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**A Critical Analysis on the Impact Competition Laws and IPR Laws Have On  
the Sports Apparel Industry**

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**Introduction**

Laws are made to help people have a common understanding of what is allowed and what is not. Although can be implemented in many different ways and each way when given in different situations have different meanings, it is generally understood and it serves a certain purpose to a certain problem. IPR laws are there to protect a person's intellectual property giving the creator his rights to protect his property that have a creative aspect to it. This creative aspect which can be used or sold as a part of something or even as it is, as a whole. This way people's creative inventions, discoveries or any form of artistic work etc are protected. This ensures safety and promotes artists and encourages people to be more creative. On the other hand we have competition law that regulates the market and ensures that there is steady growth and development in each sector of the economy. This helps to improve the market standards in many ways. It mainly restricts companies from gaining monopoly over a particular sector of the economy and ensures healthy competition among the competitors. We know in economics that perfect competition is very important or it is necessary that there has to be a balance between the controls each person or company has over the competition. Otherwise a company could misuse this power through ambush marketing and for example could raise the price of any commodity the company might be selling. Therefore it is crucial that no company should possess this kind of total control over that market and have advantage over its competitors. Considering protecting a person's creative work, at cost of making all the competitors in the market suffer is not fair because then in that case the person who gains recognitions of this work or creation in his field will not only have an edge over the others competitors but also can dominate the market ensuring that they don't have a chance to make up for it. This will stunt the development of a particular product and will eventually cause the market to crash. Therefore it is important to ensure that even artistic works too have a limit when it comes to complete rights over something he or she has made.

## **Objective**

In this paper we will be discussing about the IPR laws in a particular sectors which is very competitive and compare the competition laws in that area as well, and find out where the balance of protecting an individual's artwork comes into play and where this copyrighted claim does end up giving the person or company an unfair advantage over its competitors. To do that we will understand what can be copyrighted and what cannot by finding out the essence of what he or she has copyrighted. We will also be discussing the contradictions faced between these laws and probably find a balance between them both to ensure both the safety of a person's work as well as maintaining stability in the market.

The differences and applicability under sports apparel industry has made big difference with the development of technology, athletes are able to break records and set new highs. This is partly due to the improvement of science and technology in the products that they produce. And with this development the top brands may have an unfair advantage under the sports industry when it comes to providing equipments that may help an athlete to have an edge over their competitors. This incentive is sufficient enough to make an athlete to prefer that particular brand. This domination over sports industry can have monopolistic advantages over the sports industry. Therefore systematically analysing the laws that prevent this monopoly as well as insuring the creative innovations are secured is necessary.

## **The role of IPR in the Sports Apparel Industry**

The field of sports in today's world is a multi billion dollar industry. With major sport franchises totalling upto 6- 12 billion dollar annually. And with major brands such as adidas, nike, puma and under armour being the main producers of sports equipment by controlling a the majority of the market share is necessary that the products released by them are protected. And IPR plays a major role in this. Patents can be used to protect the design of the shoe and not only that but the science behind it. The majority of the sports shoes and other equipment today focus on the applicability of the product, not only the design aspect. Trademarks can be used to protect the brand logo of an athlete or a company like the Jordan logo or the nike swoosh logo which is associated with a particular brand recognition which can play crucial factor in sales of the product. And finally copyright can be used to protect any literary works done by these companies or players. With a lot

of sales only come with huge sponsorship with athletes and other advertisements which can be protected by IPR. In case between new balance private limited v. Liverpool, there was a question behind the amount of money a particular company brings in when signing a contract, here in this case the new balance had argued that since they were offering more money the Liverpool had to sign with new balance, according to a contract they had signed earlier. Here the court had held that a company's worth cannot be solely determined by the amount of money that's being offered but the people that the company represents. Compared to new balance, Nike had endorsement deals with the most of the top athletes in very major sport such as Michael Jordan, LeBron James, Serena Williams, Roger Federer etc. This value cannot be put in monetary value. Therefore IPR plays a critical role in the sports industry and the sports apparel industry.

### **The role Competition Laws in the Sports Apparel Industry**

The main aim of competition laws is to restrict companies from becoming a monopoly. Although in today's competition being a monopoly is unrealistic and at the same time having a perfectly competitive market is also realistic. And therefore, what we see today with the sectors of business is an oligopoly where there are 3-4 major companies that own majority of the market share. For example: Nike and Adidas in the sports industry, Apple and Samsung in the smart phone industry etc. Although there is no one company that has total control is bad for the market to even have 2 or 3 companies. In the sports apparel industry Nike is thought to be the most dominant out of all the other companies.

There have been several instances where the brand value of Nike and the marketing techniques by Nike have left even its own competitor out of the equation. For example, in the 1992 Olympics Nike had used ambush marketing to outweigh the influence Reebok had in the Olympics. Reebok was the official partner in the Olympics, and had paid a huge sum of money to the Olympics association to represent the athletes in the games, but due to the unhealthy advertising by Nike by the ways of endorsing every major athlete, and due to this Nike had gotten more recognition in this way. Further competition laws won't allow companies such as Adidas and Nike to merge since their merger would give a significant advantage over its smaller competitors. And therefore competition laws help in keeping a healthy competition among the main companies



### **Theory of natural rights**

Every person has the right over his or her property. The theory of natural right states so where every person has natural property rights over his ideas. John Locke states that A person has a right to own the creation of his mind in the same manner he owns creation of his labour. When we compare it to physical property the sole owner of the property has complete rights over the property. He or she can do whatever they want with their property whether to build a house, use the land for agricultural purposes or give it out on lease for an incentive to make profits. The same way according to the theory of natural rights a person should have complete rights over his ideas since he's the person behind it. He should be allowed to use his own property i.e. his idea, in whichever way he pleases. Whether or not it's giving him an unfair advantage over his competitors.

### **Hohfeld's analysis of rights**

Hohfeld's analyses rights of an individual and categorizes them into different categories. Under which he narrows it down to rights as correlatives and rights as opposites. One of them being the difference a person's rights and privileges. He distinguishes the difference between them both where he says that a person's rights is not the same as a privilege. He says rights as access to something which is the opposite to a duty, which can be understood as the bare minimum. Privilege as an advantage or a right that other people do not have. This might be due to various reasons but the fact is that some people have more rights over others. And this theory can be applied to IPR and competition law.

Here we have two contradicting statements which support each of the sub topics in this research. Locke's analysis of natural rights supports the inventor or the owner of an idea. It supports why a person's property should be protected and that the person or company should have total control over his idea. It provides a basis understanding of the necessity of IPR in the world. We can derive various arguments as to why a person should have rights over his property or idea. If a person has created something unique out of his own thoughts, he should be rewarded accordingly by allowing him to use his idea for whatever way he pleases. If he wants to use it to make money, he should be allowed to do that for however long he or she wants. With this theory we can disregard any advantage that person might have, since almost every human has the same capability to invent and create. It can be understood that the only reason one has come out on top is because of his or her hard work

and therefore that person should have natural rights over his idea and should be allowed to do whatever he wants with it. Which is in the same line of protecting his work which is what IPR essentially is. The paper on the patent analysis on Nike by Huei-Yu Wang, Dr. Sheng-San Cheng researches on design, trademark and patent of Nike and shows that it the core assets and the ultimate commercial weapon of the company. The paper researched on the designs, patents and trademarks of Nike in detail. And states that the secret behind Nike is the high technological advancement that Nike invest into the company. Further the paper had analysed how Nike protected its designs and technology behind their footwear through patents and trademarks fled by them and how it has become a core asset to the company. It further goes on to conclude that Nike using patents and trademarks, Nike had valued their designs as the key success to their company. This data that the paper provides critical finding in analysing the patents fled by Nike. [1]

In the process to understand the extent to which IPR law are applicable, this judgement reiterates several times in the judgement that although the inventor of a product when applied for a licence may have total monopoly over the product, the extent to which this right is available is as long as there is no monopoly that creates a disturbance in the smooth functioning in the market. The further stated that this would be going against competition laws and therefore had stated that intellectual property rights are not absolute.

Therefore the applicability of IPR plays an significant role with Nike with its huge funds can innovate sports apparel that can have a significant advantage over its competitors, these rights can be taken away if it interferes with the smooth functioning of the market.[2]

Statista an online platform that provides stats on various business and economical indexes which help people understand complex problems or progressions easily. These stats provided by Statista shows revenue share of Nike worldwide in 2021 and 5 years prior to that, it also shows the success of Nike under each product and shows which category and which product in that category is the most successful in the period of 5 years. These stats provided in this document have shown that the most successful product that Nike has released in the past 5 years have been in the foot wear sections [3]and that being their main source of income therefore the patents fled by nike has played

a huge factor in the success of Nike. But Nike's freedom is limited comparing the patents filed for the products filed by Nike the right over the patent is limited and therefore have to keep coming up with new ideas and designs to keep the revenue stable.

Secondly, we have Hohfeld's theory of rights. He critically scrutinizes what a right is. His theory of rights helps in understanding that all rights are not the same and that one right is higher than the other, disregarding the previous theory that there is no advantage since humans are the same. His differentiation between right and privilege shows that not everyone has the same opportunity and privileges. The high market value some companies and people have given them a technical advantage in the development of their product. Sports apparel aim to improve the performance of an athlete and there is a lot of research and development that go into making a sport equipment that enhances the performance of an athlete. With huge corporations having substantial amount of capital, means domination over the market which means a higher quality product in the aspect of performance of an athlete. This leads to higher prices and creates a gap between people who can access this technology. Therefore, there has to be external forces that prevent these corporations from creating this gap in the society which give an advantage to a certain group of people who can afford it.

In this case of *Union of India v. Cyanamide India Limited & Another* it mentions the applicability up to which companies can charge consumers for their products. The court held that charging excessive price for a product that cannot be replaced or found anywhere else then in that case the CCI can get involved to resolve the matter. Here the product that is sold by this company is medication that can't be found anywhere else. Due to this the company can place the product at whatever price they want which automatically results in monopoly over area. Similarly in the sports industry athletes want the product that can help them in the most efficient way as possible and therefore if certain products are priced very high certain people will have significant advantage over their competitors and also the company that manufactures this can dominate the market which can cause an adverse on the market. [4]

## Conclusion

From reviewing theories, judicial decision and articles on the aim of IPR and competition laws aims to bring and the impact it has had on recognisable brands such as Nike and Adidas in the sports apparel industry the author believes that although the role of IPR does do the right job in protecting the creative works of a person or company. It lacks in differentiating the identity or character of the patent holder. A creative work from an individual should be protected a lot more and should be given a significant advantage compared to established company such as Nike.

The essence of article 14 can be used to understand that equality is equality among unequals and therefore to establish a healthy competition protection of an individual's ideas should be extended further. The author also has found that the impacts competition laws have on the market is only preventing established companies from becoming a monopoly and not creating an environment for small businesses from entering into the market. The balance between IPR laws and competition laws only finds itself effective on a macro scale while ignoring the backbone of the economy.

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