



## India: In Defence of AIB's Game of Thrones Memes: When can Satire/Critique Act as a Suitable Defence?

In a recent article posted on Bar & Bench (see [here](#)) the authors raised an interesting facet of trademark law, one that has been the subject of controversy for many years now.

The popular television show, *Game of Thrones* has become a worldwide cultural phenomenon, ever since it started airing as a TV series on HBO in 2011. As a result of its global popularity, it has entered public consciousness in a similar way to entertainment franchises, such as Star Wars, Star Trek, Harry Potter and Marvel Comics, to name just a few. With such collective recognition and recollection of the show's characters and themes, many fans choose to share their admiration of the show by posting derivative content online.

### The Issue

The Indian comedy group All India Bakchod, popularly referred to as AIB decided to capitalize on the popularity of the show and created a number of amusing memes out of stills from the show. It juxtaposed these stills with humorous captions or superimposed them with advertising taglines of completely unrelated products to generate humour, which it then shared through its various social media platforms.

Of course, AIB is hardly the first one to do this. There is quite a sub-culture on the Internet for fans of not only *Game of Thrones*, but various other film, television or literary franchises to express their talent at humour alongside their admiration for their preferred "fandom" by creating and sharing jokes or amusing observations in the form of memes. There are Facebook pages, YouTube channels and other social media platforms entirely devoted to this enterprise, in fact! For a look at AIB's efforts, you can take a look [here](#).

### Copyright Infringement and its Defences



However, the pertinent question arising out of this for IP lawyers is does this constitute infringement of HBO's copyright in the show?

There is no denying that HBO, including its affiliates and subsidiaries, is the rightful holder of copyrights in the show *Game of Thrones*. However, a problem that has always plagued fans of such properties is: can they not express their love for their favourite show, movie or comic book without being ensnared in the web of potential IP infringement?

The most obvious defences in cases of derivative fan works are that they are in the nature of tributes to their source material, and therefore do not attempt to take away from their repute. They may, in fact, serve the opposite purpose in driving curiosity in the works which they derive from and to which they refer. Another common defence for certain fan-derivative works is that they are either in the nature of a critique or a parody/spoof of the source material. And the final important defence in determining whether a fan-derivative work is harmless is that it should not be for profit.

It is with regard to the last criterion that the controversy appears to be raging surrounding AIB's use of *Game of Thrones* stills for comedic effect. As can be seen from the series of memes, they have actually been constructed towards a promotional purpose- to announce the release of one of their YouTube videos. Therefore, under the circumstances, it is being argued that AIB may very well be liable for intentional copyright infringement.




Source: AIB on Facebook



### IP Rights v Freedom of Speech/Creativity

The landmark judgement in India upholding the right to freedom of speech and expression over disparagement involving IP rights is in the case of *Tata Sons Ltd. v Greenpeace International & Anr.*<sup>1</sup> Here, the dispute centred around a satirical game, Pac-Man style, which showed the endangered Olive Ridley Turtle being hunted by the ‘Tata

demons’, in the form of animations of their famous trademark, . The game had been designed by Greenpeace as an innovative form of protest against Tata’s construction of Dhamra port in an ecologically sensitive area of Orissa. Tata, in its turn, claimed that the representation of their famous device mark in such a negative fashion was affecting their considerable reputation built around the trademark and alleged tarnishment and disparagement. However, Justice Shri Ravinder Bhat of the Delhi High Court, in an unprecedented judgement, held in favour of Greenpeace, causing a stir in trademark owners’ circles.



Source: [www.greenpeace.org](http://www.greenpeace.org)

The above case proves that satire or critique may be a valid defence against an allegation of trademark infringement/tarnishment. But is it enough in the case of AIB’s ostensibly promotional use of copyrighted material?

The comedy group is only one amongst many, all across the world, who have attempted to capitalize on the show’s overarching popularity to promote their products. Why hasn’t HBO proceeded against these myriad “infringers”? Most likely because in pandering to the show’s already devoted fan-base, they aren’t, in actuality, causing the network any (financial) harm. In fact, as much as these renditions advertise third party products, they

<sup>1</sup> IA No.9089/2010 in CS(OS) No.1407/2010



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are propagating the popularity of *Game of Thrones* even further. An uninitiated may see such a meme/ad and be curious to find out about the show to which it refers. Thus, in using referential context, the works, whether intentionally humorous, sarcastic or critical, benefit HBO's promotional efforts for its show as much as the third party's. It's a symbiotic relation.

AIB is unlikely to face consequences for its memes, despite juxtaposing unrelated subject matter therein. And, keeping in mind the vast quantity of similar material spread throughout the Web, it is unlikely the show's rightholders will even be inclined to take such a step. After all, practicality dictates that you don't fix something unless it's broke, and copyright infringement cannot exist unless the copyright holder is intent on enforcing her/his exclusive rights. In the instant case, by allowing a little laxity, HBO is only allowing the fans of *Game of Thrones* to have a little creative fun, while quietly reaping the benefit of its popular spread.