



“Investing in Africa’s future”

COLLEGE OF BUSINESS PEACE LEADERSHIP GOVERNANCE (CBPLG)

NMPM216: INTELLECTUAL PROPERTY

END OF SECOND SEMESTER EXAMINATIONS

JMAY 2021

LECTURER: MR. GABRIEL MUZAH

DURATION: 7 HOURS

INSTRUCTIONS

- The paper contains only two (3) questions
 - Answer only **ONE** question
 - Africa University will check all submitted final exams for plagiarism, excessive referencing and for exams which are identical or in which evidence of copying is apparent. Failing to acknowledge and cite other people’s work or ideas, close paraphrasing, using passages verbatim without referencing, extreme referencing (without any original work done by the student), and copying other students’ work is considered academic dishonesty by AU
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Question 1: BigBasket Vs Daily Basket Case

This is an example of how this dispute was reported in the press:

<https://www.businesstoday.in/current/corporate/whats-in-a-name-bigbasket-slaps-notice-on-daily-basket-for-use-of-basket-in-name/story/431919.html>

What's in a name? BigBasket slaps notice on Daily Basket for use of 'basket' in name
The BigBasket notice also said that Daily Basket is carrying out an e-commerce business that offers similar products and services through a similar domain name

 **BusinessToday.In | February 22, 2021 | Updated 10:39 IST**



BigBasket slaps notice on Daily Basket

India's largest online grocery portal BigBasket has served a cease and desist notice to startup Daily Basket for using the word 'basket' in its name. The grocery giant has claimed that the startup infringes on its trademark and brand. Daily Basket published a blog 'BB is a bully' and to refute the claims.

The notice stated, "...the mere mention or reference of a name containing 'basket' in word or logo form for any e-commerce business and related products conjure in the minds of relevant class of consumers and members of trade as that of being associated with our client."

The BigBasket notice also said that Daily Basket is carrying out an e-commerce business that offers similar products and services through a similar domain name. BigBasket said in its notice that Daily Basket uses a 'deceptively and/or confusingly similar' name and mark.

"Your unauthorised acts are severely detrimental to the distinctive character and reputation of our client's brand 'BigBasket/Bigbasket.com'. The same are causing irreparable injury that cannot be computed in monetary terms. For such illegal acts, our client is entitled under civil and criminal law to take legal action against you and to seek legal recourse by way of a permanent injunction, account of profits and/or damages, in addition to other available reliefs, without any notice to you," stated the notice to Daily Basket.

The startup made the legal notice public and published a blog in an attempt to counter BigBasket's claims. "Except the word 'basket', there are no similarities or trademark violations in the brand logo. Colours are different, font is different, graphics is different and the name itself is different. So they want to sue us because we have 'basket' in our name. Last

time we checked no one has monopoly in the word 'basket' or having the word 'basket' and selling groceries online. NaturesBasket.com was actually started in 2005, way before BigBasket," said Daily Basket in its blog.

BigBasket said in the notice that the layout of the site was similar to theirs. Daily Basket argued that it is a different UI (user interface) all together. Category menu, searchbar and product visuals are similar but that's similar across platforms including Grofers, Jiomart, Amazon and Flipkart, said the startup.

BigBasket is on the verge of finalising divesting a majority stake to Tata Group for \$2 billion. Daily Basket has a 3,000 sq ft warehouse and operates only in Coimbatore. It aims to open its first offline store soon.

How Daily Basket Responded:

<https://bbisabully.com/>

BigBasket is bullying dailybasket.com with cease and desist letter

We (dailybasket.com) are a tiny online/offline grocery startup currently only serving in Coimbatore. We recently received a cease and desist letter from BigBasket to close down our operations and hand over our domains(ie, our business) to them because we have 'basket' in our brand and we also sell groceries online.

We started our operations in August of 2020. Our plan is to set up a string of mini supermarkets throughout Coimbatore and make them act as delivery hubs for our online delivery business. Currently, we operate one warehouse and about to open a mini-store in coming February 25th.

Though we have a word 'basket' in our brand and we do deliver online groceries, it doesn't mean we copied their trademarks or unethically copied their website & apps. We never misuse BigBasket's brand in any way as they claimed in the cease and desist letter. That's a blatant lie. This is our attempt to debunk their claims. Please read on

Here's what they wanted us to do

- Stop using the domain name dailybasket.com
- Discontinue the mobile apps
- Stop all the operations immediately
- Transfer our domain name dailybasket.com (Which is premium btw, and costs a little fortune) to them immediately with free of cost
- Pay their legal team of 2 lakh rupees to cover the legal notice
- Don't use similar domain containing “basket” as a prominent feature ever again

Here's their claims on our wrongdoing

- An e-commerce business and offering identical products and services through the conflicting similar domain name
- Use of the word 'daily' along with 'basket' does not make your name distinctive, and our client strongly believes that you have dishonestly adopted the name and mark "dailybasket" to make your name and mark deceptively and/or confusingly similar to our client's brand BigBasket.
- Deliberately copied the layout and getup of our client's website (with insignificant minor changes) to mischievously associate it with our client's brand "BigBasket".
- Our client was also shocked to see that you have recently created a mobile App under name "Daily Basket Coimbatore-Best grocery delivery app", to conduct your aforesaid e-commerce business operation, which is also extremely similar to our client's mobile applications for offering their services and selling products available at the BigBasket.com marketplace.
- By using the said mobile App, you are malafidely trying to create an impression that you are associated with BigBasket for Coimbatore, which in fact, is not the case.

Ok, lets explore the claims one by one. (BigBasket lawyers, Now you can easily see side by side comparison of all the claims easily. Hope this saves some of your precious hours.)

1. Here's the comparison of our logos (Move the slider to see each)



Use of the word 'daily' along with 'basket' does not make your name distinctive, and our client strongly believes that you have dishonestly adopted the name and mark "dailybasket" to make your name and mark deceptively and/or confusingly similar to our client's brand BigBasket.

Except the word 'basket', there are no similarities or trademark violations in the brand logo. Colors are different, font is different, graphics is different and the name itself is different. So they want to sue us because we have 'basket' in our name.

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Legal issues

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VS



- a) As an IP Manager what should be right strategy to combat such kind of situation.
[20 Marks]
- b) Discuss whether you support the strategy followed by dailybasket to refute the IP claims claimed by Bigbasket?
[30 Marks]

Question 2: Harry Potter Case

J.K. Rowling famously began writing the first *Harry Potter* book in a café in Edinburgh, as a single mum surviving on state benefits. In a newspaper interview she told her story: *"I was as poor as it's possible to be in this country. I was a single parent. I remember 20 years ago not eating so my daughter would eat. I remember nights when there was literally no money."* (J. K. Rowling)

J. K. Rowling, whilst inspired by other authors, created the story of *Harry Potter and The Philosopher's Stone*. She was then able to license her copyright to *Bloomsbury Publishing Plc*, who published the book and rewarded her financially. Thereafter she was paid an advance to

write more and continue the story of *Harry Potter* and complete the seven-book sequence, collectively selling over 400 million copies!

"It happened very suddenly and it was marvellous on one level. I had security. I could buy a house. I could look at my daughter and think, "Wow, I can buy you some stuff!" ... The big moment was a large advance from America in 1997. We stopped renting and I could buy a house... Next it was not just advances, it was royalties coming in." (J. K. Rowling)

J. K. Rowling was able to do this because copyright gave her the exclusive rights to protect her story. She licensed that right to *Bloomsbury Publishing Plc*, giving them permission to print and distribute her work in return for royalty payments. J. K. Rowling and *Bloomsbury* were then able to sub-license the *Harry Potter* story in order to make more creations. For example, *Warner Bros Entertainment Inc.* had to pay for a licence to use J. K. Rowling's story to create the *Harry Potter* film series. This is known as a derivative work. Other derivative creations of *Harry Potter* include the translation of the books into 67 different languages, audio books, computer games, an amusement park and more. In order to create these works a licence had to be obtained from the copyright holders. This means as well as *Warner Bros* and the other creators of the derivative works, J. K. Rowling and *Bloomsbury* can continue to benefit from royalty payments. For example, *Warner Bros* owns the copyright in the *Harry Potter* films, so when *Electronic Arts* wanted to create *Harry Potter* the video game using the characters and setting from the film, they had to obtain a licence from *Warner Bros*, who then earns royalties from the sales of the games.

Another way in which the *Harry Potter* stories have been used is to make parodies. For example, the Potter Puppet Pals is a *YouTube* series using the characters from *Harry Potter* to tell stories. The creator has spent his time and effort making the puppets, the storylines, the songs and music to produce 16 different parody videos. Until 1 October 2014, the use of the original work would have been copyright infringement. However with the introduction of the new parody exception within the scope of fair dealing, the original work can be parodied in certain circumstances. One of these videos, Potter Puppet Pals: The Mysterious Ticking Noise, has received over 156,365,229 views. At the beginning of this video is an advertisement. This usually means that the rightsholder is receiving a payment every time that the video is watched.

Source: J. K. Rowling quotes have been taken from www.jkrowling.com

- a) You want to write an original story about a wizard and his adventures at wizardry school. How do you do this without infringing copyright law? [20 Marks]
- b) Having created your own original story, how would you disseminate it? [10 Marks]
- c) Your story is highly successful. Someone approaches you and they want to use one of your characters in their video game. What permission do you give them and why? [20 Marks]

Question 3: Geographical Indications

Article 22.1 of the TRIPS Agreement defines geographical indications as:

...indications which identify a good as originating in the territory of a Member [of the World Trade Organization], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

- a) With reference to a specific product of choice that you think can be protected by geographical indication. Discuss the reasons why you think it is best suited for such protection. **[20 Marks]**
- b) What are the potential obstacles for protecting this product through geographical indication? **[10 Marks]**
- c) Discuss how this geographical indication can be protected abroad. **[20 Marks]**

END OF EXAMINATION
