

E-ISSN: 2583-9667

Indexed Journal

Peer Reviewed Journal

<https://multiresearchjournal.theviews.in>



Received: 21-08-2023

Accepted: 22-09-2023

INTERNATIONAL JOURNAL OF ADVANCE RESEARCH IN MULTIDISCIPLINARY

Volume 1; Issue 2; 2023; Page No. 544-548

## Trade mark law in India

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DOI: <https://doi.org/10.5281/zenodo.14947695>

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### Abstract

The importance of trademarks has grown in the era of globalization and the internet as companies strive to broaden their customer base and safeguard their brand identities. Trademarks have grown in importance as a means for companies to distinguish themselves and establish a reputation in the market, especially with the proliferation of online shopping and social media. Businesses in India rely heavily on trademarks to safeguard their creative goods and services due to the increasing value of intellectual property in the country's economy. In this piece, we'll go over some projections and trends for the next few years regarding trademarks in India, as well as the future of trademark expansion in the nation. The brand label is one of the framework benefits. Authorized creativity rights allow persons to retain ownership of their original goods and creative activity. Because classified invention became known via the capacity of people labor, it is limited by different enrolling and despotism fees. There are several types of intellectual property such as Trademarks, Copyright Act, Patent Act, and Designs Act. A brand is a label, phrase, or symbol that distinguishes an item from those of other firms. The system's promotion of labor and goods is simpler with a name, since the item's identification with the label is assured and easy. The owner is entitled to restrict another participant from using his or her trademark or symbol.

**Keywords:** Intellectual property rights, trademark registration, Brand protection, digital trademark

### Introduction

One way for businesses to set themselves apart from rivals is via the use of trademarks, which are visual symbols. If the context doesn't explicitly say otherwise, any mention of products will also imply services. Today, trademarks are the hub of international trade. In today's market-based economy, they play a crucial role in differentiating products and fostering non-price competition. Brands may be one of a company's most valuable assets because of the positive associations consumers have with the products sold under them in terms of performance, durability, pricing, after-sale service, and so on. Brand names are referred to as trademarks in the legal lexicon. One brand name may be used to sell several items, whether they are all in the same category or not. More and more, indications that cannot be seen have been vying for trademark status. This class includes olfactory and auditory cues, which are not officially accepted in India as yet. A number of film studios and television networks use distinctive theme songs to promote their own films and television shows. The practice of using a mark to indicate the place of production is quite

old. Etched signatures of artisans have been discovered on Iranian products imported from India some three thousand years ago! However, trademarks really came into their own during the industrial revolution, when mass manufacturing and global distribution of products became practicable and advertising via print and visual media became essential. A contemporary trademark, first used in the cutlery trade in eighteenth-century England, is a distinguishing indication that indicates the origin or source of a product and is associated with high quality.

Unilever provided the true push to the trademark. It sold soap under the name Sunlight, with the idea being that using it would make garments seem brighter, rather than the product itself. A sign that might differentiate one's goods from comparable items created by others has been marked on commodities due to the similarity of the products in the same market. As the global economy continues to integrate at a fast pace, trademarks take on a more intricate function in market-driven economies. A small number of businesses control an outsized portion of the market due to advertising and other tactics that allow them to corner the market.

Without proper oversight, a developing nation risks being inundated with foreign brands without receiving the necessary technology or assistance in strengthening its own capabilities. True, indigenous companies face unfair and harsh competition and must work harder to stand out. To facilitate the systematic and consistent registration of trademarks in India, the then-British Government of India enacted the Trade Marks Act in 1940; the act went into effect on June 1, 1942. It was succeeded on November 25, 1959, by the Trade and Merchandise Marks Act, 1958. In order to bring Indian law in line with TRIPS, which became mandatory after India's 1995 admission to the WTO as an initial member, revisions to trademark law were essential. Therefore, the old Act was abolished by the new Trade Mark Act, 1999.

### Literature Review

Desai (2011) <sup>[3]</sup> An integral part of today's economics, and brand management is fundamental to both theory and practice in the corporate world. Many well-known brands provide powerful and practical business tools. Some examples include: Coca-Cola, Nike, Google, Disney, Apple, Microsoft, BMW, Marlboro, IBM, Kellogg's, Louis-Vuitton, Virgin, and Nike. Business organizations understand the significance of such power and its worth. Brands signify much more than source and quality, which goes against the legal definition of trademarks. To be sure, they aren't the primary goals most companies have for their brands. When people purchase a brand, they aren't just buying a product; they are also purchasing an emotional, identity- and self-worth-related message from the company. Desai, Deven. (2011) <sup>[3]</sup>. Trademarks, which are basic symbols for identifying things, have given way to brands, which are more complex symbols that inform corporate strategy. Brands, brand language, and branding tactics are also being used by networked and empowered customers to make purchasing choices, voice preferences on how firms operate, and demand changes in corporate policies. The future of trade lies on these shifts. However, trademark legislation has also failed to adapt. According to this article, the full realization of brands as information resources is hindered by trademark law. The current status of trademark law is too narrow and muddled to adequately address the myriads of concerns raised by today's corporate landscape. A fundamental misconception is at the root of this failure: trademark law still does not realize that it is responsible for managing brands, not trademarks.

This chapter delves deeply into the Indian trademark landscape, covering everything from the registration procedure to enforcement measures and management tactics. After establishing what a trademark is and why it's important for branding and legal protection, this chapter explores the various trademark categories and the laws that regulate them, such as the Trademarks Act, 1999, and international agreements. Discussions on the rights granted by registration and enforcement procedures illuminate infringement, opposition actions, and noteworthy case studies; a detailed guide covers the trademark registration process. This chapter delves into worldwide brand protection tactics and tackles trademark protection issues including piracy and counterfeiting.

Krasnikov (2022) <sup>[2]</sup> Protecting intangible brand assets is a

key function of trademarks. But the literature has paid less consideration to how trademark rights affect brand assets. Accordingly, the writers take appropriability—a company's capacity to reap the benefits of invention and creativity—into account when they analyse the effects of trademark rights on brand assets. They use an experimental setting resembling nature to guarantee causation, with the trademark strength exogenously varied according to U.S. Supreme Court rulings. The authors demonstrate, using a database of US trademarks and a difference-in-difference estimation method, that both total As trademark protections become more robust, the number of applications to register trademarks and other types of trademarks increases, while the number of applications decreases.

Agostini (2013) <sup>[1]</sup> Brands enable customers to differentiate between companies and products, which in turn allows them to make more informed purchasing decisions. Legally known as a trademark, a brand is a multi-faceted sign that customers associate with a set of values and principles (American Marketing Association, 2010). A company's brand is crucial to its success and longevity; in fact, the character of the brand may be more essential than the product's technical specifications in some situations (Petty, 2010) <sup>[10]</sup>. Due to these factors, a growing number of marketing managers are investing heavily in building and overseeing product and corporate brands (Madden *et al.*, 2006) <sup>[11]</sup>. As a result, there is a growing need for them to demonstrate the financial benefits of this investment (Srivastava *et al.*, 1999) <sup>[12]</sup>.

### Trade Mark Law in India

The common law tradition, which developed from British common law, is the ancestor of India's trademark law. Separation of powers between England's common law and chancery courts occurred in the early 1800s. The chancery courts saw the trademark infringement lawsuits as deceitful activities and granted injunctions against the infringers. Specifically, in order for a plaintiff to have the right to an injunction, they had to prove that there was fraudulent intent.

Modern passing off activities developed from deceitful acts around 1838. A person who attaches a trademark to his products obtains a claim on the mark. The chancery courts in England further developed the notions of trademarks a few years later, judging them to be property. The courts therefore treated trademark ownership and use similarly to other types of property, providing protection for both. In 1875, When the first trademark laws were enacted, they were United Kingdom Trademarks Registration Act, which officially recognised the practice of registering trademarks in British law. The Act stipulated that in order to seek infringement remedy, one must first acquire a registration.

Part 54 of India's Specific Relief Act from 1877 laid up the groundwork for an infringement suit. Assuming he possessed a property interest in the trademark, It is possible for the mark's owner to sue for trademark infringement under this section. According to Section 54, a trademark is considered property just like any other kind of asset.

The first piece of legislation to establish registration processes and provide legislative status to trademarks was the Trademarks Act of 1940. The laws of 1940 were superseded in 1958, by way of the Trade and Merchandise

Act, which did not take effect until after twenty years.

The Indian government promulgated the Trade Marks Act 1999 on September 15, 2003, superseding the Trade and Merchandise Marks Act of 1958. So as to bring India's trademark laws up to speed with global trends and meet its commitments under the TRIPS agreement, the country's new trademark legislation went into effect.

### **Intellectual Property Rights - A Boon to Indian Companies**

The Internet, healthcare, almost every field of research and technology, literature, and the arts are just a few of the ever-expanding domains where intellectual property is crucial. Many of these fields are still in their infancy, so it takes a lot of fresh research to figure out what function intellectual property plays in them. Education and understanding in this area are crucial for promoting thoughtful debate on intellectual propriety.

Land, manpower, and money are no longer sufficient for a country to prosper in today's world. The new engine that is propelling the global economy forward is innovation and creativity. A country's prosperity and the rate of development of its captive intellectual capital are both affected by the policies it enacts. Such a strategy can't be built without a strong foundation for IP. One of the most effective ways to wealth creation in knowledge-based, innovation-driven economies. It encourages individuals and businesses to create and innovate, creates an environment that is conducive to the development of intellectual assets, and provides stability for both domestic and foreign investors.

As a core member of the World Trade Organization (WTO), India is bound by the Trade Related Intellectual Property Rights (TRIPS) Agreement, which has extensive ramifications for Indian trade and business. Sections of the Trademarks, Copyrights, and Designs Registration Acts, as well as other statutes pertaining to intellectual property rights (IPR) in India have been recently passed, and all of them are completely consistent with the TRIPS agreement.

As works of expression, computer programs may have copyright protection. Nonetheless, copyright protection isn't enough for certain industries, and patent protection for specific software is being considered. Software code phrases are protected by copyright, but qualifying factors including software sequence, structure, organisation, and functional parts might be protected by patent. Conversely, a trade mark is a brand name that serves to market, establish an image for, identify the product's origin, and ensure its quality.

Protecting intellectual property rights (IPR) raises the important topic of how Indian businesses may stay out of legal hot water when it comes to trademark and patent infringement. Choosing a decent brand name requires great care, ideally one that is not vulnerable to future legal action. Successful brand names have a few key characteristics: they are memorable, unique, brief, simple to spell and pronounce, and visually and aurally pleasing.

Although registration with the relevant Trademark Office is not required when using a brand name, it is highly recommended if there is ever a disagreement about the brand. The only document needed to demonstrate in the event that a dispute arises about the brand. The. Your registered brand name is worth as much as any tangible item

you own. You have the option to transfer it to another party in exchange for payment, or you may even authorize people to use the brand.

Intellectual property rights in India are being beefed up all the time. Rights pertaining to There is a robust system of laws, regulations, and courts in place to safeguard intellectual property including patents, trademarks, copyright, and industrial designs. Even though they weren't officially registered in India, famous worldwide trade marks were still granted protection around the nation. It is now possible to register settle marks under the new Trademark Act. This means that service marks that have already been recognized by courts may now be protected by statute.

Court rulings have been effective in reducing software piracy for computer software businesses. Databases on computers have been safeguarded. The courts have provided considerable protection for trade secrets under the doctrine of violation of confidence. In India, it is widely recognized that individuals have the right to privacy that is not guaranteed in any industrialized nation.

### **Requirements of a good trade mark**

1. If it is a word mark, it needs to be simple to say and keep in mind.
2. If the mark is a gadget, it should be brief enough to be described using just one word.
3. It ought to be simple to read and spell.
4. Avoid being too specific.
5. Keep it brief.
6. Visual and auditory appeal are equally important.
7. It must not be a trademark that is not allowed for registration.
8. It needs to fulfil the criteria for registration.

### **Distinct marks are registrable**

It is not possible to register all marks. A mark has to follow certain legal guidelines for the purpose of qualifying for enrollment. For a mark to be eligible for registration, it must be "distinctive" from others. An essential fundamental recognized in the laws of the majority of nations is the need for things to be unique, distinguishable, or capable of being distinguished. It is not possible to register a way to characterize the attributes of a product. The exception is words that have become unique through extended and consistent usage and directly relate to the nature or quality of things. A number of court rulings have elaborated on various elements that govern the registrability of trademarks.

### **Refusal of trade mark registration**

In the following cases, trademark registration may be denied. If the trademarks don't have anything unique about them, such they can't distinguish products from services, then...

If they are limited to marks or indications which can be utilized to denote the character, extent, amount, purpose, worth, country of origin, date of creation or service, or other characteristics of the product or service; provided that they are confined to signs or symbols that have become standard in the present lexicon and lawful cultural practices of the industry. The opposite is true if the mark has already become famous or recognizable via use prior to the

application date; in such cases, registration will not be refused.

**It is not possible to register a trademark if**

- It might mislead or confuse the general public; \*j\* it includes or contains anything that could offend the any segment of the Indian population's religious sensibilities.
- Contains or includes content that is scandalous or indecent.
- if it violates the Act Concerning the Protection of Trademarks and Logos from Unauthorized Use.
- if its appearance is confusingly quite similar to another trademark, and the goods and services that fall within its umbrella both marks are comparable.
- Due to its resemblance to a previous trademark and the similarity or identity of the goods or services it covers, the general public is likely to be confused.
- if the form of the product is intrinsic to its nature, required for the achievement of a technological goal, or contributes significantly to the product's worth.

**The economics of a trade mark: search costs theory**

We have already shown that the "search costs theory," which is grounded in an economic costs/benefit analysis and sees trademarks as helpful tools for efficient markets, is the best basis for justifying exclusive trademark rights. The field of welfare economics, which examines the theoretical foundations of potential economic policies put into place by governmental bodies, includes this line of reasoning. Utilitarianism, the theoretical foundation of welfare economics, holds that the effects of social laws, regulations, and institutions should be evaluated only in terms of their consequences, with the satisfaction or misery of people being the only significant outcomes. The free market also leads to harmony between individual and collective interests because of "the theorem of the invisible hand," a guiding principle of the particular economic variant of utilitarianism. This theorem states that in a free-market economy, people will achieve the conditions of efficient output, efficient consumption, and efficient balance of production and consumption when the forces of supply and demand bring about a set of equilibrium prices. This means that businesses will still be able to make a fair profit while prices are controlled at an ideal level.

**Moreover, the free competition will produce high efficiency and low costs.**

Scholars in the fields of law and economics use these economic ideas to explain why trademark owners should have exclusive rights to protect the goods and services that their marks represent. is That being said, owners should only be awarded trademark rights if the advantages outweigh the possible costs. According to a seminal essay by Landes and Posner, the search costs hypothesis is the best explanation for why trademark owners should have exclusive rights to safeguard the goods and services their mark offers. So, to see whether the exclusive rights that trademark owners use to safeguard the tasks their mark performs are adequately justified, we will attempt to examine the trademark's economic aspects via the lens of the search costs hypothesis. Trademark rights, say search

cost theorists, could be seen as useful tools for easing market communication by informing buyers about product quality features and providing incentives for businesses to maintain consistent product quality. Thus, we will begin by elucidating the meaning of the term "trademark" and how it speaks to the general public.

**Trade mark as a source of emotional and social satisfaction**

Schechter said that "the value of the modern trademark lies in its selling power" and that "this selling power depends for its psychological hold upon the public, not merely upon the merit of the goods upon which it is used, but equally upon its own uniqueness and singularity." Taking Schechter at his word, this is the first evidence that a contemporary trademark may serve as a tool for communication, investment, or advertising—depending on the goals of the trademark owner.

As we have seen in earlier chapters, a trademark allows the owner to establish a reputation for their goods in the minds of customers. For a trademark to serve its contemporary purpose, consumers' cognitive and emotional experiences must establish the "uniqueness and singularity" of the mark in order for it to identify a brand. The strength of a trademark in the marketplace increases when customers mentally link it with a particular brand. This implies that people now pay for more than just the goods itself when they buy a brand; they also pay for the values and reputation associated with the brand. Firms are able to sell their goods at greater prices and earn bigger profits when they establish a positive brand image as an extra purchase motive of trademark. So, it's clear that businesses may profit financially from this.

Nevertheless, the question of whether customers might gain financially by buying trademarked products—those that represent a brand image for which they are prepared to pay a premium—was raised. Companies' use of advertising and other forms of marketing to educate customers about the distinct reputation of their trademark was thought to have persuasive potential. To rephrase, companies' efforts to educate customers about the value of their brand via advertising and other forms of marketing fail to shed light on the tangible qualities of items, which in turn hinders their ability to make informed purchasing decisions. On the other side, it sells consumers a false sense of security about their own emotional and social requirements. total Consequently, consumers do not directly benefit from enterprises' use of persuasive advertising and other marketing strategies to generate new purchase impulses.

**Conclusion**

This study's introduction lays down the problem's origins, as well as the study's premise, purpose, and significance. Chapter I opens with a discussion of the importance of research, the methods used to conduct the research, the scope of the study, and the limits encountered by the researcher.

Through an analysis of several IP conceptions, the researcher has addressed IP jurisprudence and IP concept development. A quick overview of the many kinds of properties and the ways the word "property" has been broadened to include "intellectual property" is provided in

it. Trade-Related Legal Protections for Creative Works (TRIPS) is an important component In the WTO's negotiating text and one of several institutional frameworks that have evolved throughout time. Intellectual property laws have their origins in the development of treaties, conventions, and agreements, which the scholar elucidated. The researcher has provided an outline of current intellectual properties and explored numerous intellectual properties via the prism related to the TRIPS Agreement. Evolution and Evaluation of Indian Trademark Law. The third chapter is on trademark law restrictions from an Indian viewpoint. During the British rule, India had a hard time proving that trademark protection was necessary and that a registration body needed to be established. The first trademark protection laws were passed throughout the last ten years of British rule over India, after much discussion and work. In the past few decades, trademark law has seen a radical transformation. This section follows the development of the Trademark Act and the characteristics that were intended to make trademark holders' rights recognised, protected, and enforced. Finally, in an effort to offer a comprehensive picture of the current trademark laws, the researcher has sought to compare and contrast according to the Trademarks Act of 1958 and the Trademark Act, 1999.

focusses on trademark reputation across borders. A unique and expansive idea for trademark protection, the phrase "Transborder reputation" is attempted to be examined in Chapter IV of the study effort. The concept of transborder reputation law has evolved and been conceptualized via a number of judicial rulings. As the researcher worked on this chapter, they saw that the court has acknowledged the business establishment's intellectual efforts and substantial financial commitment, and they have promoted honest trading practices. This study compares and contrasts "Goodwill" with "Reputation" in great detail. It has been noted that the court has shown its activity in case decisions by placing significant emphasis on intellectual endeavors. The researcher has covered a range of foreign court approaches to transborder reputation concerns, as well as several international case laws. The researcher has gone on to detail significant case laws decided by Indian courts and other regulations pertaining to transborder repute in the Indian environment. One aspect of passing off is the reputation that travels across borders. Even when their goods aren't sold in India, foreign owners with a strong reputation outside of the country might prevent unauthorized users from utilizing their well-known mark in the country. In order to prudently defend foreign marks, the court develops such theory.

Court decisions interpreting the concept of transborder reputation have drawn clear distinctions between "usage of mark," "reputation abroad," and "reputation travelled to India," according to the study. According to the researcher, a systematic framework is necessary to aid the court in maintaining consistency. The researcher makes an effort to provide ideas and suggestions for scenarios involving transborder reputation difficulties.

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