

DELHI HIGH COURT ON PROTECTION OF PERSONALITY AND PUBLICITY RIGHTS - THE CASE OF JACKIE SHROFF

Ortis Law Offices

By Sandeep Grover, Partner and Anubhav Seth, Associate

Well known actor Jackie Shroff recently filed a case in the Delhi High Court to protect his personality and publicity rights from being misused by third parties, such as Artificial Intelligence (AI) ChatBots and E-commerce websites, for financial gain. This follows shortly after actor Anil Kapoor had obtained a favourable order from the Court in September last year, restraining the unauthorised use of his personality and characteristics by the unauthorised distribution and sale of items and merchandise featuring his face or characteristics.

JAIKISHAN KAKUBHAI SARAF ALIAS JACKIE SHROFF V THE PEPPY STORE & ORS¹

On May 14th, 2024 renowned actor Jackie Shroff approached the Hon'ble High Court of Delhi seeking to protect his personality and publicity rights from being misused by third parties, such as AI ChatBots and E-commerce websites, against commercial misuse.

It was alleged that the defendants used his name, voice, image, likeness, mannerisms, gestures, and other attributes without any authorisation potentially leading to misinformation amongst the public about his endorsement of the products and merchandise in question. Additionally, the actor sought temporary injunctions against the defendants.

1. CS(COMM) 389/2024, The High Court of Delhi, 15.05.2024

The Court while applying the principle laid down in *D.M. Entertainment Pvt. Ltd. vs. Baby Gift House & Ors.*², held that the alleged activities of some of the defendants in the present case, prima facie, led to the commercial exploitation of the rights sought to be protected by the actor.

The Court in the aforementioned case had held that the right of publicity protects individuals against the unauthorised use of their personality, which includes their name, image, voice, and other distinctive attributes.

The Court reasoned that such unauthorised use evidently suggests to the general public that the actor is endorsing or is affiliated with the defendants' products. Consequently, the actor has the right to a temporary injunction preventing the defendants from selling merchandise that infringes on his personality rights.

BALANCING OF LEGITIMATE INTERESTS BY THE COURT

The lawsuit had been brought against both identified and unidentified parties. Hon'ble Justice Sanjeev Narula passed a favourable interim injunction after adjudicating upon the following legal rights of actor Jackie Shroff: (i) Personality and publicity rights, (ii) Moral rights particularly the right of attribution and right of integrity protected under the Copyright Act, 1957, (iii) Common law rights, including the right to be protected against passing off, misappropriation, and unfair competition, and (iv) Trademark infringement of the registered marks '*Bhidu*' and '*Bhidu Ka Khopcha*'.

Whereas, two of the named defendants confirmed through their counsels that the impugned content had already been taken down from their website, the following defendants have been restrained by virtue of the ad interim injunction order dated 15.05.2024:

3

- Two E-commerce entities for infringing the personality or publicity rights of the actor who were using the photograph and name of the actor, for selling merchandise and posters autographed by the actor respectively;
- Two entities for allegedly distorting videos of the actor and creating misleading content;
- One of the defendants for hosting an unauthorised AI ChatBot that employed elements of the actor's identity without his consent;
- Another defendant for exploiting the actor's identity by selling the actor's name, nicknames such as 'Jackie' and 'Jaggu Dada', and the actor's image in the form of a downloadable wallpaper for commercial use;
- Further, the Court ordered an injunction against unidentified defendants impleaded as "John Doe", directing the removal of pornographic links that used the actor's name as well as of listings of infringing merchandise being sold on various impugned links;
- Additionally, the Department of Telecommunications and the Ministry of Electronics and Information Technology (MeitY), were directed by the Court to issue necessary directions to telecommunication and internet service providers to block the infringing URLs.

However, the Court did not pass an interim injunction against one of the named defendants who runs a YouTube Channel. The Court observed that the videos on his YouTube Channel represented a form of artistic expression that required thoughtful engagement from content creators, including target audience research, curating the videos that can resonate with the viewers and editing of variety of content to entertain the audience.

The Court opined that restricting such forms of artistic expression that goes through a creative process which not only generates economic value but also generates employment for many young people, would have a significant impact on a vibrant community, and set a legal precedent that stifles the freedom of speech and expression. Accordingly, the Bench considered it crucial to balance legitimate interests in artistic and economic expression on one hand, and the actor's right to personality, publicity, and moral integrity on the other.

CONCLUSION

Personality and publicity rights in India are still emerging and not expressly codified by any specific law, regulation, or policy. However, they are essentially considered as emanating from Intellectual Property laws as well as from Articles 19(1)(a) and Article 21 of the Indian Constitution which deal with the freedom of speech, the right to live with dignity and the right to privacy.

Given that endorsements from celebrities account for an important percentage of their revenue, the unapproved use of a celebrity's voice, image, vocabulary etc., may adversely affect their earnings. Therefore, celebrities and well-known individuals enjoy the right to regulate their personalities and to protect themselves against misuse and commercial exploitation.

Considering the development of AI and its potential misuse, the protection of personality rights has become increasingly crucial. This is perhaps the first time a Court has placed restraints on a ChatBot that was developed to imitate a celebrity using AI because it infringes upon the personality and publicity rights of an actor. The Bench is scheduled to hear the matter on October 15th, 2024.