

THE COMMERCE AND ECONOMICS OF FANTASY

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ABSTRACT

The biggest moment in TV history of this century ended with the curtains closing on the extremely popular Game of Thrones [hereinafter "GoT"] television series. Home Box Office [hereinafter "HBO"] states that the episode titled "The Long Night," delivered 17.8 million viewers, making it the most-watched episode in the show's history. Wagers and bets of all kinds were floated and placed on the outcome of the finale, followed by a myriad of reactions worldwide. GoT has taken the world by storm, and although I have not watched a single episode of this epic fantasy drama, I was nevertheless intrigued with all the brouhaha and bustle surrounding it. The principal purpose of this paper is to study and scope out from various accessible secondary data what made the series a rage like no other, the intellectual properties (created, generated and acquired) that it rode on, and the values generated by this ever-popular franchise in terms of the revenues and profits unleashed by it and their exploitation thereby. In essence, this paper intends to examine the intellectual properties created in this franchise and how it enabled wealth and asset generation for the principal players and others linked to the show.

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I. INTRODUCTION

George RR Martin (known as the American Tolkien) is credited to be the person from whom and where it all began. His moment of creative actualization was when he, enthused and kindled by JKR Tolkien's 'The Lord of the Rings', began to write the **'Song of Fire and Ice'** book series in 1991 in the same spirit. Many of his works went on to hit the New York Times bestseller list, with the acclaimed author winning many domestic and international awards and accolades in the best fantasy novel and best science fiction genre. Predictably, and riding on the mammoth success of his fantastic book series, one thing led to another and the rest, as they say, is history.

HBO Productions purchased the television rights for A Song of Ice and Fire book series, and David Benioff and D. B. Weiss of HBO began airing the fantasy serial drama on their US premium cable channel in 2011. Martin's incredible and fantastic ideas found voice and expression in his fabled (though unfinished book series) that made both him and HBO richer beyond their dreams. Each one of the eight seasons was received with overwhelming public enthusiasm, response and record viewership from an ever-widening, passionate, and international fan base. The amount of print dedicated to the 73 episodes in the digital and real media was/is flattering and enormous. The series went on to win 47 Emmy Prime Time awards and many other prestigious awards like the

Golden Globe, Hugo and Peabody awards.²⁶² This year, it had a record 32 nominations at the Emmys.²⁶³

The HBO – Martin collaboration went on to spawn many enterprises across the globe that has generated colossal wealth for many involved in the making of the GoT serial. In fact, with the last season, HBO has marched ahead of Martin and has created episodes on their own. An illustrative flavour of Martin’s earnings only from various royalties, and which are not very recent, is tabulated below:*

YEAR	ROYALTIES EARNED	AMOUNT
2016	George R.R. Martins publications	\$ 10,000,000
2016	HBO Series Game of Thrones	\$ 15,000,000
2015	Sale of A Song of Ice and Fire novels (25 M copies)	\$ 19,500,000
2013	Sales of Game of Thrones mass-market paperbacks	\$ 1,300,000

**Compiled by Lex Mantis from various sources in public domain*

Martin’s chimerical imagination, ingenuity and resourcefulness have not only hugely captivated the masses but as is obvious, people were queuing up to pay the price he demanded for his works.

²⁶² George R.R. Martin, *Fire and Blood: Category Archives: Book News*, GEORGE R R MARTIN.COM (April 25, 2018), available at <http://www.georgerrmartin.com/fireandblood/>.

²⁶³ Sarah Whitten, *Game of Thrones’ nabs record 32 Emmy Award nominations, including best drama series, in final season*, CNBC, (Jul. 16, 2019), available at <https://www.cnbc.com/2019/07/16/game-of-thrones-nabs-record-32-emmy-award-nominations.html>.

II. COPYRIGHTS

A. MARTIN-HBO COLLABORATION

In 2007, Martin sold the ‘television rights’ in his book series to HBO, who then broadcast this tele-drama for the first time on April 17, 2011. Selling the television rights essentially meant that Martin had transferred his adaptive rights in the book that he owned by virtue of his exclusive copyrights therein, to HBO for a price. It further meant that Martin would have contractually conveyed to HBO a tranche of rights, which made it possible for the network to adapt his novels into television screenplays. It further allowed HBO to transform those adapted screenplays into cinematic, audio-visual formats to be telecast, exclusively as its television program. GoT’s USP lay not only in the creation of a dark fantasy saga, but also in the creative expressions of its many mythical creatures like the dragons, dragon glass, dire wolves, giants, mammoths, ravens, unsullied (army of eunuchs), witches, faceless man, white walkers, valerian steel, etc.

Without having any access to the contract between Martin and HBO, one can probably surmise that Martin as an original copyright owner would have given limited rights to HBO. He would perhaps have retained other adaptive rights like publication rights or other broadcast rights (stage rights, radio rights, etc.) or other related copyrights (rights to

characters under varying degrees of exclusivities. Detailed rights purchase agreements help avoid unforeseen legal problem further down the road.²⁶⁴

From various sources, it is gleaned that HBO invested a total amount of \$1,460,600,000 (1.46 billion) into bringing Martin's fantasy alive and has been fiercely guarding all its intellectual properties in and around it ever since. In 2016, HBO sent thousands of copyright infringement notices to infringing internet users who were downloading GoT episodes illicitly, but without asking them for damages. This practice not only lent itself to substantially reduce the extent of the piracy of the series but also generated more goodwill in encouraging people to subscribe to the channel instead of illicitly downloading its content.

B. COPYRIGHTS IN UNPUBLISHED WORKS

With spoilers and predictions about each episode inundating the Internet, it was noticed in a particular instance in 2016 that a prolific Spanish YouTuber, Jose Senaris *alias* Frikidoctor and media knick named Spanish Spoiler, was posting his predictions about every new episode of the 6th season about to be aired. Specifically, his third video consisted of him wearing a costume and airing his predictions, but importantly, without any scenes from GoT. HBO on getting wind of his activities used the Digital Millenium Copyright Act, 1998 [hereinafter “**DMCA**”] to force him to take down the videos, but it raised hackles on how HBO could enforce its copyright on another's action, when none of the actual

²⁶⁴ Cathy Jewell, *From Script to Screen: What Role for Intellectual Property?*, WIPO (August 23, 2019), available at https://www.wipo.int/pressroom/en/stories/ip_and_film.html.

“work” was actually being displayed through the allegedly infringing action.²⁶⁵

To HBO’s credit, the prudent decision it took to pursue the YouTuber could have been spurred by the holdings of the judgement in the landmark case of *Harper & Row Publishers, Inc. v. Nation Enterprises*, in which a similar issue of copyrights in unpublished works had arisen. In the case, Nation Enterprises who was the publisher of ‘The Nation’ magazine, had obtained an unauthorized copy of the unpublished memoirs of the former US President, Gerard Ford. The former President had contracted exclusively with the well-known Harper & Row Publishers to publish his memoirs. Harper and Row, through a paid contract, subsequently engaged with Time magazine to release the excerpts of the memoirs to them, a few days before the book release. Days before the excerpts were to be released, ‘The Nation’ published a 2,250-word article, of which at least 300-400 words constituted verbatim quotes taken from the manuscript, and clearly indicated that the said memoirs had been leaked to Nation Enterprises. Following the unauthorised disclosure of the memoirs, Time magazine cancelled its agreement with Harper & Row, and the publishers sued Nation for infringement. The US Supreme Court, taking into account the various arguments and counter-arguments placed before it, held that “*Nation’s taking of copyrighted expressions exceeded that necessary to disseminate the facts, and infringed the copyright holders’ interests in the*

²⁶⁵ Russell Brandom, *Can you get kicked off YouTube for spoiling Game of Thrones?*, THE VERGE (May 10, 2016), available at <https://www.theverge.com/2016/5/10/11650986/youtube-game-of-thrones-spoilers-frikidoctor-dmca>.

confidentiality and creative control over the first public appearance of the work.”²⁶⁶ It was also held that “*once a copyright holder establishes a causal connection between the infringement and loss of revenue, the burden shifts to the infringer to show that the damage would have occurred had there been no taking of copyrighted expression.*”²⁶⁷ The judgement took into account the importance and merits of the confidentiality aspects of ‘to be’ published works and how unfair disclosures of such works can destroy the IP value of the content therein.

The above case helped to establish some principles of confidentiality in unpublished works. Since every prediction of the Spanish Spoiler turned out to be true, it meant that he was privy to undisclosed information from some source within the studios on what would transpire in each of the next episodes, presumably for a price, and which he was enjoying in revealing to the public through his spoilers.²⁶⁸ HBO used their ‘right of first publication’ to stop him from cutting into their viewership and revenues, even though he did not display any of the actual content.²⁶⁹ It is important to mention at this juncture that the infringing action was not really impacting HBO’s revenues for the show, as HBO does not belong to the tribe of telecasters supplementing and generating incomes from advertisements (the episodes do not have a

²⁶⁶ Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539 (1985).

²⁶⁷ *Id.*

²⁶⁸ Kim Refron, *Is leaking the plot of every new ‘Game of Thrones’ episode on YouTube - and HBO is trying its best to stop it*, BUSINESS INSIDER (May 8, 2016), available at: <https://www.businessinsider.in/Someone-is-leaking-the-plot-of-every-new-Game-of-Thrones-episode-on-YouTube-and-HBO-is-trying-its-best-to-stopit/articleshow/52170546.cms>.

²⁶⁹ Anastasios G. Garbris, *Game of Thrones Copyright Infringement*, GABRIS LAW LLC (May 11, 2016), available at www.garbislaw.com/game-thrones-copyright-infringement.

single advertisement), which in turn are driven heavily by viewership linked TRPs. HBO's revenues were derived from their channel and streaming subscriptions only.

C. DOCTRINE OF FAIR USE

The *Harper & Row Publishers* judgement is widely cited, mainly because of its ratio on Fair Use (called 'Fair Dealing' in India) wherein section 107 of the DMCA's four-factor test as enunciated to determine Fair Use, was relied upon; being:

“(1) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(2) The nature of the copyrighted work;

(3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) The effect of the use upon the potential market for or value of the copyrighted work.”

Fair Use is a doctrine developed by the courts in the US to encourage and foster learning, research, teaching, news reporting, commentary, criticism, etc. without being hampered by rigid applications of copyright laws. In essence, it is legally permissible to copy from copyrighted material for specific purposes only, designed to nurture scholarship and originality, and fulfil the goals of copyright law for

‘promoting the Progress of Science and the useful Arts.’²⁷⁰ It allows one to use and build upon prior works in a manner that does not unfairly deprive prior copyright owners of the right to control and benefit from their works.²⁷¹ However, whether a use is fair or not is always a mixed question of law and facts and ultimately remains a subjective conclusion. Amount of material infringed is not as important as the impact of the infringement, and Fair Use is not a permission to plunder the works of the original authors without paying the customary price.²⁷²

In the context of Fair Use, a cause of serious concern has been the indiscriminate use of copyrighted images and other content in memes, and whether such memes are a fair use or copyright infringement. Needless to say, images used in GoT are the exclusive copyrighted property of the producers/network alone, and hence any meme that uses images appropriated from copyrighted sources would be a sitting duck for copyright infringement. However, given their satirical nature, they are thus presumed to be more for personal and social use rather than commercial use and may lack all the necessary elements for copyright infringement. It is often argued that such memes ought to be protected under Fair Use, as the copyrighted work would not be substantial therein. For example, if a picture of Ned Stark from GoT is used with the words ‘Brace Yourself’

²⁷⁰ U.S. CONST. art. I, § 8, Cl. 8.

²⁷¹ Office of the General Counsel, Copyright and Fair Use: A Guide for the Harvard Community (August 23, 2019), *available at* <http://ogc.harvard.edu/pages/copyright-and-fair-use>.

²⁷² Warner Bros. Entertainment Inc. and J.K. Rowling v. RDR Books, 575F. Supp. 2d 513 (2008).

on the upper portion of the meme with 'XXX is Coming' written below, it may pass off for Fair Use.²⁷³

However, it ought to be also noted that memes are often used to advertise products and merchandise. In such cases, memes cannot be defended under Fair Use, as they go beyond the realm of personal use and mere humour into a definitive zone of use for commercial gains of the advertiser. "*Humor is not an iron-clad legal defence to either copyright or trademark infringement -- or for that matter libel.*"²⁷⁴ An added perspective is that such memes tend to undermine the producers' copyright by affecting the potential market of the show and leads to an infringement that cannot be protected or defended by fair use.

D. 3-D PRINTING AND FAIR USE

Another emerging area of IP infringement is the facility of 3-D printers, which makes it very easy to copy designs and copyrighted material. They are a powerful new tool for experimenting with the designs of the physical world. The iron throne in the GoT Series is made entirely from swords and is a much-infringed design. Even though the artistic work of the throne is copyrighted, it is suspected that its makers would have also sought a design patent or industrial design protection on it.

²⁷³ Aishwaria S Iyer and Raghav Mehrotra, *A Critical Analysis Of Memes And Fair Use*, 4.1 RLR (2016) available at <http://dspace.jgu.edu.in:8080/jspui/bitstream/10739/1443/1/A%20Critical%20analysis%20of%20meme.pdf>.

²⁷⁴ Lloyd J. Jassin, *How to Use Trademark Law to Create Multiple Passive Income Streams & Avert Legal Battles*, COPY LAW (2010), available at www.copylaw.com/new_articles/titles.html.

Recently,²⁷⁵ in 2016, it came to light that a design entrepreneur from Orlando, Florida, introduced a 3-D printed ‘iPhone dock’ modelled on the GoT throne, as a merchandise for sale on his website. HBO on learning about it shot off a ‘cease and desist’ letter claiming both copyright and trademark violations. He tried offering to take the design on license from HBO, which they refused.²⁷⁶ As a result, he had to return all the money he earned, to the customers who bought the throne iPhone dock from him.²⁷⁷

III. GOT TRADEMARKS

A. NAMES & TITLES

Analysing the triumph of the novels and the franchise, it is evident that a large part of their success should be attributed to the unique, distinctive and exceptional names or terms that have been assigned to the characters, places and the beasts in the plots. Martin says in an interview

²⁷⁵ Definition: “design” means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.

²⁷⁶ Nathan Hurst, *HBO Blocks 3-D Printed Game Of Thrones iPhone Dock*, WIRED (Feb. 13, 2013) available at <https://www.wired.com/2013/02/got-hbo-cease-and-desist/>.

²⁷⁷ Jim Edwards, *Here's The 3D-Printed 'Game Of Thrones' iPhone Dock That's Banned By HBO*, BUSINESS INSIDER (Aug. 14, 2013), available at <https://www.businessinsider.in/heres-the-3d-printed-game-of-thrones-iphone-dock-thats-banned-by-hbo/articleshow/21812682.cms>.

that he was inspired by the ancient and medieval English history which he had studied, when combined together with his creative genius, fanciful imagination and the relevance of a character or plot to the story line, helped in designing and coining names that today have become a hit with the masses and even enjoy a cult following. The names/titles of the characters, episodes or places have captured the world's fancy that many of them are known today as a part of the colloquial vocabulary, like "Dracarys" that commands dragons to breathe fire; or catchphrases used in the show like "Winter is Coming" or "White Walker," the name of ice demons, creatures of ice and cold that raise the dead and came eight thousand years ago; "Children of the Forest" who are supernatural creatures and not really children;²⁷⁸ "Three-Eyed Raven," a supernatural, mythical being who can see into the past and whose brain has access to the entire history of Westeros; and many such other examples.²⁷⁹ What is more interesting is the fact that many of the names have acquired a metaphorical connotation and are being used in a variety of ways to signify or make different statements, including via memes.

Besides, HBO has created names and characters that have become exceedingly popular like 'Night King', who does not actually exist in Martin's books. The names used in GoT have become extremely popular as babies are being named after the characters like Khaleesi and Arya;

²⁷⁸ Shannon Carlin, *A Cheat Sheet Of Game Of Thrones Words & Terminology You Need For Season 8*, REFINERY 29, (Apr. 13, 2019), available at <https://www.refinery29.com/en-us/2019/04/228859/game-of-thrones-words-dictionary>.

²⁷⁹ Bill Donahue, *Game Of Trademarks: How 'Thrones' Shields Its Brand*, LAW360 (May 16, 2019), available at <https://www.law360.com/articles/1157943>.

along with being mentioned as names for drinks, alcoholic beverages, gaming products and merchandise. A known fact which has been exploited to the hilt by film and movie merchants is that fans like to proclaim their preferences and wear their hearts on their sleeves to celebrate their favourite shows, films, characters or actors by wearing/carrying merchandise in those names. There is one website, which proclaims “85 all -new GoT baby names for boys and girls.” Recognizing the intellectual property value in the names and titles of/in such films/series/episodes, more so as potential brands, merchandise and/or merchandising opportunities, protection of these names and titles assume paramount importance; lest they are misappropriated, misused, become generic or fall by the wayside.

However, the Copyright Law in India or the US, like in many other jurisdictions in the world does not protect names or titles of books and films (works) which are copyrighted.²⁸⁰ While registering copyrights in any expression or content in India, is one of the required particulars, which have to be entered in the Form XIV under Section 44, it is also the literary title²⁸¹ of the work along with the work itself and the relevant names and addresses of the authors, publishers and owners of the copyright. Given that any copyrighted work will obviously be identified and recognised by its name/title, it stands to reason therefore that the commercialisation and leveraging (trading) of that content through sales and licenses, will also take place through its titles. What follows as a

²⁸⁰ Kanungo Media (P) Ltd. v. Rgv Film Factory, 138 (2007) DLT 312 (India).

²⁸¹ J. THOMAS, MCCARTHY, TRADEMARK AND UNFAIR COMPETITION (3rd ed. vol.1, 1995).

logical next step is that intellectual property protection for names/titles are best sought under the trademark laws of the land and hence filing trademarks for titles is a common phenomenon for big entertainment franchises. An important judgement in this regard would be the one recently held 2015 in *Krishika Lulla and Ors vs Shyam Vitharao Devkutta*²⁸² where the SC expressly pronounced that copyrights do not subsist in the titles of literary works which include movies and the protection for the same can be granted only by way of trademarks. Generally, title trademark applications are made in Class 41, which includes services for education, training and various sporting and cultural activities according to the international system of trademark classification and the Trademarks Act of India, 1999.²⁸³

B. REGISTRATION OF FILM/SERIAL TITLES

It also needs to be pointed out as recently held in *Kanungo Media (P) Ltd vs. RGV Film Factory*, that the law with respect to protection of movie titles under trademark laws in India, similar to the Trademark laws in the US, does not allow stand-alone titles of literary work or cinematic expressions to be registered unless the titles/names are designated for a series of works or the singular titles have acquired a ‘**secondary**’ meaning among the public at large. The test of secondary meaning for literary titles is basically to determine whether, in the minds of a significant number of

²⁸² *Krishika Lulla v. Shyam Vithalrao Devkatta*, (2016) 2 SCC 521 (India).

²⁸³ The Trademark Rules, 2002, Class 41, Schedule IV; Nice Classification-11th ed. (2019).

consumers, the title in question is allied with a single source of the literary work. The Court held in the above case that,

*“title of the film falls into two categories, firstly, titles of series of films and secondly titles of single copyrighted works. Protection is certain as regards titles of series of film, and such titles enjoy standard trademark protection. However, the Court found that in order to extend this protection to the title of a single copyrighted work, it must be proven that such title has acquired a wide reputation among the public and the industry that is, has acquired a secondary meaning. Therefore, in order to obtain an injunction, the onus is on the plaintiff to establish that its film title has acquired a secondary meaning.”*²⁸⁴

A case in point for a series title would be the famous ‘Chicken Soup’, ‘Harry Potter’ and the Marvel Comics super hero series.

The rationale behind protecting the titles of book or film/tele series and franchises, emanates from the fact that once the title of a series gets established, each work in the series serves to reinforce that it comes from the same source as the others and becomes identified in the public's mind with a particular author or publisher. Therein, lays the value of a sound intellectual property strategy and the justification for the current drift of publishers and film makers in promoting and pushing for copyrighted works in series. The criticality surrounding a title can be well understood from the fact that in India, the various trade associations like

²⁸⁴ Kanungo Media (P) Ltd. v. Rgv Film Factory, 138 (2007) DLT 312 (India).

Indian Motion Pictures Producers' Association (IMPAA), Producers Guild of India, Indian Film and TV Producers' Council (IFTPC), Screen Writers Association etc. allow film producers and directors to register their film/series title with them as a preparatory step, even before the film hits the floors, to pre-empt and prevent others from unauthorizedly using or usurping the same title.

Title registration preferably under the Trademark laws not only helps film producers to build, strengthen and reinforce a certain title into a brand, but also protects them against consumer confusion by distinguishing their titles from competing for entertainment and information platforms. Being an author or publisher of a serial, is today considered as one of the key secrets of successful publishing and affords all the creators involved in such series, many opportunities in valuable sequels and adaptation rights in best-selling books and hit movies. Hence, titles of stand-alone works, of a book, periodical, song, movie, or television program, normally will *not* be protected under trademark law.

C. GoT TRADEMARKS

It is no surprise then that HBO today has more than 100 registered trademarks, and has filed more than 100 applications for "Thrones"- related trademarks, including those on highly specific elements of GoT that have garnered positive public responses in the US and other countries of the world. HBO has also lodged dozens of oppositions to perceived similar trademark applications and not the least of which have been making their displeasure with the President of the

United States known, for his memes and using GoT names and trademarks. In May 2016, just two days after a highly appreciated episode explaining the origins of a character named "Hodor", before killing him off, HBO applied to register the name for T-shirts and mugs in that name.²⁸⁵

The owners of "Lord of the Rings," "Star Wars" and the Marvel comics universe, have similarly registered dozens of fictional elements having great potential for merchandising, as trademarks. So apart from the copyrights in the story, plot, screenplay, film etc. a wealth of intellectual property lies in the very distinctive names chosen for plots/episodes, characters, places etc. to the extent that they each have acquired distinct trade identities. After all, trademarks can live forever and the GoT trademarks will certainly outlive the series and will always remain a pipeline for HBO revenues.

D. TRADEMARK BATTLES OF SPIRITS

A UK based brewery, Wadworth and Company filed a UK trade mark application for a figurative mark in 2017, which included a graphical depiction of stones (configured in a similar manner to Stonehenge) located above the words: "Wadworth" and "Game of Stones", covering ales and flavoured beers. The application was opposed by HBO on grounds of close similarity with their trade marks. HBO alleged that

²⁸⁵ Bill Donahue, *Game Of Trademarks: How 'Thrones' Shields Its Brand*, LAW360 (May 16, 2019), available at <https://www.law360.com/articles/1157943>.

‘Game of Stones’ would inevitably ‘ride on the coattails’²⁸⁶ of their longstanding reputation and goodwill and would cause a misrepresentation, leading to consumers thinking the two were linked. However, these arguments and the opposition were rejected by the UKIPO who pointed out that though the marks shared some identical goods and the common word ‘game of’, it was not enough to constitute infringement. They held that there were very little visual or conceptual similarities between the marks and no misrepresentation and hence ‘Game of Stones’ was allowed to proceed.²⁸⁷

Similarly, in another case, one Maanmohan Singh applied to register the trade mark “Game of Vapes” in April 2017 in respect of goods in Class 34 (Tobacco, Smokers' articles: Matches) which application HBO opposed on the basis of its earlier EU trademark “Game of Thrones”, registered *inter alia* for goods in that class.²⁸⁸

While HBO presented similar lines of arguments as mentioned above, it also submitted evidence related to the licensing and various other activities it undertakes with respect to its GoT marks, to prove their substantial commercial use. HBO also argued that consumers recognize

²⁸⁶ Explanation: Coattails are the lower flaps on the back of a man’s jacket. To ride on someone’s coattails is an idiom in the English language and means to become successful by attaching yourself to another’s success. The idea behind ride someone’s coattails is of someone holding onto the back of someone’s jacket in order to be pulled along without exerting any effort of his own. A person who rides someone’s coattails is usually considered unable to attain success on his own.

²⁸⁷ Mathilde Pavis, *HBO fails in attempt to protect Game of Thrones trademarks*, THE IPKAT (April 02, 2019), available at <http://ipkitten.blogspot.com/2019/04/hbo-fails-in-attempt-to-protect-game-of.html> [hereinafter “Pavis”].

²⁸⁸ *Id.*

well, the licensing or authorised merchandising of goods in relation to its marks.

However, the UKIPO decision in the case is thought provoking and must be quoted here, in the elucidation of the points made above. It ruled that,

“The marks owned by HBO were considered to be visually and aurally similar to Singh’s mark, but only to “a medium degree” (para 23 & 24). The UKIPO considered that the difference in concept was significant and would inevitably lead the consumer to understand “Game of Vapes” to be a “comedic play on Game of Thrones” (para 53). Moreover, it was held that “Game of Vapes” was not a “natural brand extension” of “Game of Thrones”, because no range of “game of...” trademarks exists. Although a consumer may be reminded of the earlier trademarks [owned by HBO], it would only amount to a mere association, not indirect confusion. As a result, the opposition failed in its entirety.”²⁸⁹

As of 2018, HBO has sued Teechip.com for selling GoT knockoff merchandise on its site since July 2016 without their consent. It sued Teechip.com for both, copyrights and trademarks infringement and claims that despite it being notified by HBO to take down pirated ware it continued with the violations. The network has claimed damages paid from the profits of the knockoff merchandise, as well as triple the amount

²⁸⁹ Pavis, *supra* note 287.

in damages “*for wilfully and intentionally, directly and/ or indirectly, using a mark or designation, knowing such mark or designation is a counterfeit.*”²⁹⁰

In a surprising turn of events from HBO suing others to protect its IP, Franciscan Vineyards of Napa Valley, California, owning trademarks Ravenswood, Ravens and a drawing of three ravens (Ravenswood wine bottles) used by Ravenswood Vinery, opposed in 2015, HBO’s trademark application for ‘three eyed raven’ trademark on grounds of fraudulent use. The three eyed raven has today acquired a popular symbolic relevance of mystery and power to guide people out of trouble. HBO sought the trademark for alcoholic and carbonated beverages, energy drinks, mixers and fruit drinks and had contracted with Ommegang Brewery in Cooperstown, New York to sell Three Eyed Raven Dark Saison Ale. The Brewery had previously introduced four such GoT inspired beers.

IV. GOT MULTIPLIER EFFECT

A. GOT SUBSCRIPTION REVENUES

The makers of the show were without a doubt, financial wizards who realizing the merits of great content of ‘Fire and Ice’ and its success, could project from the income potential that lay in televising the novel

²⁹⁰ The Blast Staff, *HBO Unleashes Legal Dragons Over Bootleg 'Game of Thrones' Merch*, BLAST (May 28, 2018), available at <https://theblast.com/c/game-of-thrones-merchandise-lawsuit>.

and telecasting it globally. The revenues that HBO has earned from GOT are as follows:²⁹¹

SEASONS	EARNINGS/EPISODES (USD)	EARNINGS /SEASONS (USD)
1.	19 M	171,541,501.98
2.	24 M	240,711,462.45
3.	38M	378,498,023.72
4.	40M	396,343,873.52
5.	42M	419,169,960.47
6.	53M	533,300,395.26
7.	65M	453,754,940.71
8.	88M	525,691,699.60
Total	369 M	3,119,011,857.71

The above example illustrates the rich dividends that HBO reaped from backing Martin and investing in this television Serial. Interestingly, it

²⁹¹ *How Much Money Has HBO Made From Game Of Thrones?*, FINANCE MONTHLY (May, 20, 2019), available at <https://www.finance-monthly.com/2019/05/how-much-money-has-hbo-made-from-game-of-thrones/>.

is also observed that HBO earned the most during Season 6 of GoT. HBO's subscriptions charges are about \$10 per month and if there are 50 million subscribers, who subscribe for the duration of a season (two and a half month) the math is plain and evident. As culled from different sources of information, it is believed that the top stars/cast/performers of the show too, have ranked handsomely, on an average USD 1.1 million, besides a percentage of syndication payments when the show is aired over 170 countries and that the network makes approximately \$168 million in form of CD sales and \$132 million in total from merchandise sales. Each set of the complete Series (up to seven seasons) is available in India for INR 5000/- and if 1 million people were to buy that, it would be INR 500 crores, straight into HBO's pockets.

On the other hand, the true reflection of HBO earnings can only be in the context of the kind of colossal investment it has made in GoT.

B. REVENUES FROM SPIRITS AND BEVERAGES

It is certainly noteworthy that different groups of people, industries, jewellery designers, fabricators and even places have benefited from the GoT franchise. An interesting dimension to have emerged with the GoT franchise is its clever brand extension into alcoholic beverages, ales and beers, creating thereby another stream of revenues. Back in 2013, HBO partnered with Ommegang Brewery to release a "Game of Thrones"-inspired beer called Iron Throne Blonde Ale, which was a runaway success. It was followed by others like Black, a stout; Fir and Blood, a red ale; Three Eyed Raven, a dark Saison; Seven Kingdoms, a

hoppy wheat ale and Valar Morghulis and Valar Doaheris, a dubbel and tripple ale, including "Milk of the Poppy," an obscure medicine referenced in "Thrones," as a trademark for alcoholic beverages. Ommegang Brewery website also has a dedicated page on GoT inspired beers and ales like, For The Throne, Mother Of Dragons, Queen Of The Seven Kingdoms, King In The North and Hand of The Queen, Bend the Knee Golden Ale and Winter is Here.

C. GOT AND TOURISM

Departing completely from issues of GoT content *per se*, a much talked about the phenomenon has been the magical tale of economic transformation in Iceland and Croatia and in particular, The Northern Ireland, these are the destinations in whose scenic locales many of the episodes were filmed. The Serial was also filmed on locations in Spain, Morocco and Malta. With GoT pilgrims and fanatics swarming these countries where the fantasies were woven, tourism has received a huge boost and the countries have benefited immensely. GoT has contributed hundreds of millions of dollars to the Northern Ireland economy with a total estimated benefit to be above \$240 million over the past decade, bringing in \$40 million annually to the local economy with 120,000 visitors a year.²⁹² It is believed that from a land of strife and violence, Northern Ireland's economic landscape has altered dramatically to a thriving one, with more than 900 full-time and 5,700 part-time jobs in the

²⁹² Kiko Itasaka, *For Northern Ireland, 'Game of Thrones' is much more than a popular TV show*, CNBC NEWS (May 19, 2019), available at <https://www.nbcnews.com/news/world/northern-ireland-game-thrones-much-more-popular-tv-show-n993771>.

process and bustling tourism.²⁹³ Belfast's filmmaking industry has gone from a sleepy endeavour to a powerhouse and "*Game of Thrones* changed everything," says Richard Williams, chief executive of Northern Ireland Screen Agency (NIS),²⁹⁴ which has invested \$ 18.28 million in the show. Likewise, in Iceland, as many as 250 crew members, actors and extras work on the show, according to Pegasus, a production company contracted by HBO in that country.

D. GOT COSTUMES AND INDIA

However, the bit of information that had us excited the most, was the discovery that India too has played a big role in the production of the tele serial and has benefitted greatly from it. An entrepreneur from Dehradun, Capt. Saurabh Mahajan, an ex-army man supplies the armour for GoT, specifically Jon Snow's legendary Longclaw. In 2005 he set up a 100% export unit called as Lord of the Battle and focused on manufacturing and supplying battle gear, armours, costumes, and weaponries and other medieval artefacts to production companies/film studios, stage productions and re-enactment companies all across the globe. On being queried about the specifics of his contract, Mahajan declared that he is bound by a 20-page non-disclosure agreement about his deal with HBO and could not, therefore, divulge details about the item

²⁹³ Andrew, *How Game of Thrones brought jobs and a PR rebrand to Northern Ireland*, THE BIG ISSUE (Nov. 27, 2016), available at <https://www.bigissue.com/culture/game-thrones-brought-jobs-pr-rebrand-northern-ireland/>.

²⁹⁴ Jeremy, *How Game of Thrones put Northern Ireland on the filmmaking map: 'It is basically night and day'*, INDEPENDENT (Apr. 12, 2019), available at https://www.independent.co.uk/news/long_reads/game-of-thrones-northern-ireland-film-location-set-got-belfast-tv-hbo-a8860561.html.

he manufactures. However, he informed that it was made of a variety of high carbon steel making it malleable and break-resistant. The reason why Mahajan is preferred over his many global competitors is that his products are handcrafted, speaking volumes thus about the craftsmen he employs and who are incidentally better off economically today, because of him and GoT.²⁹⁵

Another Dehradun connection with GoT surfaced in our research, that of an R.S. Windlass & Sons, who are the licensed manufacturers of GoT clothing and garments. Their textile mill in Noida specializes in period clothing and replicas of costumes used in Hollywood movies.²⁹⁶

V. CONCLUSION

The research into Game of Thrones has been a huge revelation; for the more we dug, the more we found that there is a story within a story and every frame of GoT was seeped in intellectual properties, making it a veritable feast for human eyes and mind and certainly for HBO's pockets. Therein lay the worth and merit of true creativity and originality of the content that spawned a thousand deals of commercial value.

From the US to Great Britain to Europe and Asia, GoT has traversed the globe in every sense, has kept the masses thrilled with

²⁹⁵ G Sampath, *This manufacturer crafts the armour for 'Game of Thrones'*, THE HINDU (Mar. 07, 2019), available at <https://www.thehindu.com/entertainment/movies/medieval-battles-made-in-india/article18306503.ece>.

²⁹⁶ Asad Ali, *Windlass*, HINDUSTAN TIMES (Oct. 10, 2015), available at <https://www.hindustantimes.com/brunch/windlass/story-bMNXpg32h1dx0v5oMDLrL.html>.

exciting entertainment and can truly be considered a developmental story, transforming lives, livelihoods, countries and the entertainment industry. The long list of credits at the end of each GoT episode/Series told quite another story of the army of people, beginning with David Benioff and D.B. Weiss, involved in creating them and the kind of complex, collaborative exercise it was. Right from the story/script of GoT to its screenplays, the direction; the grand visuals, cinematography and special effects; the soundtrack and music; the characters and every single element of drama conceptualised and expressed through costumes, backdrops and props; the digital and technological innovations through the length and breadth of the production; the production, distribution and the actors/performers rights; trademarks and merchandise; the confidential marketing and distribution strategies; the development of tourism in the beautiful locales where GoT was shot, all constituted the diverse and varied intellectual properties that went into the making of a single Got episode, not mention a Series and the entire Serial.

The latest drama that HBO has had to contend with is that over 7,50,000 fans disappointed with the GoT finale have petitioned HBO online to remake the episode, which they claim were not based on Martin's novels, were "ruined beyond repair" and were instead written in-house. It is indeed fascinating to note that in the 21st century, in a world driven by content, whether digital or print, visual or audio, or real or virtual; the lure of ancient folklores, dragons and witches, phantoms and ghosts never loses its sheen, never fails to fascinate or to fire up the child and the adult equally and grip the imagination of all regardless. Perhaps

the value and potential of a well-stocked IP stable is best explained when one looks into the Five hundred and Twenty-One (521, one mark has not been renewed) registered 'Harry Potter' marks owned by Warners Bros. and fourteen other pending applications. Nothing sells better than a great story and nothing succeeds like success and we are fortunate to witness every day everywhere the giant strides and March of the media and entertainment industry with their story tellers, especially with the great revival of fairy tales and we are inspired to follow their suit in creativity.