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# CHARACTER MERCHANDISING AND PROTECTION OF INTELLECTUAL PROPERTY

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## ABSTRACT

The last couple of years have seen phenomenal growth in the advertising world, which has brought to the fore the potential of using popular characters, both real and fictional ones for increasing the sale and demand of products and services. Character merchandising is a business tactic used by the owner or the creator of the character to market and sell products and services to such consumers who are drawn to the mystique of the character. Merchandising can be done by various products like toys, bag packs, t-shirts, lunchboxes, bottles, video games, caps and many more. Big players of the show biz industry couldn't resist using the tactic only to discover that Indian law has lagged behind in protecting this modern trade practice. The article aims to understand the concept of 'character merchandising' and bring to light the key legal issues relating to it. It analyzes the legal framework provided for the protection of character merchandising under intellectual property laws and also discusses some important Indian case laws.

## INTRODUCTION

Businesses and small stores often use character merchandising to boost their sales. If you walk into your neighborhood's market, you would find a T-shirt with your favorite anime character, superheroes or athletes. You would hear a salesperson in a supermarket asking a child which character they would like to have on their water bottle —Harry Potter or Shinchan. Collectibles from a wide range of films and television series, including Game of Thrones and Marvel Movies are widely available online. Whether the consumers are kids or adults, everyone enjoys having products linked to their favorite sports teams or actors. It makes sense that how character merchandising is seen as an ingenious marketing strategy.

Character merchandising has expanded into so many different forms over the years that what the entertainment industry once found as a side source of revenue has now become its mainline source of income. It is a multi-faceted beast that has taken so many variations since Walt Disney Studios first started giving license of its well-known cartoon characters in the late 1930s. The expression "character" encompasses a broad spectrum of real persons like Amitabh Bachhan or Justin Bieber to non-human fictional characters like Mickey, Doraemon, Spiderman to human fictional character like Harry Potter and James Bond.

Character merchandising is not explicitly protected under the laws of any country. In India, for the merchandising of fictional characters and image merchandising, Indian Acts relating to copyrights, trademarks and industrial designs may be applicable. This research article delves into the meaning of character merchandising and protection afforded to it under different IP Acts. It also highlights the key issues involved and discusses relevant case laws relating to it.

### Review of literature

1. **Nishant Kewalramani and Sandeep Hegde M, “Character Merchandising”, Journal of Intellectual Property Rights Vol 17, September 2012, pp 454-462.<sup>1</sup>**

The authors in this article highlighted the problems faced in affording protection to character merchandising with special focus on ‘personality merchandising’. The article focuses on the fundamental friction between Indian laws that protect character

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<sup>1</sup> Nishant Kewalramani and Sandeep Hegde M, *Character Merchandising*, Vol 17 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS, pp 454-462, September 2012.

merchandising. The article analyzes several judgments given by the courts that have had a significant impact on how the entertainment and related industries use character merchandising. Lastly, they have suggested a dispute resolution framework that strikes equilibrium between the interest of the celebrity and the owner of copyright.

**2. Manisha Singh and Shreyanshi Mazumdar, “Character Merchandising Vis-à-vis IPR”, Mondaq, 17 June 2021.<sup>2</sup>**

The work highlights protection of character merchandising under The Copyright Act, Trademarks Act and Designs Act. The article bifurcate character merchandising into three types; fictional character merchandising, image merchandising and personality merchandising. Then discusses the Indian case laws relating to character merchandising.

**3. Praveen Kumar Maurya, “Character Merchandising- Trademark and Copyright issue involved”, SSRN, September 28, 2022<sup>3</sup>**

The article discusses the concept of character merchandising and the application of trademark and copyright Act on it. It compares the legal framework for character merchandising in India, USA and UK. The article also includes various Indian judgments on character merchandising.

### Research Objectives

1. To understand the concept, meaning and nature of character merchandising.
2. To examine the existing legal framework that governs character merchandising in India.
3. To explore the key legal issues involved in character merchandising.

### Research Questions

1. What is the meaning of character merchandising?
2. What is the existing legal framework that governs character merchandising in India?

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<sup>2</sup> Manisha Singh and Shreyanshi Mazumdar, *Character Merchandising Vis-à-vis IPR*, MONDAQ (March 5, 2026, 7.43 pm), <https://www.mondaq.com/india/trademark/1080424/character-merchandising-vis-%C3%A0-vis-ipr>.

<sup>3</sup> Praveen Kumar Maurya, *Character Merchandising- Trademark and Copyright issue involved*, SSRN (March 5, 2026, 10.2pm), <https://ssrn.com/abstract=4448484>.

### 3. What legal issues are associated with character merchandising?

#### Research Methodology

The method of doctrinal research is used in this research article, which is descriptive in nature. The author, while writing this article has relied essentially on the secondary sources of data. Books and articles are referred to and, online databases like Manupatra, Supreme Court Cases (SCC), law journals, etc., have also been used. A uniform citation style has been used in the article.

## CHARACTER MERCHANDISING

### History and background

Character merchandising was first established as a planned structure in the US in early 1930s at the Walt Disney studios. To the surprise of many, one of the company's personnel created a unit dedicated to the secondary commercial exploitation of its cartoon characters 'Mickey, Minnie, and Donald'. With this unit, she managed to grant a lot of licenses for production and sale of cheap mainstream products such as bottles, T-shirts, drinks, badges, toys, etc. The concept of using a character's reputation existed even before the 20th century but that was done for non-commercial purposes. For instance, holy figures from the "Ramayana" such as Bhagwan Ram, Laxman, Hanuman and Maa Sita have been represented in the form of toys, dolls, artwork, and paintings in India for many years.

A number of businessmen decided to use fictional characters for promoting their products at the end of 19th century. These characters would appear on the products, packaging, or any text printed on the product to generate secondary income.<sup>4</sup> The concept of 'merchandising' was developed and expanded significantly in the 20<sup>th</sup> century. There are many famous illustrations of character merchandising like a Cadbury chocolate with the 2D figures of 'mickey and minnie' on it, or the miniature toys of famous anime character 'Naruto', or a pink backpack with the image of 'Barbie doll' on it.

### Definition

Before understanding the definition and meaning of "character merchandising", we need to

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<sup>4</sup> WIPO International Bureau, *Character Merchandising*, WIPO (March 5, 2026, 10pm), [https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf).

understand the term "character". Generally, the term "character" denotes both real and fictional characters alike, from athletes or celebrities in entertainment and film industries to non-human characters like Chota Bheem or Doraemon as well as human fictional characters like Iron Man or Sherlock Holmes. In the case of character merchandising, the defining features of the characters which the mass audience can easily point out are considered relevant such as a character's name, sound, looks or emblems that denote his or her identity.

WIPO define character merchandising as, “the adaptation or secondary exploitation, by the creator of a fictional character, by a real person, or by one or more authorized third parties, of the essential personality features (such as the name, image, or appearance) of a character in relation to various goods and/or services with a view to inspiring prospective customers a desire to buy those goods and/or use those services because of the customers' affinities.”<sup>5</sup>

As a preliminary point, the individual or organization leading and performing the merchandising process i.e. the merchandiser, is generally never the actual person who develops a character. In such cases, contracts with the clauses of transfer, license or endorsement agreements relating to the ‘property or personality rights’ of the character are to be made in order for other persons to be considered as permitted users of the character in question.

### **Types of character merchandising**

Character merchandising is divided into three main categories –

1. **Fictional Character Merchandising** – It is one of the earliest forms of merchandising, it uses fictional character's key traits like its name and appearance, among other outstanding characteristics in promoting a particular product or service. It can either be 3D like small table toys of your favorite character, or be 2D like posters, stickers, fridge magnets or badges. Amusing the audience, fictional characters have brought enormous financial rewards to their owners. While the tale ends, the characters legacy continues. Take examples of the huge financial success of iconic characters such as Barbie, Harry Potter, DC and marvel superheroes.
2. **Personality Merchandising** - Products and services are advertised or promoted with

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<sup>5</sup> WIPO International Bureau, *Character Merchandising*, WIPO (March 5, 2026, 10pm), [https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf).

characteristics and features of the real people. It is more contemporary type of merchandising. Such merchandise is commonly known as "reputation merchandising" because the real person whose characteristics have been "marketed" is a celebrity. Merchandisers argue that it is the name or image of a popular personality that convinces the consumers to buy the products which they don't even need. For example, brand ambassador of Tanishq is Deepika Padukone or L'Oreal products are endorsed by Aishwarya Rai.

3. **Image Merchandising-** Image merchandising is the newest type of merchandising. It entails selling and promoting products and services through the use of fictional characters portrayed by real actors in movies or a television show. In this case, it at times is not easy for the public at large to distinguish the actor-the real man and the character- the role he plays. For example, the character Harry potter was played by Daniel Redcliff, in this case a sweatshirt with a picture of Daniel Redcliff would mention the name Harry Potter.

## LEGAL FRAMEWORK FOR CHARACTER MERCHANDISING IN INDIA

Till date, India has not introduced any explicit legislation or provision to deal with character merchandising. Indian courts face a difficult challenge to interpret the concept of character merchandising, more so "personality and image merchandising" as there is no law or legislation governing it. There are many conflicts relating to this concept, but very few cases ever find their way to the Indian courts. However, the cases that actually lands in courts are the ones that captures the attention. To comprehend how Indian laws apply to character merchandising, one must examine both the statutes and the important judgments.

### The right of publicity

The Indian constitution guarantees Right to life and personal liberty to every person.<sup>6</sup> "Right to privacy" is an important element of "Right to life and personal liberty". In the case of *ICC Development International v Arvee Enterprises*, The High Court of Delhi held that "right to publicity" has emerged from "Right to privacy". The court stated that "The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice. etc. An individual

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<sup>6</sup> INDIA CONST. art. 21.

may acquire the right of publicity by virtue of his association with an event, sport, movie, etc.”<sup>7</sup>

In the case of *Amitabh Bachchan v. Rajat Negi and Ors*<sup>8</sup>, 2022 J. Navin Chawla, stated that an actor is no doubt a famous person and has fronted or endorsed numerous products for advertising. Given his name, voice, and image, it is only fair that he receives credit of his due. An actor's name, picture, or voice cannot be used for commercial purposes or interest unless he gives his consent. Therefore, it is clear that celebrity whose picture is used without his consent may file a lawsuit to compel the business or organization to put a halt to the use of his personality traits in any way. The celebrity may also claim damages and reasonable royalties for the appropriation. Hence, any attempt to deny individuals their “right to publicity” is in violation of art. 19 and 21 of the Indian constitution. Individuals possess their “right to publicity” and no one can monopolize anyone’s persona.

### Law of Copyright

Law of copyright affords greater protection to character merchandising by giving rights of ownership to the creator of the character. Copyright subsists in original literary, dramatic, musical and artistic work, sound recordings and cinematograph film<sup>9</sup>. Author of a cinematograph film or sound recording is the producer of such work,<sup>10</sup> while Section 14(d) of the Act<sup>11</sup> states that “author in the case of a cinematograph film shall have exclusive rights to make a copy of the film, including a photograph of any image forming part of such film”. Section 38(4) of the Copyright Act states that “Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not object to the enjoyment by the producer of the film of the performer’s right in the same film.” By analyzing these provisions, it is clear that once a performance is included in a cinematographic film, the performers' rights are relinquished and the producer of a film becomes the owner of the character. At that point, only the producer retains the rights that subsist in the film and any pictures, figures or images contained within it, including the ability to exploit those pictures, figures and images for merchandising purposes.

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<sup>7</sup> ICC Development International v Arvee Enterprises, 2003(26)PTC245(DEL).

<sup>8</sup> *Amitabh Bachchan v. Rajat Negi and Ors*, CS(COMM) 819/2022.

<sup>9</sup> The Copyright Act, 1957, § 13, No. 14, Acts of Parliament, 1957 (India).

<sup>10</sup> The Copyright Act, 1957, § 2(d)(v), No. 14, Acts of Parliament, 1957 (India).

<sup>11</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

In the case of *Raja Pocket Books v Radha Pocket Books*<sup>12</sup> the court faced the issue of deciding the ownership of copyright of the character "Nagraj" in a comic book series. The plaintiff had been publishing and distributing the "Nagraj" comic series for a long time. Nagraj is typically dressed in "red trunks with a belt which mimics a snake and green body stockings that create an illusion of serpentine skin." Then defendants published a comic book with a character named "Nagesh", who bore an uncanny resemblance in looks to "Nagraj", and two of them had mystical snake-like powers. The Court held that the plaintiff owns copyright in "Nagraj" character and any act on the part of the opponent to use the protagonist's semblance in posters, products or any other type of advertisement would be an infringement.

### Copyrightability of characters

The U.S. courts have devised two tests to determine the copyrightability of the characters.

**The distinct delineation test** – It was devised in the case of '*Nichols v. Universal Pictures Corp.*'<sup>13</sup> the court ruled that fictional characters are protected by copyright only if they are "distinctly delineated". It is a two-fold test; it first determines whether the previous character is unique enough and have distinctive traits. Secondly, whether the expression of the infringing character is considerably similar to that of the earlier character. For instance, "Tarzan" satisfied the test and has been granted copyright protection. Likewise, the character of "superman" had also received copyright protection<sup>14</sup>.

**The story being told test** - The test finds its roots in '*Warner Brothers Pictures Inc. v. Columbia Broadcasting System*'<sup>15</sup>. This test discovered that if a character is not an active participant in the conveying of the story then they are certainly not a part of copyright and hence can be used without anyone's rights being violated. In order for a character to be copyrightable, the character must be the primary subject of the story.

### Law of Trademark

Trademark Act, 1999 can easily be applied to the disputes of character merchandising because of its broad interpretation and wide applicability. Character and celebrity names can

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<sup>12</sup> *Raja Pocket Books v Radha Pocket Books*, 1997 (40) DRJ 791.

<sup>13</sup> *Nichols v. Universal Pictures Corp*, 45 F.2d 119 (1930).

<sup>14</sup> *Detective Comics, Inc. vs. Bruns Publications, Inc*, 111 F.2d 432 (2d Cir. 1940).

<sup>15</sup> *Warner Brothers Pictures Inc. v. Columbia Broadcasting System*, 216 F. 2d 945 (1954).

be registered as a trademark.<sup>16</sup> Under Section 2(m)<sup>17</sup> "mark" includes a name. However, for registration it has to satisfy the prerequisites of section 2(zb), a trademark has to be a mark that can be graphically represented and is capable of distinguishing the goods and services from that of another. A name that is distinct and is not descriptive of the goods and services can be registered as a trademark. Many famous celebrities and personalities have registered their trademarks, including "KHILADI" which is registered by Akshay Kumar, famous chef Sanjeev Kapoor registered "SANJEEV KAPOOR KHAZANA", Sachin Tendulkar registered initials of his name 'SRT' and many more. If these names are now used by any other person or organization without the consent of these celebrities for promotion and sale of the goods and services, they can file a suit for infringement.

The owner of a registered trademark can claim remedy as per section 102 and 103 of the Act<sup>18</sup>. It states that if any person 'falsifies' a trademark and applies it to any goods and services without the consent of the owner, it shall be considered an offence and he shall be punished with imprisonment and penalties. In case of unregistered trademarks, owner can exercise the remedy of 'passing off'. However, the owner of the trademark has to prove that the mark has 'goodwill and reputation', there is an element of misrepresentation capable of deceiving consumers about the origin of the mark and that he has suffered harm because of such deception. Furthermore, Indian courts often acknowledge the significance of 'personality rights' and 'goodwill and reputation' tied to names of the famous individuals. In the judgment of *Anil Kapoor v. Simply Life India & Ors.* 2023<sup>19</sup> Delhi High Court emphasized the concerns related to 'personality rights' and prohibited the defendant from using the actor's personality traits without authorization.

### Issues associated with character merchandising

1. Personality rights issue- 'Right to publicity' and 'Right to privacy' are the two main rights that a person has in relation to his personality. One standpoint claims that any use of person's personality traits like his image, voice, appearance without his consent violates 'right to privacy' of that person. However, another constituent feels that celebrities largely surrender their right to privacy by simply being public figures. A

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<sup>16</sup> Shilpi Saurav, *Names Matter! Using Names as Trademarks*, 2 April 2024, <https://www.barandbench.com/law-firms/view-point/names-matter-using-names-as-trademarks>.

<sup>17</sup> Trademark Act, 1999, No. 47, Acts of Parliament, 1999 (India).

<sup>18</sup> Trademark Act, 1999, No. 47, § 102, 103, Acts of Parliament, 1999 (India).

<sup>19</sup> *Anil Kapoor v. Simply Life India & Ors.* CS(COMM) 652/2023.

famous person is considered to have given permission for his public persona, if he observes or participates in public life to such an extent that information about him starts attracting the media.

2. Copyright issue- Generally, author is the 'owner' of the copyrighted work, except in the case where it is commissioned by a different individual. In that case such individual becomes the 'owner'. According to section 14 (d) Copyright Act, producer is the author of a cinematograph film and he may reap benefits of character merchandising. But, if a person is performing a character, it might not be feasible for the producer to use all attributes of the character without the performer's permission as this in turn will violate his 'right to publicity'. Thus, this is another ongoing debate relating to character merchandising.
3. Trademark issue- A trademark uniquely identifies a good or service and reflects its goodwill. The market success of a product is determined by its trademark. In celebrity marketing, however, the fame of a celebrity holds similar importance in projecting the merchandise's success. Association of a big name with a product strengthens the legitimacy associated with the product, as a celebrity's fame enables buyers to relate to it immediately. With celebrity endorsement, the morale of people rises to an extent where they believe that the product would be effective. Hence, it becomes very challenging to differentiate which factor contributed more greatly to the successful outcome of merchandising, brand name or celebrity affiliation.

## **INDIAN CASE LAWS ON CHARACTER MERCHANDISING**

### **1. Malayala Manorama v. V.T. Thomas<sup>20</sup>**

This judgment opened the door to an expansion of copyright jurisprudence in India. It is the first case to provide copyright protection to a fictional character in India. The Court ruled that Thomas would own the copyright to the characters of 'Boban and Molly' as he created them independently and not while working for the Respondent. As a result, the Respondents were not allowed to recruit third parties to develop new cartoons of 'Boban and Molly'. However, Thomas was permitted to

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<sup>20</sup>Malayala Manorama v. V.T. Thomas, AIR 1989 Ker 49.

create new cartoons of the same characters. Thus, the Court implicitly decided that fictional characters can be copyrighted under the Copyright Act.

## **2. Star India Pvt. Ltd. v. Leo Burnett (India) Pvt. Ltd.<sup>21</sup>**

The telly series "kyunki saans bhi kabhi bahu thi" is the subject matter of the law suit. The issue involved in this case was whether the defendant, (Leo Burnett (India) Pvt. Ltd) have defeated plaintiff's (Star India Pvt. Ltd.) character merchandising? The court held that "the figures to be merchandised must have some public recognition" when the defendants developed an advertisement for "Tide Detergent" that involved the respective roles of a grandmother and mother-in-law with the slogan "kyonki bahu bhi kabhi saas banegi." The test of substantial similarity was employed to establish that on both grounds of quality and quantity, there are differences between the two pieces of art and they don't bear any great resemblance or identity one with the other.

## **3. Disney Enterprises v. Pankaj Aggarwal<sup>22</sup>**

The plaintiff was the owner of the U.S. copyright of the Lightning McQueen cartoon race car. Defendants used a Lightning McQueen imitation in producing 'Choco Car' chocolates. Plaintiff filed a suit for infringement, as well as permanent injunction. The High Court ruled that characters could be both copyright and trademark protected. It was emphasized that complete prohibition on the usage of renowned characters in commercial items is important since developing and creating fictional characters requires imagination and creativity. Moreover, in accordance with the "International Copyright Order and the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention" copyright of the plaintiff should be protected in India. Thus, a permanent injunction was granted to the defendants in response to the plaintiff's successful claim.

## **4. D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors.<sup>23</sup>**

In this case Punjabi artist Daler Mehndi assigned to the plaintiff all his rights, title and

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<sup>21</sup> Star India Pvt. Ltd. v. Leo Burnett (India) Pvt. Ltd, (2003) 27 PTC 81 (Bom.).

<sup>22</sup> Disney Enterprises v. Pankaj Aggarwal, (2018) SCC Online Del 10166.

<sup>23</sup> D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors., CS(OS) No. 893/2002.

interests in his personality along with the trademark 'DALER MEHNDI' and goodwill associated with it. The defendants were in the doll business, peddling low-quality replicas that imitated Daler Mehndi's likeness. These dolls were capable of singing a few lines from the artist's work and songs. The court held that the act amounts to passing off.

## **CONCLUSION AND SUGGESTIONS**

Character merchandising is seen as an ingenious marketing strategy to reap economic benefits. The law, however, could not keep pace with the rapidly evolving commercial activity in this regard. The legal ambiguities have caused unexpected losses to the true copyright owners and also act as a barrier to the economic interests. The law cannot and must not stand still; the courts cannot wait for new legislation to be enacted or for trademark infringement and passing off to yield acceptable results. The existing legal system needs to be looked through fresh perspective to create the middle ground at which celebrities can indulge in the fruits of stardom, free from violation of their publicity rights and copyright holders to be able to maximize the utilization of their work. There are some suggestions that can be made after understanding the concept of the character merchandising.

Firstly, India needs to be more explicit in its laws relating to character merchandising. This would make the definition clearer while also aiding in the protection of artists' rights.

Secondly, until the new laws are enacted the Indian courts should adopt the approaches used by the US courts for offering better protection to the authors who commercially exploit their creations. Tests like character delineation test and story being told ought to be followed in India to expedite the process for safeguarding against any infringement concerning character merchandising.