the character. For example, in case of the character of James Bond, there have been various celebrities who have played the character in different films. The viewers relate to the character of James Bond and the identity of the celebrity takes a back stage. In case of a conflict in such a scenario, the adjudicating authorities may further impose conditions such as the producer may have to mention on the merchandise that the particular celebrity does not endorse the article.
4 In case of a cinematographic film not based on any prior famous characters, there is a major contribution of the celebrity towards the success of the film. In such a scenario only conditional merchandising should be permitted by the producer. Strict conditions should be imposed on the utilization of stills comprising of the celebrities. Some such conditions are:
   (a) Use of any image where the dominant part of the image comprises of the celebrity should not be permitted.
   (b) Any image from the film comprising of the celebrity should be accompanied by the title of the film written next to the image so as to suggest that the merchandising is based on stills from the film and there is no endorsement by the celebrity.

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(c) The merchandise should contain a conspicuous notice that the celebrity does not endorse the product and it is just the still from the film that has been utilized.

(d) The producer should not be permitted to use the dialogues of the celebrity from the film for merchandising, as the consumers will definitely be led to believe that the celebrity endorses the product.

Following is the recommended stepwise analysis for adjudication of character merchandising disputes:

Step 1- Identification of the nature of merchandising

The first step is to identify the nature of the merchandising activity i.e. whether the merchandising is based on a fictional/cartoon character or is celebrity based merchandising.

Step 2- In case of fictional/cartoon character based merchandising

In case the adjudicating authority concludes that the merchandising is based on a fictional/cartoon character, then in absence of any assignment/licence or any other contract to the contrary, the merchandising rights will exclusively rest with the copyright owner of the fictional/cartoon character.

Step 3- In case of celebrity based merchandising

In case the merchandising is identified as celebrity based merchandising, then a further inquiry is to be made with respect to whether the merchandising is personality based merchandising or image based merchandising.

Step 4- In case of personality merchandising

If the merchandising activity is personality based merchandising, then the merchandising right exclusively belongs to the personality/celebrity and the celebrity's rights will prevail over any merchandising attempts by a third party.

Step 5- In case of image merchandising

If the merchandising activity falls under image merchandising, then the copyright owner of the film (producer in absence of assignment) will have the right to merchandise the stills from the film provided certain conditions and restrictions as aforementioned are followed.

The above mentioned model may be as depicted in Fig. 1.

Conclusion

Character merchandising has become immensely popular given the sort of business advantage it entails. At the same time, the law has not been able to catch up with this fast paced business practice. The legal

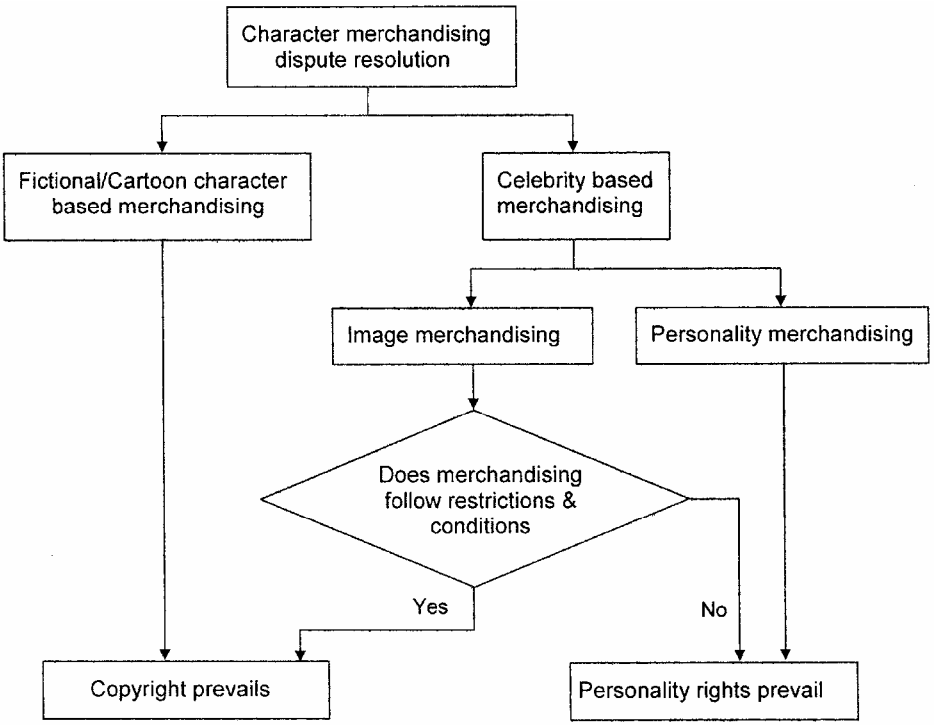

Fig. 1— Flowchart for adjudication of character merchandising disputes

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uncertainties not only prove to be a hindrance to the business interests but also result in unanticipated losses to the rightful copyright owners. There is a need for the law to catch up; the adjudicating authorities can neither wait for a specific legislation to come in nor does resorting to trademark infringement and passing off yield justifiable results. Just because a certain endorsement contract between a celebrity and another entity will be affected, it cannot be enough reason to prevent a copyright owner from carrying on a rightful business activity with respect to his or her own content. The need of the hour is to use the existing laws with a new perspective and evolve a mean path where the celebrity can reap the benefit of fame without obstruction while at the same time the copyright owners can utilize their content to the maximum.

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14 *ICC Development International* v *Arvee Enterprises*, 2003 (26) PTC 245 Del.

15 *Raja Pocket Books* v *Radha Pocket Books* 1997 (40) DRJ 791.

16 Sections 9 and 11 of the Trade Marks Act, 1999 respectively, provide absolute and relative grounds for refusal of registration of a mark. A mark has to pass the tests laid down in these provisions to secure a registration.

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