

A Doctrinal Research and Review of Hashtag Trademarks

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Abstract : Technological escalation cannot be negated. The same is true for the benefits of technology. However, such escalation has interfered with the traditional theories of protection under Intellectual Property Rights. Out of the many trends that have disrupted the old-school understanding of Intellectual Property Rights, one is hashtags. What began modestly in the year 2007 has now earned a remarkable status, and coupled with the unprecedented rise in social media the hashtag culture has witnessed a monstrous growth. A tiny symbol on the keypad of phones or computers is now a major trend which also serves companies as a critical investment measure in establishing their brand in the market. Due to this a section of the Intellectual Property Rights- Trademarks is undergoing a humungous transformation with hashtags like #icebucket, #tbt or #smilewithacoke, getting trademark protection. So, as the traditional theories of IP take on the modern trends, it is necessary to understand the change and challenge at a theoretical and proportional level and where need be, question the change. Traditionally, Intellectual Property Rights serves the societal need for intellectual productions that ensure its holistic development as well as cultural, economic, social and technological progress. In a two-pronged effort at ensuring continuity of creativity, IPRs recognize the investment of individual efforts that go into creation by way of offering protection. Commonly placed under two major theories- Utilitarian and Natural, IPRs aim to accord protection and recognition to an individual's creation or invention which serve as an incentive for further creations or inventions, thus fully protecting the creative, inventive or commercial labour invested in the same. In return, the creator by lending the public the access to the creation reaps various benefits. This way Intellectual Property Rights form a 'social contract' between the author and society. IPRs are similarly attached to a social function, whereby individual rights must be weighed against competing rights and to the farthest limit possible, both sets of rights must be treated in a balanced manner. To put it differently, both the society and the creator must be put on an equal footing with neither party's rights subservient to the other. A close look through doctrinal research, at the recent trend of trademark protection, makes the social function of IPRs seem to be moving far from the basic philosophy. Thus, where technology interferes with the philosophies of law, it is important to check and allow such growth only in moderation, for none is superior than the other. The human expansionist nature may need everything under the sky that can be tweaked slightly to be counted and protected as Intellectual Property- like a common parlance word transformed into a hashtag, however IP in order to survive on its philosophies needs to strike a balance. A unanimous global decision on the judicious use of IPR recognition and protection is the need of the hour.

Keywords : hashtag trademarks, intellectual property, social function, technology

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