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Forum Shopping: An Analysis of the Deprecated Practice of Manipulating Jurisdiction

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ABSTRACT

This research study attempts to assess the views of the court (both the Hon'ble Supreme Court of India and the Hon'ble Delhi High Court) on the deplorable practice of forum shopping in matters involving intellectual property violations. The tactic of plaintiffs seeking those jurisdictions they believe are most willing to declare a favourable ruling or verdict, known as forum shopping, has grown in popularity in recent decades. Numerous plaintiffs, for instance, have brought actions in the Delhi High Court, asserting jurisdiction judging by past orders or perhaps even the mere potential of infringement in Delhi. The Delhi High Court is well-known for its proactive strategy to safeguarding intellectual property rights ("IPRs") and for resolving such cases in a timely and effective manner. As a response, it has now become a favourite gathering spot for IP litigation. The facts and decisions of key cases given by the Apex Court and the Delhi High Court with the aforementioned trend of altering jurisdiction are the basis for this study. The paper's main findings are that forum shopping can overwhelm some courts, cause needless expenditures for defendants, and generate a bad public view of the judicial system's impartiality. The findings of this study article are significant since the online world has made it easier for persons to duplicate and disseminate recognized trademarks and content, but its ubiquity beyond borders has made identifying jurisdictional competence for legal action more onerous. The subject of jurisdictional competence has indeed been brought before courts several times, and there has been a significant amount of jurisprudence on it. This research paper summarizes the key implications from the decision, including how to decentralize IP matters and to discourage the tendency or upsurge of the conduct of forum shopping.

Keywords: IPRs, jurisdiction, choice.

I. INTRODUCTION: TRACING THE MODUS OPERANDI OF DOMESTIC FORUM SHOPPING FROM DIVERGENT LENS

A plaintiff's tactic of having his lawsuit tested in a specific court or jurisdiction where he

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believes he will achieve the much more sympathetic judgment or result is known as forum shopping.² The phrase is most commonly used whenever a claimant wants to circumvent the traditional venue² for controversy for a variety of reasons, including favourable legislation and jury prejudices.³ Inside one country's boundaries, domestic forum shopping takes place. In marital cases in the United Kingdom, for instance, forum shopping between England and Scotland has happened.⁴ Domestic forum shopping has been dubbed a national legal hobby in the United States.⁵ Domestic forum shopping is quite widespread in intellectual property lawsuits. Plaintiffs in the United States have filed lawsuits predicated on home-field benefit, the advantage of trial attorneys, and the pace at which tribunals resolve disputes.⁶ Overseas IP proprietors have litigated in China's major cities, such as Beijing and Shanghai, where they have been frequently based and where jurors are said to be conversant with complicated patent and copyright law notions.⁷ In Italy, a claimant from near Milan fought an accused trademark infringement from Venice, which was based in Milan. In Spain, a claimant based in Barcelona filed a patent violation lawsuit against respondents based in Madrid and Navarra.

Internal forum shopping has been characterized by judges in the United States as "villainous," "inappropriate," and "to be deterred," among several other thoughts. Lord Simon in the United Kingdom has identified the idea of local forum shopping among both England and Scotland as a major threat.⁸

When a nation's laws on a topic are mostly homogeneous, yet litigants prefer to suit in a specific location owing to imagined prejudices of judges and juries, domestically prevalent forum shopping grows particularly troublesome. According to one research, courts in the south of England are much more pro-wife in divorce settlement than courts in the north of England, resulting in forum choosing.⁹ Legal constructivists have repeatedly maintained that judicial

² BLACK'S LAW DICTIONARY 590 (5th ed. 1979). ²

Chaplin v. Boys (1971) A.C. 356, 401 (H.L.).

³ See Note, Forum Shopping Reconsidered, 103 HARV. L. REV. 1677, 1678 (1990).

⁴ See David Hodson, Quo Vadis? The Family Lawyer Goes Forum Shopping, 4 PRIV. CLIENT BUS. 158, 159-160 (2012).

⁵ J. Skelly Wright, The Federal Courts and the Nature and Quality of State Law, 13 WAYNE L. REV 317, 333 (1967).

⁶ Kimberly Moore, Forum Shopping in Patent Cases: Does Geographic Choice Affect Innovation? 83 J. PAT. & TRADEMARK OFF. SOC'Y 558, 574-6 (2001)

⁷ Diana Matthias, IP in North China —Identifying and Protecting It, in BUSINESS GUIDE TO BEIJING AND NORTHEAST CHINA 74, 76-77 (Chris Devonshire Ellis and Graham Thompson eds., 2007).

⁸ H.L. Debates 1410 (Jan. 30, 1996) (statement of Lord Simon), <http://www.publications.parliament.uk/pa/ld199596/ldhansrd/vo960130/text/60130-20.htm>.

⁹ Andrew Hough, Northern Men "Get More Favorable Divorce Payout," Research Shows, DAILY TELEGRAPH, Sep. 2, 2009, <http://www.telegraph.co.uk/news/uknews/6124840/Northern-men-get-more-favourable-divorce-payouts-research-shows.html>.

ruling might be influenced by trained coverages and subconscious impulses.¹⁰ Felix Cohen, for example, asserted that justices' "economic class" and "previous expert knowledge as lawyers for vested interests" frequently play a decisive role in patent disputes.¹¹ Roscoe Pound's sporting theory of justice reduces lawsuits to a trivial sport between claimants and adversaries, with attorneys' pleadings hampered by that of the crankshaft of rampant consumerism and tribunals supposed to operate cost-effectively, is also important.¹² Local forum shopping, especially in a practically homogeneous nation, thereby compromises rationalist interpretations of the law from a philosophical point of view.

Local forum shopping, on the other hand, might overwhelm particular tribunals, result in needless costs for respondents, and produce a bad public view of the judicial system's fairness. Lord Chief Justice Thomas has claimed that offering more adjudication outside of London would enhance legal practice outside of London and assist the regional economy while advocating for a halt to Britain's London-centric lawsuit tendency.¹³ On the other hand, it might be claimed that if specific locations in a nation are continuously denied reviewing issues owing to forum shopping in those other cities, there would be fewer chances for attorneys in those areas, and their economy will suffer. Furthermore, forum shopping is frequently based on limited anecdotal reports instead of objective scientific investigation, which leads to a sheep instinct or mentality within attorneys.

The Hon'ble Supreme Court denounced the conduct of forum shopping during one of the first decisions¹⁴, stating that every effort by a plaintiff to go "forum shop" cannot be tolerated. A plaintiff cannot choose his or her platform, and any effort to "forum shop" should be squashed with a stern fist.

In this context, the topic of forum shopping in Intellectual Property infringement cases in India, with an emphasis on trademark and copyright violation, will be discussed in this research paper.

¹⁰ JEROME FRANK, *LAW AND THE MODERN MIND* xxxiv (1930).

¹¹ Felix Cohen, *Transcendental Nonsense and the Functional Approach*, 35 *COLUM. L. REV.* 814, 816-817, 844 (1934).

¹² Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 *ANNU. REP. A.B.A.* 395, 404-6, 417 (1906).

¹³ Lord Chief Justice Thomas, *Birkenhead Lecture Delivered at Gray's Inn, London: Justice in One Fixed Place or Several?* ¶ 33 (Oct. 21, 2013), <http://www.judiciary.gov.uk/wpcontent/uploads/JCO/Documents/Speeches/lcjbirkenhead-lecture-21102013.pdf>.

¹⁴ *M/s Chetak Construction Ltd. v. Om Prakash & Ors.*, 1998(4) SCC 577. ¹⁵ *K.C. WHEARE, FEDERAL GOVERNMENT* 28 (1951).

II. CAUSES OF FORUM SHOPPING

(A) Horizontal Choice Problem

India is a unitary state with supplementary federal characteristics¹⁵ and cohesive judiciary attributes that do not facilitate forum shopping. However, due to a tangle of regulatory restrictions, forum shopping in IPR infringement claims is frequent in India. There is a primarily dual alternative in this process. The first is a horizontal option, in which a claimant chooses which city or state to bring a lawsuit in and which tribunal to litigate within.

According to Indian civil procedural laws, a civil lawsuit must be brought either in which the adversary is resident or where the civil action occurs (in toto or partially). To employ this choice, a forum-shopping claimant must invent a way to demonstrate that a certain component of the civil action, or the defendant's domicile or place of work, was well within the competence of the claimant's selected venue. However, under copyright and trademark law, the Indian government has established "long-arm" authority provisions, which allow a claimant to sue for patent infringement in the country wherein the claimant is situated, even though the civil action doesn't exist therein. The significance of these stipulations may be seen in the latest instance in which a claimant made extensive use of them.

In *Microsoft's* case, the company claimed that it had a workplace in Delhi and charged a respondent in Bengaluru for copyright violation. Despite the reality that Microsoft had a significant business footprint in Bengaluru. The court chastised "rich claimants" like Microsoft for venue hunting but agreed that Microsoft was authorized to do that under copyright law, and that "court's duty" obliged the court to consider the case and provide Microsoft redress.¹⁵

The preceding case exemplifies the advantages and disadvantages of a long-arm competence rule based only on the plaintiff's residence. The Delhi High Court's ruling on this exemplifies the difficulty of whether this clause ought to exist whatsoever. The Delhi High Court has asked the lawmakers to remove the atypical clauses of the Copyright Act and the Trademarks legislation respectively. The court's remarks in *Microsoft* matched those made by Rupchand Pal, a communist lawmaker who had contested such a clause in the Trademarks

Legislation when it was passed in Parliament. "The defendant will have to travel from far away regions to observe the proceedings," Pal said in a furious address. The impoverished would be at a loss and will be unable to defend themselves in court. Due to the obvious demands from international corporations, these policies are being pushed ahead. Multinational corporations

¹⁵ *Microsoft Corporation & Anr. v. Dhiren Gopal & Ors* 2010 (42) PTC 1 (Del).

now have considerable power in a variety of areas. And what were the WTO requirements that oblige us to enact these legislative changes? There is no such requirement in my opinion. We slither when we are urged to bend."¹⁶

(B) Vertical Choice Problem

The second option is to litigate outrightly in the High Courts of Delhi, Bombay, Madras, and Calcutta, India's four major capitals, bypassing a tribunal of the first occurrence in the selected territory of the state (namely, a District Judge's Court or a Civil Court of that State). These four High Courts have the power to oversee first-instance competence, or, to use the correct word, ordinary original civil authority, in civil disputes of particular significant importance, as assessed by the claimant.¹⁷

Despite this, judges and attorneys assume that the Delhi High Court handles around 70% of all IPR cases of the breach in India.¹⁸ The Delhi High Court has grown to monopolize the IP lawsuit landscape in India, and Choice Two may be performed evenly in any of four locations. Patent litigation has traditionally been seen as lavish lawsuits particularly when significant parties are engaged. The majority of the time, such a lawsuit is commercial and probably includes one substantial party, who is generally the claimant/right bearer. The corporate and legal divisions of these multinational businesses are usually located in urban areas. In the same way, multinational businesses often engage legal firms in major cities like New Delhi and Mumbai. As a result, many of these corporations find it advantageous to sue in the locations where their headquarters or legal firms are situated.

Until very recently, Indian courts were subjected to numerous disputes about intellectual property. Because of the freshness of these provisions, as well as the reality that there was very little consciousness of the meaning and worth of intellectual property in India to proceed with, as well as the serendipitous involvement of legal professionals who involve themselves mostly in the particular matter and established acumen in it, hardly just a few Indian courts surfaced as authorities on the subject.¹⁹

The Delhi High Court is commonly thought to have been lenient in giving *ex parte* temporal

¹⁶ Discussion on the Trade Marks Bill 1999, 13th Lok Sabha, Dec. 22, 1999 (Statement of Rupchand Pal).

¹⁷ Law Commission of India, Delays and Arrears in High Courts and Other Appellate Courts, 1979, ¶¶ 2.1 to 2.5, 15.1, 15.2, <http://lawcommissionofindia.nic.in/51-100/Report79.pdf>

¹⁸ Pravin Anand, The Vicissitudes of Indian Patent Law, PATENT LAWYER, 2013, <http://www.patentlawyermagazine.com/thevicissitudes-of-indian-patent-law>.

¹⁹ Abhilasha Nautiyal & Aditya Gupta, KILLING ME SOFTLY: THE SLOW DEATH OF LONG – ARM JURISDICTION IN INTELLECTUAL PROPERTY CASES IN INDIA 99 JIPS 1 (2017).

injunctive relief.²⁰ In India, IPR invasion proceedings seldom go further than the primitive phase. Such litigation stretches on for "years upon years," as the Indian Supreme court has noted²¹, and petitioners are only interested in acquiring an injunctive relief. "People connected with the judicial process operate as pragmatic maximisers of their satisfaction levels," according to an economic standpoint to law.²² As a result, claimants will seek a venue that provides the best likelihood of a favourable decision and boosts the claimant's fiscal circumstances.

III. DISSUADING FORUM SHOPPING CIRCA 2008: THE OUTLOOK OF THE DELHI HIGH COURT

Invasion of trademarks is at issue in this lawsuit.²³ A lone judge submitted the issue of the Court's exercising competency based on a webpage just being available in Delhi to the High court Division Bench. But neither the claimant nor do any of the respondents had a real presence in Delhi, it was questioned if the Court had the authority to hear the case only because the webpage could be viewed in the capital.

The Court looked at legal precedent from a wide range of common legal systems that applied to the situation of determining authority and concluded that just accessing the defendant's webpage in Delhi wouldn't give the Court authority. A dormant webpage, with no aim to actively target consumers beyond the city in which the site's server is based, never give the forum judicial power, and this was a popular notion in common law countries. The following is a breakdown of how the Court looked at the legislation in different countries:

As mentioned below, the Court looked at numerous US court judgments and explored several standards that were determined to be significant in determining a forum's authority:

(A) The Purposeful Availment Standard

The Supreme Court of the United States articulated a two-fold testing method for evaluating whether forum courts have jurisdiction over a respondent who does not reside or does commerce in the forum's legal jurisdiction.²⁵ The claimant should establish that the respondent consciously oriented their efforts more toward the host state and or "actively benefitted of the right of performing certain tasks in the territory of the state in just such a case, the court said.

²⁰ T. Prashant Reddy, A Critical Analysis of the Delhi High Court's Approach to ex parte Orders in Copyright and Trade Mark Cases, 3 MANUPATRA INTELL. PROP. REPORTS 171 (2011).

²¹ Vardhman v. Chawalwala, (2009) 41 P.T.C. 397, ¶ 3 (S.C.).

²² Richard Posner, *The Economic Approach to Law*, 53 TEX. L. REV. 757, 761 (1973).

²³ Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy and Anr., 3 CS (OS) No. 894/2008.

²⁵ International Shoe Co. v. Washington, 326 U.S. 340 (1945).

The forum court also had to be convinced that acquiring authority would be consistent with customary ideas of fair treatment and meaningful fairness.

(B) Zippo Sliding Scale Test

The Zippo court has evolved a tri faceted approach for deciding when particular personal authority over such a non-resident respondent is pertinent: The respondent should have minimal connections with receiving state; the claim being made against the respondent must result from such connections, and the exercise of power ought to be legitimate.²⁴²⁵

(C) Effects Test

*Calder v. Jones*²⁷ established the "effects" standard, which requires that the damage or injuries caused by the respondents' location be noticed in the forum state before competence can be established.

1. Canada

The Court noted, based on several Canadian precedents, that judicial authorities place a strong emphasis on the 'real and considerable link' between the issue and the venue for determining competence. In *Muscutt v. Courcelles*²⁶, for example, the judge considered various eight elements in assessing if the Court has legal authority: The relationship between both the forum and the claimant's purport; the relationship between both the forum and the respondent; biasness to the respondent in inferring authority; callousness to the Claimant in not supposing judicial power; participation of other stakeholders to the lawsuit; the authorities eagerness to impose an extra-provincial decision delivered on the very same jurisdictional grounds and if the case is interprovincial or intercontinental.

2. UK

The Court cited the decision of *Flowers Inc v. Phone Names*²⁷, in which it was decided that just because webpages may be viewed from everywhere on the globe did not imply that the legislation must treat them as somehow utilized everywhere on the globe for trademark concerns.

²⁴ Zippo Mfg. Co. v. Zippo Dot Com, Inc. 952 F.Supp.1119 (W.D.Pa.1997).

²⁵ U.S. 783 (1984).

²⁶ (2002) 213 DLR (4th) 577.

²⁷ (2002) FSR 12 CA.

IV. CURBING FORUM SHOPPING: DISSECTION OF THE RULING IN *IPRS V. SANJAY DALIA*

In its decision on the Indian Performing Right Society Limited's challenge, the Supreme Court elaborated²⁸ on the importance of bringing trademark and copyright violation proceedings in the proper venue. The appellant contended that the claimant's branch office was in Delhi, whereas the claimant asserted that the whole civil action arose in Mumbai, Maharashtra, in which the claimant's headquarter was also based. The respondent opposed the action being filed in the Delhi Court and disputed the high court territorial authority. The High Court's Single Bench and Divisional Bench supported the challenge, ruling that the lawsuit really should be brought in the jurisdiction of Mumbai, where the claimant's headquarters was situated, and the civil action occurred. Following that, the claimant lodged an appeal with the Apex Court against these findings.

The purpose of sections 62 and 134 of the Copyright Act and the Trademarks Act respectively according to the Apex Court was to provide a supplemental platform in the context of a district court inside that jurisdiction of which the claimant definitely and consciously stayed, managed to carry on business, or individually work for a profit. The rules were designed to allow the claimant to file a lawsuit in the location in which he or she lived, worked, or had local branches, rather than to permit the claimant to annoy the adversary by bringing litigation in far-flung locations. The non-obstante clause in aforesaid sections of copyright and trademark legislation does not exclude the application of section 20 of the CPC. It was evident that the claimant had been given an extra recourse in the form of the ability to bring a lawsuit where he lived or conducted business. A claimant may sue where the respondent lives or if the civil action arises under Section 20 of the CPC. Sections 20(a) and (b) normally specify the location of the defendant's residence, place of trade, or individual employees for profit. The CPC's Section 20(c) allows a claimant to file a lawsuit when the civil action arises in whole or in part. A company shall be regarded to engage in business in India at its single or major location or concerning any claim for damages occurring at any location where it has a subsidiary branch, according to the Explanation annexed to Section 20 CPC. As a result, a corporation may be prosecuted in the location of its only or major office, in which the civil action occurred entirely or partially, and where it also has a subsidiary workplace. The Supreme Court held that section 62 of the Copyright Act and section 134 of the Trademarks Act must be read purposefully. This indicates that the plaintiff may bring a lawsuit in any location where he was dwelling, doing

²⁸ Indian Performing Rights Society Ltd. v. Sanjay Dalia & Anr., (2015) 10 SCC 161.

business, or working for profit. It is not essential to bring a lawsuit in the location where the adversary resides or where the civil action originated in whole or part. Nevertheless, if the claimant was a resident or doing trade at a location where the civil action occurred in whole or in part, he/she must bring a lawsuit there. They can't use Section 62 of the Copyright Act and Section 134 of the Trademarks Act to launch a lawsuit in a different jurisdiction solely to torment the respondent. The Supreme Court used the concept established in *Heydon's case*³¹ (for resolving the dispute, the rules must be interpreted in such a way as to avoid causing mischief.). If the appellant's view is adopted, any branch office of the corporation might be utilized to bring the jurisdiction in really far locations to irritate the defendant, while providing the plaintiff with the recourse under the laws in issue, it was also important to prevent causing harm to the respondent. The claimant's assertion that the Delhi High Court has processed a large number of IP cases in the nation and hence has gained experience in dealing with such conflicts was also rejected. The parties should litigate the claim in Delhi since the majority of such litigation is brought there and the attorneys there are experienced in such things. Nevertheless, such considerations are immaterial when determining jurisdiction in respect. It is not the attorneys' expediency or competence that determines jurisdiction. As a result, the challenge was rejected by the Supreme Court.

V. SUGGESTIONS

To avoid detection in the guise of forum hunting, plaintiffs should take into account the following factors when bringing claims in locations where the adversary doesn't even have an involvement or presence:

- a) The claimant should make an effort to substantiate the use of long-arm legislation to intervene in the case.
- b) In the lack of a long-arm provision, the claimant should stress the matter's or respondents' relationship to the court. It is recommended that the claimant strive to satisfy the 'purposeful availment' test considered in the venue.
- c) In addition to implementing a legal prima facie case, the claimant must prove a genuine and substantive link between the case and the venue.
- d) Applicants must avoid litigating unrelated topics in foreign jurisdictions to prevent bringing spurious cases or wasting the time of the court, which might harm the claimant's objectives.

VI. CONCLUSION- THE LEGITIMATE RAMIFICATIONS

The current state of things in terms of securing enforcement proceedings in Delhi by merely having a subsidiary operation there would have to end at some point. In essence, the conclusion of this judgment of Sanjay Dalia has no significant impact on India's compliance situation. Nevertheless, this move can efficiently 'deregulate' TM and Copyright enforcement. Plaintiffs could now be required to file sanctions in the province of their locations, and further lawsuits in locations apart from Delhi is likely. Whether it be in Delhi or not, having ready to obtain regulatory action at the headquarters is still a viable option. Instead of just presuming the likelihood of a lawsuit in the Delhi High Court, claimants will have to consider competence as a significant aspect in developing their lawsuit strategy. In other words, the ruling might affect the surrounding legal services segment since prospective Claimants would presumably choose lawyers with a strong base near their corporate headquarters. Complainants considering panIndia infringement proceedings with a common framework may need to integrate this into their tactic composite.

The Supreme Court has assured that the claimant has the comfort of filing a lawsuit at their location of the home and where they work for a living, granted that the respondent's interests are likewise protected, and the respondent is not tormented needlessly by the claimant.
