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Bharucha & Co.
Intellectual Property Attorneys

Series of brief newsletters released by Bharucha & Co. on latest development of IP predominantly in Pakistan.

COPYRIGHT – DICHOTOMY BETWEEN IDEA AND EXPRESSION

Plaintiff: **Muhammad Kashan**
Defendants: **Coca Cola Corporation Pakistan Limited through Chief Executive Officer and 3 others**
Decision: **Injunction Application Dismissed**

The question before the court was whether the plaintiff had a work which can be protected under the Copyright Ordinance 1962 or was it only an un-protectable idea. The plaintiff was engaged in the business of producing original audio-visual contents in the name and style Dream Station Production and had produced a number of popular songs and music videos. While the defendant No. 1 was the Pakistani arm of the well known US beverages company – Coca-Cola Company – and defendant No.2 was a director of the said local entity, all the defendants in one way or another were involved in the production and airing of a program called "Coke Studio" which according to its Wikipedia entry, "is a Pakistani music television series, which features live studio-recorded music performances by various artists", produced by Coca-Cola Company and Frequency Media, defendant No.3. The program had gone through five seasons and the dispute related to the sixth, referred to as "Coke Studio Season 6" and the plaintiff asserted that the defendants by making and airing Season 6 had infringed his copyright in a work entitled "Dream Music".

The plaintiff claimed to have conceived a unique idea for a reality music show to bring local and international music artists on the same platform for collaboration in the production of songs. The plaintiff also claimed to have prepared a format of the show called "Dream Music" and issued a booklet describing the same. In or around June 2012 the plaintiff prepared a "pilot" of the show in collaboration with one or more Indian artists. The plaintiff got in touch with one Dr. Rafat Siddiqui to take the matter further who brought Mr. Rihan Merchant to the plaintiff's recording studio who was the chief executive of defendant No. 4 – a media buying house engaged in business of procuring, producing and airing audio visual content for various clients including the defendant No.1 and a presentation was made to him including the pilot. In April 2013 the plaintiff was introduced by defendant No.4 to Mr. Shehan Rayer stated to be the head of its music projects, who was enabled to view a presentation of "Dream Music" on a password protected website being forwarded to him by the plaintiff and which was responded enthusiastically by the defendant Nos. 3 and 4 and they even talked about a "profit sharing deal" but eventually he never returned to the plaintiff.

The plaintiff alleged that on October 6, 2013 he was shocked to see the promotional clips/videos (known as "promos') launched by Coca-Cola Company in collaboration with defendant No.3 on the internet, in relation to Season 6 and alleged that its copyright in "Dream Music" had been infringed due to substantial similarity between "Season 6" and "Dream Music". It also alleged that the similarity could not be coincidental and particularly relied on an audio-visual presentation titled "Making of Coke Studio Season 6" aired by the defendant Nos.1 to 3, which was alleged to be a complete copy of the plaintiff's original idea clearly visible/apparent after watching both video clips i.e. the plaintiff's pilot on the one hand and the defendant's video on the other, as the content and format of Season 6 were completely dissimilar to the first five seasons and that the defendants had embarked on essentially a new sort of program by infringing the plaintiff's copyright.

The defendant No.1 submitted that what is protected within the meaning of the Copyright Ordinance is not an idea but its expression in a work. It was denied that any copyright vested in the plaintiff in respect of any work. Furthermore, the said defendant denied that it or any of its officers had ever seen the plaintiff's claimed work prior to the filing of the suit and that defendant No.4 ever acted on behalf of the contesting defendant Nos. 1 and 2 in any manner as alleged by the plaintiff. Instead, defendant No.4 used to act only as an advertising agent for the defendant No.1 and that relationship had ended in December 2011.

The counsel for the defendant No.4 submitted that Mr. Merchant had ceased to be its chief executive since January, 2013 and denied any connection with Mr. Shehan Rayer or that at any stage he saw any presentation by the plaintiff and particularly viewing of the plot for "Dream Music".

The court cogitated on the idea/expression dichotomy and contended that the booklet as well as the video was not a "pilot" as claimed by the plaintiff hence was neither an expression which is protected under the law nor an idea. In fact it was a concept note which was a description of an idea. It was held that the defendant's video presentation cannot be regarded as infringing the plaintiff's video. It was also observed that though the plaintiff's counsel had sought to place reliance on certain specific instances of similarity or commonality, but videos have to be viewed as a whole. When so considered, the matter before the court lost any relevance that they might appear to have if considered in isolation. The two videos were declared to be distinct and each proceeds on its own basis. The ideas described in the two works were also considered to be distinct. There was therefore no infringement of the plaintiff's work. Accordingly, the court held that the plaintiff was unable to make out a case for interim injunctive relief on the ground of infringement of a work under the Copyright Ordinance. Consequently injunction application was dismissed with a note that observations were tentative in nature and should the suit proceeded to trial, the same should be decided on their own merits.