

Traits Of Trademark Law In India

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Abstract:

Trademark is one of the types of intellectual property rights. Trademark is any term, phrase, symbol, or design, or a combination of phrases, words, symbols, or designs, that identifies and separates the products of one producer or seller from those of others who might also offer those particular products. The primary objective is to identify the origin of the products, not to describe their characteristics. The distinctive identification that sets apart your business, product, or service from the competitors is known as a trademark. A registered trademark is an intangible asset and piece of intellectual property of your business. It protects the investment made to gaining consumer's loyalty and trust.

A trademark registration gives you the legal ability to sue those who try to copy your trademark and prohibits them from using a mark that is likely to cause confusion to the one you have registered. The trademark concept was utilized in nineteenth-century by courts to effectively define trademarks as property rights. To understand the reason for trademarks as property rights, this intellectual understanding is a must. If property emerges from productive, value-creating work, this explains why ownership of a mark is essential to its initial legal recognition and continuous protection. This value is known as "good will," and it is frequently described as a property right as a whole. Therefore, trademark law protects the exclusive use of a mark as a representation of the exclusive use and enjoyment of the underlying property right in the goodwill in the business.

Keywords: Intellectual property rights, Trademark, Good will, Infringement, Passing off, TRIPS

Introduction

A type of intellectual property rights is trademarks. Individuals are able to keep ownership rights to their original works of art and creative work according to intellectual property laws. Trademarks, Copyright Acts, Patent Acts, and Designs Acts are types of intellectual property. A brand is always a trademark; a trademark is not always a brand. Sometimes, the difference between a trademark and a brand is unclear. The trademark, which has a larger meaning than a brand name and can be more than just a symbol or logo, serves as a distinguishing sign or signal in a company organization. People are more persuaded by a trademark that stands out and conveys the product's high quality. A trademark might be a slogan, a logo, or a pictorial mark.

The Trade Marks Act of 1999 in India covers a variety of trademark and related matters, including registration, protection, and relief in case of infringement. . India is a signatory of the Paris convention and the TRIPS agreement, hence the Act complies with its guiding principles.

- **History of Trademark Law in India:**

In India, there was no law governing trademarks prior to 1940. Numerous issues involving trademark infringement, registered and unregistered, emerged and were addressed in accordance with Section 54 of the Specific Relief Act of 1877, while registration was determined in accordance with the Indian Registration Act of 1908.

The Trademark and Merchandise Act, 1958, took the role of the Trademark Act. It offers improved trademark protection and prohibits unauthorized or dishonest use of marks on goods. The Act allows for trademark registration, giving the owner of the mark a legal right to its exclusive use.

In order to comply with the TRIPS (Trade-Related Aspects of Intellectual Property Rights) regulation recommended by the World Trade Organization, the Indian government replaced this prior Act with the Trademark Act, 1999. The Trademark Act's objectives are to protect trademark users, set guidelines for property usage, and offer legal remedy for the enforcement of trademark rights.

According to the Trademark Act of 1999, police have the authority to make an arrest in cases of trademark infringement. The term "infringement," which is frequently used, has a comprehensive definition in the Act. The Trademark Act outlines the offences' penalties and punishments. Additionally, it lengthens the period needed for both regular and non-traditional trademark registrations.

- **Significance of TM, SM, R:**

The public at large is often curious in these symbols because they want to know why the majority of brands or artists utilise them in their logos, names or devices, or creative works, respectively.

TM Symbol: A trademark is a distinctive symbol used to distinguish a company that sells the goods and services of one person from those of another. A proprietor must submit a trademark application to the Registrar of Trademarks in order to receive a trademark. After the applicant has submitted an application for trademark registration with the trademark registrar, the sign TM may be used with the trademark. The TM symbol serves the dual purposes of notifying individuals that a corporate entity has submitted an application for trademark registration and informing trademark infringers and counterfeiters.

SM Symbol: Previously only products had trademarks. The trademark for services is now designated with a distinct type of trademark symbol, "SM," thanks to the addition of classes 35 to 45 that are related to the service category. For trademark applications submitted under classes 1-34, it is customary to use the TM symbol, and for applications filed under classes 35–45, applicants typically utilise and prefer the SM symbol. However, it is also allowed to use the TM sign for all classes.

R Symbol: Only once a trademark is registered is it authorised to use the ® symbol next to it. The brand can be legally protected from infringement under trademark rules if it bears the R sign, indicating that it has been registered. It is forbidden to use the R symbol prior to trademark registration.

- **Different Types of Marks:**

1. **Service Mark:**

A name or designation that has been legally registered and is used in the same way as a trademark to set one company's services apart from those of its competitors. It symbolizes as 'SM'.

2. **Collective Mark:**

Employees, a collective group, members of a collaborative association, or members of another group or organisation use a collective mark to indicate the source of goods or services. A collective mark denotes a mark that is applied to a collection of companies with similar qualities as well as to goods and services. For the purpose of dividing the various goods or services, the company or group uses this mark to represent more than one individual who is functioning in a group organisation or legal entity. Eg: CA used by the Institute of Chartered Accountants

3. **Certification Mark:**

Standards are defined through certification marks. They assure customers that the products meet to set requirements. Eg: ISI mark and FSSAI mark.

4. **Word Mark:** They could be letters, words, or numbers.

5. **Logos:** They are made up of an image or a logo.

E.g :McDonlads, SWOOSH sign of Nike

6. **Well known Mark:** A mark becomes well-known when it is quickly recognised by a significant portion of the populace. E.g- Rolex, Cartier, and Ferrari.

7. Sound Mark: A sound trademark, sometimes known as a sound logo or audio logo, is a trademark that uses sound to serve the purpose of clearly identifying the commercial source of goods or services.

8. Smell Mark: Since smell is one of the strongest senses associated with memory, companies are becoming more interested in combining pleasant scents with their products. The ability to visually represent the product's aroma and the ability to demonstrate that it is different from the product itself are requirements for registration of a smell mark. For instance, a sample of the scent in a bottle would expire with time and could not be maintained on a trademark registration.

9. Shape Mark: Shapes are among the visual traits that aid in identifying a product. A product's shape must be distinctive and not serve as a functional component of the product in order for it to be registered as a trademark. For instance, the Coca-Cola bottle obtained a trademark to safeguard its uniqueness and distinctive shape.

- **Trademark Registration:** A trademark registration gives you the legal ability to sue those who try to steal your trademark and forbids them from using a mark that is deceptively similar to the one you have registered. The registrar of trademarks is responsible for trademark registration. There are a few steps to take when you want to register a trademark.

1. **Selecting a trademark:** Do not forget to select a special and distinctive mark to function as your company's logo. The other crucial aspect is figuring out which class you fall into. There are 45 categories of products and services under which a trademark can now be registered. Classes 1-34 cover products, whereas 35-45 cover services.

2. **Search:** Once you have decided on a mark, it is beneficial to conduct a search to see if it is similar to any existing registered marks.

3. **Submitting an application:** A single application may be submitted for a number of classes, series, or collective trademarks. You must complete form TM-A for this. You can register a trademark for more than one class using this form. If you select "manual filing," you will have to visit to the Registrar Office of Trade Marks, which is located in major Indian cities including Delhi, Mumbai, Kolkata, Ahmedabad, and Chennai, and manually submit your application for registration. Then you must wait for the acceptance of the acknowledgment for at least 15 to 20 days. However, if you use an E-filing system, you will receive a receipt of recognition right away on the official website. You can use your TradeMark (TM) symbol next to your brand name once you've received your recognition.

4. **Examination:** Once the application has been submitted, the Registrar of Trademarks will review it to ensure that all requirements have been met and that the brand name complies with the law. Additionally, there should not be any similarity to or identity with any already registered or pending trademarks. This is why we thought you must choose a unique brand name.

5. **Publication:** Your brand name will be published in the Indian trademark journal by the Registrar of Trademarks following the examination procedure. It goes without saying that this is the most crucial stage of trademark registration, and there shouldn't be any objection within three months, or 90 days (or 120 days in some situations), from the date of publication. If there is no opposition, the Trademark Registrar will proceed through with issuing the Trademark Registration Certificate.

6. **Opposition:** The Registrar of Trademarks will provide you with a copy of the notice of any opposition if it is made by a third party within three months after the trademark's publication in the trademarks journal. Within a certain amount of time, you must submit a counterstatement in

response to the opposition notice. You will be given two months to submit the counter statement or the trademark application will be considered discontinued and rejected. This stage will not apply to you, however, if there is no objection within 3 months, and your brand name continues moving closer to being accepted for the issuing of a Trademark Registration Certificate.

7. **Hearing on opposition to the trademark:** If there is no trademark opposition, you will not be subject to this stage. However, if a third party opposes your trademark registration and you reply with a counter-statement within two months, the Registrar of Trademarks will send a copy of your response to the opposing party. you and the third party must provide evidence to back up your claims. After you and the third party submit your evidence, the Registrar will give you a chance to be heard. The Registrar will issue an order of acceptance or denial of the trademark application following hearing from both parties and consideration of the available evidence. Your trademark application will be processed to issue registration if the Registrar of Trademarks accepts it.
8. **The issuance of the trademark registration certificate:** If no opposition is raised during the allotted 90 days, the Registrar will accept your trademark application, or your trademark application will be accepted after a trademark opposition hearing. And the Registrar issues the Registration Certificate with the Trademark Registry seal. This will formally certify your trademark's registration and further protection. From the application filing date onwards, the registration will be valid for ten years. You can renew the trademark again once this has expired. Renewal is possible forever.ⁱⁱⁱ

- **Difference between Passing off and Infringement of Trademark:**

The Trade Marks Act provides simultaneously criminal and civil remedies for the passing off and trademark infringement. Trademark infringement is a violation of the registered trademark owner's exclusive rights to use the mark. A person who uses a mark that is identical, similar, or deceptively similar to a registered trademark without the registered proprietor's consent is said to be infringement of the trademark. It is important to remember that Indian trademark law, which is based on common law principles, protects a prior user's vested rights against a registered proprietor. Common law tort known as passing off is used to protect unregistered trademark rights. Passing off basically refers to the misappropriation of party A's identity in its trademark by party B, who then falsely promotes themselves as party A's partners or associates in order to harm party A's reputation.^{iv}

- **Term of Trademark:**

A trademark registration is valid for ten years, after which it may be renewed for an additional ten years by paying the required renewal fees. Upon payment of the fee, a request to renew a trademark may be made up to one year prior to its expiration or six months after it has passed. Within a year of the mark's validity term's expiration date, a request for its restoration may be made with the payment of additional fees.^v

Conclusion

An instantly identifiable symbol, phrase, or term that designates a particular product is known as a trademark. It recognizes the originating company's ownership of the brand and distinguishes a good or service legally from all others of its kind. Trademarks are indicated by the ® and TM symbols, and it may or may not be registered. Despite the fact that trademarks never expire, in order to benefit from the corresponding protections, the owner must regularly utilize it. Trademarks are used to recognize and protect the words and design elements that identify the source, owner, or developer of a product or service. For instance, it is unlawful

for a soft drink company to have a name that sounds like Coke or a mark that resembles Coca-Cola.

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