

Topic 11: Indigenous community-based handicraft initiatives: A case study on TCEs

The Nepalese Scarves Case

*The facts in this case study are entirely fictitious. Any resemblance with actual facts is mere coincidence. Some elements are inspired by the WIPO case study **Promoting Traditional Crafts in the 21st Century** (<http://www.wipo.int/ipadvantage/en/details.jsp?id=2892>).*

FACTS

1. Based in Kathmandu, the capital of Nepal, the Himalayan Handicraft Association (HHA) was founded in 2010 in order to promote and market handicraft products made by women members of a Nepalese indigenous community.
2. Known to be strong and durable, hemp has been used for manufacturing clothes in Nepal since time immemorial. Indigenous communities living in the hillsides of the country have relied on the bark of hemp because of the unique qualities of its fibers which include strength, smoothness, and lightness. Through traditional, fully natural treatments of these fibers, Nepalese craftswomen have been able to achieve a luster similar to silk that can be spun into wool and woven on a handloom in order to produce material for creating scarves.
3. HHA has been selling the scarves at the local market for four years, with respectable success.
4. Recently, wanting to distinguish their products in a competitive market, HHA followed the advice of an intellectual property counsel, and applied with the Nepalese Intellectual Property Office for the trademark registration of the word "HEMP" for their hemp scarves. This registration was refused by the Office. Do you know why?
5. HHA finally opted for POPPY, which is the name of a flower that grows near the hemp fields. This has the advantage of distinguishing their products from those of other manufacturers and traders. Customers now recognize the POPPY trademark and may be attracted to HHA scarves bearing the POPPY trademark.
6. A few months ago, in order to expand their market, HHA began selling the scarves on the internet. It created a stylish and customer-friendly website, enhancing their reputation internationally. But this increased exposure was a double-edged sword...

Group 1

- a) While browsing the Internet, HHA discovers a Nepalese website that sells mass-produced scarves made of synthetic polyester fibers that look like hemp silk bearing the trademark “HOPPY” on the tag.

HHA is disheartened because that competitor is free-riding on the goodwill of the POPPY trademark and misleading customers into buying his fake products instead.

- b) Additionally, HHA finds out that a fashion designer draws inspiration from the sacred symbols represented on the traditional scarves and creates dresses with similar patterns, which she sells under her own label. She does not copy directly or exactly any of the patterns, but her dresses definitely evoke a certain Nepalese style.

HHA and the craftswomen it represents are very concerned about the situation. They want to stop others from doing those acts and realize that they need a firm understanding of key intellectual property principles and tools.

HHA seeks your advice to safeguard their intellectual property rights and interests. Based on what you learned during this workshop, how could you assist them?

Group 2

- a) HHA tours the region to identify new markets. It notices that a village in a neighboring valley is producing scarves looking very similar to those that its craftswomen have been doing for centuries. At first, the association is furious. How could a neighboring village produce knock-offs?

HHA decides to speak with the responsible craftspeople in the village, asking them to stop imitating their scarves. After a rather pleasant discussion, it realizes that it is actually also the centuries-old tradition of the people of that village to make scarves with similar designs. From a potential threat, HHA now sees a benefit in partnering with the village's craftspeople.

What kind of IP tools could they commonly develop and use? What are the advantages and drawbacks of those options? Could you explain why you would choose one over the other?

- b) A sports gear entrepreneur once visits the HHA workshop and takes many notes on the techniques and skills that the women employ to weave their scarves. A few months later, HHA discovers that the entrepreneur uses the traditional weaving technique not to make scarves or any other clothing item, but to make parachute straps. The technique is known to make very resistant material which is perfect for the parachute's strict safety standards.

HHA and the craftswomen it represents are very concerned about the situation. They want to stop the entrepreneur from using their traditional technique and realize that they need a firm understanding of key intellectual property principles and tools.

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Group 3

- a) A small producer in Bhutan, a neighboring country, makes similar scarves using the same raw material, hemp. That producer knows that Nepalese scarves have acquired quite a reputation lately, and markets its scarves as “Made in Nepal” at the local market in Kathmandu. Is he allowed to do so, and why? What IP tool could HHA use to avoid this from happening? What are the benefits of using such a tool?

- b) Additionally, HHA finds out that a fashion designer draws inspiration from the sacred symbols represented on the traditional scarves and creates dresses with similar patterns, which she sells under her own label. She does not copy directly or exactly any of the patterns, but her dresses definitely evoke a certain Nepalese style.

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Group 4

- a) A sports gear entrepreneur once visits the HHA workshop and takes many notes on the techniques and skills that the women employ to weave their scarves. A few months later, HHA discovers that the entrepreneur uses the traditional weaving technique not to make scarves or any other clothing item, but to make parachute straps. The technique is known to make very resistant material which is perfect for the parachute's strict safety standards.

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- b) A very successful multinational cosmetics company sells its natural beauty products in packaging that reproduces some designs that are on the traditional scarves made by HHA, without its permission. HHA wants to stop this use, but here, as it is on its way to discuss with the multinational representative, it sees a partnership opportunity. Do you know what idea bloomed? How could this be done?
