

UNDERSTANDING THE IMPORTANCE OF INTELLECTUAL PROPERTY FOR CONTENT CREATORS AND SOCIAL MEDIA INFLUENCERS

*Banashree Roy**

*Nisha Sarma***

Abstract

The world today is driven by information and technology. The presence of the global world is an intrinsic part to live in for each and every individual. Each and every individual owns a device and besides, have their own accounts in popular social media sites which occupies a vital position in their lives. These individuals are prone to using the sites and sharing contents online many a times. There has been a rise of influencers in the social media sites posting contents online, some being this their source of income and increasing their followers. The internet has made this possible on the part of these creators to change the dynamics of the large public through blogs, newsletters, etc. However, in a parallel world, there appears impersonators who gain profit using others names or logos, ideas and creation in this regard, making it imperative on the part of the original creators to protect their contents. Hence, an analysis and a study in this regard needs to be made to understand the concept of social media influencers, protection with regard to the contents and the need for it under the IPR regime. The authors through this paper try to throw light on the implications of Intellectual Property Law upon these creators in the present digital world and also attempt to put forward some suggestions in this regard.

Keywords: Intellectual Property Rights, technology, content creators, social media influencers, trademark, copyright.

1. Introduction

The present era is governed by information and technology and it would not be wrong to state that individuals are embedded in a global world. Man has evolved himself since the primitive era to the present to such an extent that everything is possible with a click thousands of miles away. Each and every person, be it rich or poor, owns a device

* Teaching Associate, P.G. Department of Law, Gauhati University.

** Assistant Professor, N.E.F Law College, Guwahati.

be it a cell phone, computer or the like. It is like an inseparable tool in his day to day life. Though the advent of technology has made things easier, yet there lie many complexities in such issues related to technology governed by the internet. Individuals today are keen in displaying their private life through social media and it has become a part and parcel for every individual. The most popular apps that are very much prominent among the individuals include YouTube, Instagram, Facebook to be counted among the many. These apps are mainly used by individuals to either share content, or display their private life. There is indeed tons of content that is being shared online. However, contents are not always free to use and share with others. Therefore, a careful perusal needs to be done before sharing anything on the social media forum.

1.1. Concept and Meaning

The term ‘Intellectual Property’ in simple parlance means the legal rights given to the inventor or creator to protect his/her invention or creation for a certain period of time. This invention or creation however, must be the original creation of the human intellect that may be in the form of artistic, literary, technical or scientific creation. These legal rights in the form of Intellectual Property rights confer an exclusive right to the inventor or the creator or his/her assignee to fully utilize his/her invention or creation for a stipulated period of time. Indeed, Intellectual Property plays a pivotal role in the modern economy.¹

Intellectual Property within its domain encompasses Patent, Trademarks, Industrial Designs. Originally, only the above three were protected as Intellectual Property, but at present, the term ‘Intellectual Property’ has a much wider ambit which includes Copyright and Geographical Indications including the above mentioned three.²

It is of utmost necessity to understand these varied forms of Intellectual Property to get an insight assigned to the meanings of each in brief. The term Patent, firstly, implies an innovation which must be original and new by the creator to get a thing patented. It should satisfy the criteria of being novel, non-obviousness and commercially applicable in society. As for instance, Mc. Donalds which is quite popular and needs no introduction

¹ Chandra Nath Saha and Sanjib Bhattacharya, “Intellectual Property rights: An overview and implications in Pharmaceutical Industry”, 2(2) *Journal of Advanced Pharmaceutical Technology & Research* (2011), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/> (last visited on November 17, 2022).

² *Ibid.*

has a total of 52 patents globally. Secondly, trademarks are marks, names or logos under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. To get a clear picture, Nike, the popular shoe brand needs to be mentioned that bears a trademark to protect their brand. Thirdly, designs or industrial designs refer to any shape, configuration, surface pattern, composition of lines and colours applied to an article. The famous apple brand has a design name being protected under the intellectual property regime. Copyright, fourthly, relates to expression of ideas in material form which may include any literary, musical, dramatic, artistic, cinematography work, audio tapes and computer software. Tom and Jerry, the popular cartoon show among the young generation, are copyrighted characters. Lastly, geographical indications are indications which identify as good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin.³ The most common geographical indication guaranteed protection is Basmati Rice to name one.

The above is a brief description of what the varied Intellectual Property Rights means under the legal regime.

It is pertinent to understand the other important aspect of the paper i.e., i.e., social media influencers. Social media and the use of it are very much common in the modern global world. It is indeed popular in every aspect and each and every individual has an account in some site or the other regarding the same. In the modern world ruled by the internet, the popular sites that need mention are Facebook, Instagram, YouTube, Twitter to name a few among the many.

To understand who are social media influencers, it is necessary to know influencers first. Influencers are people who can influence others regarding the purchasing decisions with the former's capability and knowledge in the field of a product. In a similar context, social media influencers are individuals who through the use of social media can influence people to buy products they promote through these sites. The general public follows the influencers in the popular sites and these social media influencers can make a severe impact to its viewers through their knowledge and ideas.

³ *Ibid.*

There are mainly three types of influencers, namely, mega, macro and micro influencers. In a bird's eye view, mega influencers are those influencers having more than 1 million followers, the macro influencers have followers in between 40,000 and 1 million, and lastly, the everyday individuals gaining some kind of popularity through a sizable media following are the micro influencers. However, there has been an emergence of another kind of influencer known as nano-influencer who only have a tiny number of followers but are experts in specialised fields. Besides these, there are bloggers, YouTubers, podcasters who also make names on social media.

Social media influencers are people whose online popularity and relevance grant them influence over others within their social sphere. These influencers in social media make them highly attractive to advertisers. The influencers in the popular social media platform create and post content which includes photos, videos and live streams. Influencers in the sites earn income through ad dollars generated from their content, product endorsements and other revenue streams. Moreover due to the interactive and publicly accessible nature of social media forums, influencers are highly susceptible to certain risks involving Intellectual Property.⁴

2. Need for the Influencers to Understand Intellectual Property

With the high growth rate of the use of social media platforms, copying of the contents and the unauthorized use of trademark or brand names have become rampant. The various prominent Intellectual Property Rights available to social media influencers include trademarks, copyrights, domain names, brand names, etc. It is essential on the part of the content creators as they rely on these ideas for their source of income, thereby, making it necessary for the protection of Intellectual Property with regard to these creations.

As already stated, under the Intellectual Property Rights regime, as far as Copyright is concerned which protects the original works of an author, includes within its ambit photographs, videos, images, written text, art, sound recordings, cinematograph films and other original creators. This right which is given to the original authors by virtue of intellectual property provides the right to distribute, make copies of display or perform

⁴ David Klein, "Legal Concerns for Social Media Influencers: Intellectual Property", *available at*: <https://kleinmoynihan.com/legal-concerns-for-social-media-influencers-intellectual-property/> (last visited on November 17, 2022).

their original works. In the case of social media influencers, they need to ensure that they have requisite permission before using the original creative works of others in videos, images or the text of social media posts. The online use of creative contents is not free from copyright. The influencers, hence before sharing the material need to take necessary steps before sharing the material of the author, and also if the former needs a license for the same. Fair use of information in the social media sites is only available for limited exceptions, which is non-commercial as for instance sharing educational information, criticism and others. However, the problem arises for the influencers when it gets difficult to prove regarding what content is commercial and what is not. While some may be able to prove their content, in other cases, there may be a promotion of another product or brand along with the criticism of the copyright owner's brand, which then becomes a commercial activity.⁵

It is to be noted that several social media forums have enacted their own tools to check whether there has been a violation or infringement of Intellectual Property Rights. One of the glaring examples in this context is YouTube which has implemented a 'Content ID' system wherein it assists the copyright owners in the identification, management and protection of their content. The owners of copyright in this context can register themselves on the popular app that consists of large catalogs of contents. Thereby, whenever any content is uploaded on YouTube, the 'Content ID' system scans the new content and checks for matches of copyrighted content already present in the Content ID database.⁶

The influencers, in cases of trademark protection, must obtain the written permission of any brand whose name, trademark, logo or products are featured in a social media post, blog, video or photograph. Posting contents online without prior permission from the original creator containing the other person's trademark, brand name or logo may violate their Intellectual Property Rights. If an influencer makes any direct references to the products or services of a brand, it is referred to as branded content, and the influencer must obtain special permission to use that brand's name in his or her content. Trademark laws protect the trademark owners from two types of infringement, namely the likelihood of confusion and dilution. Confusion arises when there are more than one

⁵ *Ibid.*

⁶ *Id.* at 4.

with the same mark. For eg., there are presence of Duplicate Nike shoes with the same mark that the original one has. This leads to utter confusion among the buyers. However, Nike has original registration of their brand which clears this confusion. Dilution occurs when a third party uses a mark or trade name that appears sufficiently similar harming the perception of the public. There is avoidance of dilution there is a distinctive mark which distinguishes it from others. Thus, trademark removes this confusion and dilution by making it clear as to which is the original one.

Another aspect of Intellectual Property is a new area covering domain names which include user-friendly and easy to remember addresses that users on the internet use to locate any website. A domain name simply means the online identity of one's business. Each website has a domain name serving as an address, which is generally used to access the website. Domain names are usually the business names followed by .com, .org, .gov, .net, .in, etc. many times, domain names are also registered as trademarks if they fulfill all the conditions required for registering a trademark. Once the person gets it registered, the said registered proprietor of a domain name will have all the legitimate rights and authorities, which are commonly availed by the owners of the respected registered trademarks. It is therefore, pertinent on the part of the social media influencers to choose a domain name after conducting appropriate background checks and ensuring that their selected name is not already registered or infringes upon the rights related to Intellectual Property of others.⁷

Thus, it is important to protect the contents on the internet as far as Intellectual Property Rights are concerned. For instance, if Intellectual Property Rights like trademark and copyright are being protected with registration, it is easier to enforce them in the event of a dispute, as compared to unregistered rights.⁸

3. Protective Steps for Influencers and Content Creators

The social media influencers having their original content needs to protect their original content, which is freely and easily accessible in the world governed by the internet. There are impersonators who use these contents without permission and use it

⁷ *Ibid.*

⁸ Intellectual Property for Social Media Influencers, *available at:* <https://www.lexology.com/library/detail.aspx?g=f4416c8c-e704-431d-bb44-f7b18be4855c> (last visited on November 18, 2022).

for their own benefits. Thereby, it is of utmost importance that influencers must register their intellectual property so that they can enforce it against third party risks.

The influencers in the social media sites need to register their contents for copyright as soon as it is created including their channel's name or also can be protected by virtue of a trademark as soon as they begin using them on social media in terms of their content. There are notable influencers who have taken steps in this regard to trademark their name. Donald Trump, Taylor Swift, Rihanna, Victoria Beckham, Justin Bieber, Katy Perry, Kylie Jenner and Huda Kattan are some of the popular names to cite a few in this regard. For instance, the famous Kylie Jenner was opposed by Kylie Minogue who was a popular Australian singer already having her Trademark registered name when the former tried to register her name 'KYLIE' as a trademark in the United states.⁹ This is just a glaring example which exhibits the importance of registration regarding the trademark in such cases. In a similar context, Huda Kattan has a registered trademark of her name for 'Huda Beauty' in the United Kingdom and European Union. It is necessary considering the fact that there are impersonators who use these names with a *malafide* intention for their own profit which is many a times unknown.

This is a scenario as far as trademark is concerned. In cases related to copyright, it is necessary and advisable on the part of the influencers to have copyright registrations in place for the unique content that an influencer publishes. This is necessary because in many countries, in relation to copyright protection under the Intellectual Property Regime, the damages in relation to infringement of Copyright can only be claimed if there is copyright registration for the same. And the damages that can be claimed are only applicable from the date of the registration. But the problem arises, when by the time the registration occurs, the major financial harm to the infringed work and its owner, has likely been done. However, if registration with regard to copyright is made, the compensation with regard to the same can be claimed.

Social media sites besides being copyrighted and trademarked can be the subject of patent protection as well. However, the extent and applicability of such subject-matter protection in relation to patent varies from country to country, nonetheless it is patentable. There are instances where social media technologies and apps have been patented. So far,

⁹ *Kylie Minogue v. Kylie Jenner* (2016).

one example in this context is a patent held by twitter on a method of detecting and managing groups. In the United States of America, it is estimated that more than thirty thousand patents have been filed pursuant to social-networking related technologies and methods.¹⁰

Besides the above, social media is also a repository of trade secrets in relation to businesses. The courts have in the last few years recognized trade secret protection for activities like LinkedIn contacts to visitors and liker details, on social media platforms. If appropriate steps are to be taken in this regard, then activities like LinkedIn connections, Twitter followers, advertising metrics, etc. can be subject of trade secrets in this regard.¹¹

It can be stated thus that the creator of the Intellectual Property is the owner of Intellectual Property in respect of social media and anyone who creates Intellectual Property in the form of copyright, trademark, patents, designs on social media sites like FaceBook, You Tube, Instagram, the creator becomes the owner of such Intellectual Property.¹²

4. Implications of IPR in Context to Content Creators and Influencers

As social media becomes more well-known, promoters, YouTubers, and musicians run the risk of facing immediate legal issues related to Intellectual Property Rights (IPRs). Social media marketers and content producers spend a lot of effort into developing a reputation as authorities on particular subjects, goods and industries. In fact, the influencer marketing sector, which presently represents around 15% of total value spent on worldwide advertising, is predicted to cost \$15 billion by 2022. Promoters produce a variety of smart and secure devices in addition to providing content and products.¹³

Daily consumption of the content on social media websites occurs across a number of channels. With this, they must comprehend that millions of individuals can

¹⁰ Social Media and Intellectual Property (IP): Part I- Protection and Ownership, *available at*: <https://www.bananaip.com/ip-news-centre/social-media-and-intellectual-property-ip-part-i-protection-and-ownership/> (last visited on November 19, 2022).

¹¹ *Ibid.*

¹² *Id.* at 10.

¹³ "Importance of Intellectual Property for Social Media Influencers and Content Creators", *available at*: <https://www.lexorbis.com/importance-of-intellectual-property-for-social-media-influencers-and-content-creators/> (last visited on November 19, 2022).

quickly access and copy their original work. It is crucial that they comprehend and safeguard their Intellectual Property. When creating content, it is also important to understand that before using the creative works of others in videos, photos or text in social media, social media platforms make sure they have adequate authorization and consent to use such content to avoid infringing the rights of others.¹⁴

The following are a few reasons to register Intellectual Property:¹⁵

- i. *Establishing ownership of Intellectual Property Rights:* Establishing ownership of Intellectual Property Rights is important since it makes it easier to enforce rights in the event of a dispute.
- ii. *Registered IP becomes more credible and legitimate:* When content is secured, consumers are more likely to trust it as well as revisit it.
- iii. *Easier to get plagiarized content removed if IP is registered:* If someone is misusing or recreating original content, it is easier for it to be taken down if such content is registered as compared to unregistered IP, which requires strong evidence in support.
- iv. *Avoiding replications altogether:* If registered, people would not want to replicate the content in the first place as the registration will discourage any copying.

In the current economy, a company's intangible assets may account for a sizable amount of its market value. Despite this, a lot of businesses fail to recognise or are unaware of the full value of their Intellectual Property. An IP audit can reveal important IP assets, most notably whether a business has any substantial unregistered IP, such as important trademarks, technologies, or trade secrets for which registrations or suitable secrecy measures should be sought. The value, better protection, enforcement and commercialization of the company's Intellectual Property can all be aided by an IP audit. A thorough examination of the company's branding, technology, important papers and secret information can also achieve this. Companies should put procedures in place once an IP portfolio has been created to capture and add to that portfolio as IP is produced.¹⁶

¹⁴ *Ibid.*

¹⁵ *Id.* at 13.

¹⁶ Mrinal Kumar, "Intellectual Property Rights for Social Media Influencers", available at: <https://lawinfluencers.com/intellectual-property-rights-for-social-media-influencers> (last visited on March 10, 2023).

When a corporation has built up a considerable reputation and goodwill associated with a particular brand, trademarks can be extremely valuable assets. Unregistered trademarks normally only receive protection in the region where they have gained significant goodwill through widespread use and advertising. The exclusive right of the owner to use the mark throughout a country in connection with the specific goods and services listed in the registration, the right to prevent others from using a confusingly similar trademark for comparable goods or services, and the right to restrict use of that mark by third parties in a way that tarnishes the brand or reduces the value of the goodwill attaching to it are just a few of the significant legal advantages conferred by registration. By making the public aware of these rights, registration in the national Trademark Registry aids the protection of Trademarks. As a result, important company brand names, logos, and slogans ought to be registered with the Indian Trademark Registry.

Patents are essential for protecting the investment made by businesses whose mainstay is innovation. It is essential to safeguard an organisation's products, processes and development activities through registration because patent rights may only be obtained through registration. But only original innovations that have not been made public before are eligible for patent protection. The only countries in the world that give applicants a one-year grace period with regard to disclosure of their invention anywhere in the globe are Canada and the United States. In order to pursue patent protection in all jurisdictions where the organisation wants to conduct business, it would be prudent for organisations to retain complete confidentiality of all of their research and development activities or internal procedures. As part of the usual procedure for getting corporate authority or capital approval to market the new product or process, a process of evaluating new products and processes for potential patent protection should be included. To help in assessing whether there is any technology that is patentable and whether it is advantageous to seek for patent protection, the screening process should involve IP counsel. Once a product is put on the market, it is typically seen as an enabling disclosure to the public, precluding the use of a patent. So, it is crucial to file any patent applications before launching a product, exhibiting at a trade show, or conducting market research.¹⁷

¹⁷ Kathryn Park, "The Path to Protection- Good Trademark Strategies Start at the Beginning", *WIPO Magazine*, (December 4, 2020), available at: https://www.wipo.int/wipo_magazine/en/2020/04/article_0008.html (last visited on March 10, 2023).

Furthermore, it is crucial to carry out the required clearance searches prior to a product launch or brand expansion into new jurisdictions to avoid unpleasant surprises, such as learning that the mark is already being used by another entity or that another company holds the patent rights to a technical feature or component of your product or service. Trademark clearance searches can help businesses determine whether a specific name or campaign slogan is available. If the intended mark has not already been registered by another party, it might be wise to do so in order to safeguard its rights to the name and deter others from doing the same. Similar freedom-to-operate investigations should be made to ascertain whether a product can be sold in a certain country without violating the rights of other people's IP that are already in place. Companies rush to the markets only to learn that a third party has patent rights to a technical feature or component of the product, or for the technique of manufacturing such a product. This discovery can be costly or even fatal to the commercialisation of the product in a given jurisdiction.¹⁸

In addition to protecting the company's IP against infringement by third parties, keeping an up-to-date IP register is helpful for maximising the value of that IP through improved management, clever alliances, licensing, and sales. If trademarks are applied to new goods or services, it is crucial that these new applications or modifications to existing registrations cover these new uses. When establishing co-branding or cross-promotional agreements with third parties, this issue is also crucial. Each party to the agreement should consider the types of goods and services that could be associated with the use of their marks and update any trademark registrations as necessary.¹⁹

Before concluding any agreement that will expand the range of products and services previously associated with a mark, it is advisable for the organisations to conduct a search of the Trademarks Register to make sure that any additional products and services are open to their use. It would also be a good idea to submit an application to update the current registration (if there is one) or submit a new application for the mark in connection with any new products and services.²⁰

The original work of the mind and brain is protected by Intellectual Property. No matter where or how it is developed, copyright will be safeguarded under the IP

¹⁸ *Ibid.*

¹⁹ *Id.* at 17.

²⁰ P. Narayanan, *Intellectual Property Law* 159-161 (Eastern Law House, New Delhi, 2020).

framework. Therefore, creativity, inventions and ideas generated on social media will receive IP protection notwithstanding that they were posted on social media. On the other hand, the kind of creation will dictate the type of protection. Copyright will protect a picture, work of art, piece of literature, film, or other item of authorship. The name, domain, or page name of a representation on social media will be protected as a trademark. A trade dress, design patent, or industrial design may all provide protection for a product with a visually appealing appearance. Additionally, a patent may be used to protect an app, tool, programme, technique or other invention. Trade secrets may also be used to protect data, contacts, information, and interactions relevant to any particular industry. Due to the fact that social media is still in its early stages of development, the rules for safeguarding intellectual property are less stringent than those for traditional forms of media.²¹

However, several nations have established explicit guidelines to control social media ownership practices. The US Copyright Act, 1976 was modified by the Digital Millennium Copyright Act, 1998. Three major updates were made by the amendments: it became illegal to provide false copyright information; it created protections for online service providers in cases where users violate any copyrights; and it encouraged content owners to grant more people access to their content in exchange for protection against unauthorised use of their content. Section 52(1) (c) of the Copyright Act, 1976, which enables the filing of takedown notices to file-sharing services to remove infringing content, is perhaps the closest Indian equivalent to the DMCA. When they get a takedown notice, Internet Service Providers, content hosts, and other intermediaries may remove content.²²

The European Union (EU), a big trading partner of India, is also thinking about limiting social media activity, particularly about tweets supporting terrorism. The General Data Protection Regulation (GDPR), 2016, which establishes guidelines for how businesses, including social media platforms, must acquire and handle users' data, was also introduced by the EU. It has also taken action to safeguard copyright. Its copyright regulation holds platforms accountable for making sure that copyright-infringing content

²¹ W. M. Dhumane and Mihir Shashikant Patil, "Rise of Social Media leading to Privacy and IP disputes", available at: <https://theprint.in/opinion/rise-of-social-media-leading-to-privacy-ip-disputes-indian-laws-need-teeth-to-tackle-them/969261/> (last visited on November 20, 2022).

²² *Ibid.*

is not published on their websites and transfers responsibility for any infringing content provided by users to social media platforms. The content that social media platforms accept on their sites must therefore be chosen with extreme care. The Digital Millennium Copyright Act (DMCA), 1998, which protects businesses and social media service providers in the US, and the Information Technology Act, 2000 and its accompanying rule, which accords protection to businesses and social media service providers in India, are in direct opposition to this instruction.²³

The NetzDG law, also known as the Facebook Act, was enacted in Germany in 2008 and mandated that businesses with more than two million registered users in the nation set up processes for reviewing complaints about the content they were hosting on their platforms and remove any content that was prohibited within 24 hours. Therefore, even if someone claims intellectual property rights over a piece of work, the government has the ability to take it down without notifying the author. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which apply to both social media and over-the-top (OTT) platforms, have similar regulations and require social media platforms to remove identified information within 36 hours.²⁴

Furthermore, because Indian culture is so diverse in terms of religion, economic status, caste, and language, the issue of content restriction has always been significant in India. The Information Technology Act of 2000 and the Copyright Act of 1957 are the laws and policies that are now in place to regulate social media. Many issues, such as sites that contain links to illegal information, are still not fully covered by the legislation. India must consider the users' rights to the exclusive ownership of their creative content among other things if it is to follow other nations in regulating ownership rights on social media service providers.²⁵

The laws governing the use of IP have dramatically changed since social media provided us all the ability to post and share material. The current regulations were not developed with social media in mind. Policies have only lately been put into place to address concerns about data usage and privacy, but not for the protection of IP assets. To safeguard the privacy and Intellectual Property Rights of their residents, several nations

²³ "Key Social Media Privacy Issues for 2020", *available at*: <https://sopa.tulane.edu/blog/key-social-media-privacy-issues-2020> (last visited on March 10, 2023).

²⁴ *Ibid.*

²⁵ *Id.* at 23.

have created and enacted their own rules. Owing to India's diverse culture, the issue of Intellectual Property on social media is challenging, but it may be successfully handled by taking the necessary actions, such as enacting rules like the GDPR and DMCA that are modelled after societal needs and stand firm with Indian requirements.²⁶

In order to protect the Intellectual Property on social media, it is also necessary to test a transformational draft policy in the Indian environment. This will help determine what is lacking and how to improve IP asset protection on social media.

5. The Future of Protecting Digital Content on Social Media

Social media has become an integral part of our lives, and it is an excellent platform to share a person's thoughts, photos and videos with the world. However, with this convenience comes a significant risk that a person's digital content can be easily copied or stolen. In this context the government has also provided some rules which are necessary to be followed by the social media influencers to clearly state their brand affiliations in order to avoid penalties. Some of the rules provided by the government include publication of clear disclosures about brand associations so that there exists transparency and the consumers are also protected.²⁷

Social media influencers have monopolised the spotlight in recent years as few others have. They advise everyone on which brand to purchase, which eating place to visit and where to place our money. While it is true that one should act and spend their hard-earned money wisely, it is also true that these social media influencers have the potential to deceive people. It is essential that no one ever base their purchasing choices on the advice of social media influence. In one of the landmark judgment *Marico Limited v. Abhijeet Bhansali*,²⁸ the Bombay High Court noticed two main issues:

The Court held that the defendant (a content creator on YouTube.com) cannot, under the garb of educating or bringing the true facts to the public, provide misleading information to disparage the plaintiff's product. Any campaign to educate the members of the public by placing before them the true and correct facts may be welcomed.

²⁶ Neeraj Pandey and Khushdeep Dharni, *Intellectual Property Rights* 3-10 (Eastern Economy Edition, Delhi, 2014).

²⁷ "Govt. Lays Down New Rules for Social Media Influencers", available at: <https://www.outlookindia.com/business/lays-down-new-rules-for-social-media-influencers-here-s-all-what-you-need-to-know/> (last visited on February 12, 2023).

²⁸ 2020 (81) PTC 244 (Bom).

However, such an excuse should not be used to put out misleading information, which disparages, discredits, or belittles someone else's product or influences the consumers not to buy the said product.²⁹

Additionally, the unauthorised use of the plaintiff's registered trademark by the defendant in a manner, which is detrimental to its distinctive character or reputation, cannot be in accordance with the honest practices in industrial or commercial matters. While this being the first case to come forward which discussed social media, however some questions are still left to be answered. But nonetheless, there will be a number of cases to come before the courts owing to the rise of social media influencers and the complexities in the near future.

5.1. Suggestions – A Way Forward

In this world of technology driven society, where everything is possible within a simple click and in a few seconds, with social media booming up like a volcano, the creators creating contents online, sometimes this being their only source of income, the need with regard to the protection of their contents becomes utmost necessary. However, the complexities with regard to these are many, with impersonators looming over the intent to make their own profits. As the Intellectual Property Rights embraces and gives protection to the original creators having novel ideas, the social media creators should take necessary action to be protected under the regime. Keeping in view the problems with regard to the same, the authors would like to put some suggestions in this regard:

Firstly, it is always advisable on the part of the content creators to seek licenses or register their contents or domain names or even hashtags under trademark or copyright as applicable on their respective contents, because prior registration or having a license will refill the losses if suffered by the former in this context.

Secondly, before registering their contents, it is advisable on the part of the creators, that due diligence and extreme caution should be present to see and verify that similar brand names or domain names do not collide.

²⁹ *Supra* note 13.

Thirdly, the social media influencers should carefully read the terms and conditions for the social media platform they are using on which they upload their respective contents and copyright it.

Fourthly, although the government has provided rules to protect content in social media, it is also necessary to provide stronger laws which will help to refill the loss if suffered and also provide the content creators with legal recourse if their contents are used without infringement.

Fifthly, it is necessary on the part of the influencers to use legal services that are specialised in protecting Intellectual Property Rights which will help them to enforce their legal rights and seek compensation for any infringement.

6. Conclusion

Therefore, it can be concluded that with the rise of social media influencers and considering the number of users using these platforms, people are prone to copying, remaking old versions and claiming it to be their own. It does become necessary on the part of the original creators to register their works as they rightly deserve. They should be cautious and keep track of any infringement or violations within the ambit of Intellectual Property. In this regard, the original work can be protected under copyright and unique brand identity through trademark. As creation of unique and distinctive work always requires lots of effort and time thus it should be always protected. It is necessary for creators and influencers to understand their legal rights and take steps to protect their Intellectual Property. However, this protection can be assured only with the application of laws, which the law lacks with regard to social media influencers. The Courts are not able to determine as to 'what is ok' and 'what is not' until and unless there exists proper laws with regard to the same. Hence only time will tell what law holds for the content creators and social media influencers.