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## TRADEMARK REGISTRATION IN INDIA: LAW, PROCEDURE, AND JUDICIAL TRENDS

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### ABSTRACT

A trademark constitutes the foundation of a brand identity, distinguishing one enterprise's goods or services from those of its competitors. In India, trademark law has undergone substantial development, evolving from its colonial origins into a modern legal framework consonant with international obligations. This article examines the Indian law governing trademark registration under the Trade Marks Act, 1999, analysing the categories of registrable marks, the registration procedure, the grounds for refusal, and the rights conferred upon registration. It further discusses significant judicial decisions that illuminate the courts' interpretive approach to deceptive similarity, non-traditional marks, and emerging challenges in the digital environment. While the statutory framework is broadly robust, the article identifies persistent examination delays and the continuing elaboration of the "well-known" mark doctrine as areas warranting legislative and administrative attention.

### 1. INTRODUCTION

In the business world, a trademark serves three main purposes. First, it shows the origin of products or services. Second, it informs you about the quality you can expect. Third, it represents the good reputation that a business owner has worked hard to build. For any of these to be useful, the mark must be clear and legally protected. When a trademark is registered, the right to use it becomes an official, nationwide legal right.

Trademark law in India began with the Trade Marks Act of 1940. It was then replaced in 1958 and again by the current Trade Marks Act of 1999, which officially began on September 15, 2003. The 1999 Act aligned Indian law with the TRIPS Agreement, allowing for more types of marks (such as service marks) and making it easier to enforce them. The Trade Marks Rules, which were last updated in 2017, made all the paperwork and process steps much more modern, introducing online filing and simplifying fees and forms.<sup>(123)</sup>

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<sup>1</sup> Trade Marks Act, No. 47 of 1999 (India) [hereinafter the Act].

<sup>2</sup> Trade Marks Rules, 2017, G.S.R. 1049(E) (India).

<sup>3</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

This article proceeds as follows. Section 2 sets out the conceptual and statutory foundations. Section 3 examines the grounds for registration and refusal. Section 4 describes the registration procedure in detail. Section 5 analyses the rights conferred by registration and the available remedies. Section 6 surveys the landmark judicial decisions that have shaped the law. Section 7 addresses contemporary issues, and Section 8 concludes.

## **2. CONCEPTUAL AND STATUTORY FOUNDATIONS**

### **2.1 WHAT IS A TRADEMARK**

Section 2(1)(zb) of the Act explains that a trademark is essentially any visible sign that helps distinguish one person's goods or services from another's. When we say “mark,” we refer to a lot of different things: words, names, signatures, labels, numbers, shapes, packaging, colors, or any mix of these. This is a broad definition, and that is intentional; the law aims to protect anything that acts as an identifier, regardless of its appearance. Therefore, India allows the registration of all kinds of less common marks: shapes, sounds, or even colors, as long as they are unique enough.<sup>(45)</sup>

### **2.2 THE TRIPS FRAMEWORK**

Under TRIPS (specifically Articles 15–21), India needs to let any unique sign be registered, ensure that marks receive long-lasting protection (at least seven years each time), and allow trademark owners to stop others from using marks that are too similar on similar products or services. Indian law generally covers these aspects, but the exact rules for what counts as a famous mark are still being determined by the courts.<sup>(6)</sup>

### **2.3 THE STATUTE AND RULES**

The Trade Marks Act of 1999 has ten chapters, covering everything from how to register and handle disagreements to rules regarding criminal acts. The Controller General of Patents, Designs, and Trade Marks manages this through the Trade Marks Registry, which has offices in Mumbai (the main one), Delhi, Kolkata, Chennai, and Ahmedabad. The 2017 Rules replaced the 2002 Rules, updated all forms, and made online filing the standard procedure.

## **3. WHAT CAN BE REGISTERED**

### **3.1 ABSOLUTE GROUNDS FOR REFUSAL — SECTION 9**

Section 9 lists the specific reasons why a mark cannot be registered, and these reasons are all about the mark itself, not because it clashes with another existing trademark.

No distinctiveness: If a mark is not unique, is too common, or simply describes what is being sold, it will not be registered. The Supreme Court, in the *Corn Products v. The Shangrila Foods* case made it clear that one cannot let one company claim ownership of a word that everyone uses.<sup>(7)</sup>

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4 Id. § 2(1)(m).

5 Trade Marks Act § 2(1)(zb).

6 TRIPS Agreement arts. 15–21.

7 *Corn Prods. Ref. Co. v. Shangrila Food Prods. Ltd.*, A.I.R. 1960 S.C. 142 (India).

Marks that only describe or praise: Section 9(1)(b) stops marks that simply explain a product's type, quality, purpose, or origin. For example, calling candy "SWEET" or a delivery service "SPEEDY" will not work.

Marks already in common use: If a sign is already typically used for that kind of product, it cannot be registered.

How a mark can become unique: There is a way around this—if you can prove that your descriptive mark has become so well-known that people now connect it specifically to your brand, you might sometimes be able to get it registered.

Other outright rejections: Section 9(2) says no to marks that are misleading, offensive, or violate any law or moral standard. Any mark that could offend religious feelings is also not permitted.

Product shapes: Section 9(3) does not allow the registration of simple product shapes or features that serve a practical purpose. Trademark law is not meant to give you a never-ending monopoly over functional designs.

### **3.2 RELATIVE GROUNDS FOR REFUSAL — SECTION 11**

These "relative grounds" are all about when a mark clashes with another. Under Section 11, a mark will not be registered if:

- The mark itself and the goods or services it represents are exactly the same as an existing trademark (this is called "double identity").
- There is a good chance that people will get confused because the marks or goods/services are similar, perhaps even making them think that the two marks are connected somehow.

The earlier mark is considered "well-known," and the new mark unfairly benefits from or harms its unique status or reputation.

Courts look at this from the perspective of an "average consumer"—meaning, would a regular buyer get confused? In *Cadila Health Care v. Cadila Pharma*, especially for drug names, the Court emphasized that just looking for small differences isn't enough; when there's a real risk to health, you need to be extra careful.<sup>(8)</sup>

## **4. THE REGISTRATION PROCEDURE**

### **4.1 SEARCHING AND FILING**

Prior to filing, it is advisable to search the Registry's online database for potentially conflicting marks. India follows the Nice Classification system, which comprises 34 classes for goods and 11 classes for services. A single application (Form TM-A) may cover multiple classes.

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<sup>8</sup> *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, (2001) 5 S.C.C. 73 (India).

Your application requires your personal details, an image of the mark, a list of the goods or services, the date you first used it (or plan to use it), and the fees (which are ₹4,500 per class for individuals and so on, or ₹9,000 per class for other types of applicants).

#### **4.2 EXAMINATION**

Once you file, an examiner will look over your mark and highlight any problems based on Section 9 or 11 in an Examination Report. You then have 30 days to respond, although sometimes you can get an extension to 60 days. You can also request a meeting to discuss this. If the Registrar is satisfied with your responses, your mark will be processed; otherwise, it will be rejected. While the official aim is to finish this examination within three months, in reality, delays often mean that it takes a lot longer.

#### **4.3 ADVERTISEMENT AND OPPOSITION**

Upon acceptance, the mark is published in the weekly Trade Marks Journal. Any person may oppose registration within four months of such publication. In the event of opposition, both parties file statements and evidence and attend a hearing before the Registrar delivers a decision. The four-month opposition window is strictly construed—failure to file within that period bars a party from opposing.<sup>(9)</sup>

#### **4.4 REGISTRATION AND DURATION**

If there is no opposition (or if you successfully defend against it), your mark will be registered. You will receive a certificate, and your mark will be protected from the date you first applied. The registration is good for ten years, and you can keep renewing it every ten years indefinitely as long as you pay the required fee.<sup>(1011)</sup>

#### **4.5 PRIORITY CLAIMS AND THE PARIS CONVENTION**

India is a signatory to the Paris Convention. Accordingly, an applicant who has filed a trademark application in another member country may claim that earlier filing date as the priority date in India, provided the Indian application is filed within six months. This priority mechanism offers valuable protection against bad-faith filers who seek to pre-empt the original proprietor.<sup>(12)</sup>

### **5. RIGHTS CONFERRED BY REGISTRATION AND REMEDIES**

#### **5.1 EXCLUSIVE RIGHTS**

Section 28 confers upon the registered proprietor the exclusive right to use the mark in relation to the goods or services for which it is registered. The proprietor may also restrain any third party from using an identical or deceptively similar mark in relation to identical or similar goods or services.<sup>(13)</sup>

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<sup>9</sup> Trade Marks Act § 21.

<sup>10</sup> Id. § 23(2).

<sup>11</sup> Id. § 25.

<sup>12</sup> Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as revised at Stockholm, July 14, 1967, 828 U.N.T.S. 305.

<sup>13</sup> Id. § 28.

## **5.2 INFRINGEMENT — SECTION 29**

Section 29 clearly states what counts as infringement. For marks that are well-known, protection can even apply if the product that infringes has nothing to do with yours. If someone takes unfair advantage of your famous mark's good name or damages its reputation, it is also considered an infringement.<sup>(14)</sup>

## **5.3 PASSING OFF**

Registration is not a prerequisite for protection. The common law action of passing off remains available to unregistered mark owners. Passing off arises when a trader misrepresents, whether intentionally or not, that its goods or services are those of, or associated with, another trader. To succeed, the claimant must establish goodwill or reputation, a misrepresentation by the defendant, and resulting or likely damage. As the House of Lords confirmed in *Reckitt & Colman v. Borden*—a decision widely applied by Indian courts—this action provides an important remedy where a well-known mark has not yet been registered.<sup>(15)</sup>

## **5.4 CIVIL AND CRIMINAL REMEDIES**

Civil remedies available to a registered proprietor include injunctions, damages or an account of profits, and delivery up or destruction of infringing goods. Courts may also grant interim injunctions where there is an imminent threat of infringement. Jurisdiction in civil trademark matters vests in the District Court and the High Court. Where infringement is committed knowingly, criminal liability may arise, including imprisonment of up to three years and monetary fines.<sup>(16)(17)(18)</sup>

## **6. JUDICIAL TRENDS AND LANDMARK CASES**

### **6.1 DECEPTIVE SIMILARITY: “AVERAGE CONSUMER” STANDARD**

In *Parle Products v. J.P. & Co.*, the Supreme Court held that identity of marks is not required to establish infringement; it suffices if an average consumer of ordinary intelligence is likely to be deceived or confused.<sup>(19)</sup>

### **6.2 PHONETIC SIMILARITY**

*Amritdhara Pharmacy v. Satya Deo Gupta* case looked at how trademarks sound. Even if two marks, such as “AMRITDHARA” and “LAKSHMANDHARA,” look different, if they sound similar and cause confusion, then there is an issue. Courts consider the sound of a mark to be as important as its appearance.<sup>(20)</sup>

### **6.3 MEDICINES: HEIGHTENED SCRUTINY**

In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, the Supreme Court mandated heightened scrutiny for pharmaceutical trade names, recognising that confusion between drug

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14 Id. § 29(4).

15 *Reckitt & Colman Prods. Ltd. v. Borden Inc.*, [1990] 1 W.L.R. 491 (H.L.) (U.K.), as applied in Indian courts.

16 Id. §§ 103–105.

17 Id. § 134.

18 Trade Marks Act § 135.

19 *Parle Prods. (P) Ltd. v. J.P. & Co.*, A.I.R. 1972 S.C. 1359 (India).

20 *Amritdhara Pharmacy v. Satya Deo Gupta*, A.I.R. 1963 S.C. 449 (India).

marks poses serious risks to public health. Applying a multi-factor test, the Court held that “FALCITAB” and “FALCIGO” were deceptively similar and liable to cause confusion.(21)

#### **6.4 WELL-KNOWN MARKS AND REPUTATION CROSSING BORDERS**

In *N.R. Dongre v. Whirlpool Corp.*, the Supreme Court affirmed that a foreign mark not registered in India may nonetheless be entitled to protection where it has acquired a trans-border reputation through advertising, publications, or export trade. This principle was further applied by the Delhi High Court in *Daimler Benz Aktiengesellschaft v. Hybo Hindustan*, which restrained the use of “BENZ” on undergarments, affirming that marks of global renown command protection commensurate with their reputation.(2223)

#### **6.5 DOMAIN NAMES AND CYBERSQUATTING**

As domain names became popular, courts had to decide whether Internet addresses could be considered trademarks. The case of *Satyam Infoway v. Sifynet Solutions* confirmed that they could do so. You build a reputation around a domain name just as you do with a regular trademark, and courts will protect that reputation.(24)

#### **6.6 HONEST CONCURRENT USE**

Section 12 allows the Registrar to register similar marks in situations where both have been used honestly simultaneously. *Kores (India) v. The Khoday Eshwarsa* case laid out the factors to consider: how long each mark had been used, whether people were truly confused, and which party would face the most trouble. The *National Bell v. The Metal Goods* case made it clear that to qualify for this exception, your mark must be genuinely used in business.(2526)

#### **6.7 ASSIGNMENT AND LICENSING**

The Act simplified the rules for transferring trademarks. Section 37 allows owners to transfer their marks, whether they also transfer the related business. Courts have consistently stated that a trademark is a piece of property that can be transferred, but it must not be done in a way that might confuse customers.

### **7. CONTEMPORARY ISSUES**

#### **7.1 NON-TRADITIONAL MARKS**

Indian law generally does not exclude marks based on colors, sounds, or shapes. The Registry has allowed some color and sound marks, but the requirement for a very exact visual representation complicates things. Currently, sound marks must be shown with musical notation, and smell marks need to be described in words, which courts are still a bit hesitant to accept. India has not yet adopted the more flexible rules for non-traditional marks that are part of the Singapore Treaty.(27)

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21 *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, (2001) 5 S.C.C. 73 (India).

22 *Daimler Benz Aktiengesellschaft v. Hybo Hindustan*, A.I.R. 1994 Del. 239 (India).

23 *N.R. Dongre v. Whirlpool Corp.*, A.I.R. 1996 S.C. 2053 (India).

24 *Satyam Infoway Ltd. v. Sifynet Sols. (P) Ltd.*, (2004) 6 S.C.C. 145 (India).

25 *Nat'l Bell Co. v. Metal Goods Mfg. Co.*, A.I.R. 1971 S.C. 898 (India).

26 *Kores (India) Ltd. v. M/s Khoday Eshwarsa & Son*, A.I.R. 1984 Bom. 218 (India).

27 Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, 2658 U.N.T.S. 101.

## 7.2 E-FILING AND MODERNIZATION

Since 2017, entities other than individuals are required to file trademark applications through the online portal. The IP India website facilitates electronic filing, searching, and payment, substantially streamlining the process. Notwithstanding these digital reforms, considerable backlogs persist; registration commonly takes in excess of two years from the date of filing.

## 7.3 REGISTRY'S ROLE IN WELL-KNOWN MARKS

Under Rule 124 of the 2017 Rules, the Registrar may formally recognise a mark as “well-known” upon application, without the need for prior litigation. An applicant submits the requisite evidence and may obtain this status before any contentious proceedings are initiated. The Registry has conferred this status upon several marks, which are now listed in a dedicated well-known marks register.<sup>(28)</sup>

## 8. CONCLUSION

India's trademark registration framework has evolved considerably since the modest statute of 1940. The Trade Marks Act, 1999, reinforced by the 2017 Rules and shaped by an extensive body of judicial precedent, provides robust protection for proprietors and consumers alike. The principal challenges that remain are administrative—reducing examination backlogs and expediting well-known mark determinations—and doctrinal, as the courts and the Registry continue to refine the standards applicable to non-traditional marks and digital commerce. Continued legislative and institutional attention to these areas will position India's trademark system to meet the demands of a rapidly evolving commercial environment.

## FOOTNOTES

[<sup>1</sup>]: Trade Marks Act, No. 47 of 1999 (India) [hereinafter the Act].

[<sup>2</sup>]: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

[<sup>3</sup>]: Trade Marks Rules, 2017, G.S.R. 1049(E) (India).

[<sup>4</sup>]: Trade Marks Act § 2(1)(zb).

[<sup>5</sup>]: *Id.* § 2(1)(m).

[<sup>6</sup>]: TRIPS Agreement arts. 15–21.

[<sup>7</sup>]: *Corn Prods. Ref. Co. v. Shangrila Food Prods. Ltd.*, A.I.R. 1960 S.C. 142 (India). Note: The originally cited case — "*Kores (India) Ltd. v. Wolverine World Wide Inc.*" — does not exist in Indian case law and has been removed. The actual *Kores (India) Ltd.* litigation concerns

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<sup>28</sup> Trade Marks Rules r. 124.

honest concurrent use under § 12: see *Kores (India) Ltd. v. M/s Khoday Eshwarsa & Son*, A.I.R. 1984 Bom. 218 (India), cited below at note 26.

[^8]: *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, (2001) 5 S.C.C. 73 (India).

[^9]: Trade Marks Act § 21.

[^10]: *Id.* § 23(2).

[^11]: *Id.* § 25.

[^12]: Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as revised at Stockholm, July 14, 1967, 828 U.N.T.S. 305.

[^13]: Trade Marks Act § 28.

[^14]: *Id.* § 28.

[^15]: *Id.* § 29(4).

[^16]: *Reckitt & Colman Prods. Ltd. v. Borden Inc.*, [1990] 1 W.L.R. 491 (H.L.) (U.K.), as applied in Indian courts.

[^17]: Trade Marks Act § 135.

[^18]: *Id.* § 134.

[^19]: *Id.* §§ 103–105.

[^20]: *Parle Prods. (P) Ltd. v. J.P. & Co.*, A.I.R. 1972 S.C. 1359 (India).

[^21]: *Amritdhara Pharmacy v. Satya Deo Gupta*, A.I.R. 1963 S.C. 449 (India).

[^22]: *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, (2001) 5 S.C.C. 73 (India).

[^23]: *N.R. Dongre v. Whirlpool Corp.*, A.I.R. 1996 S.C. 2053 (India).

[^24]: *Daimler Benz Aktiengesellschaft v. Hybo Hindustan*, A.I.R. 1994 Del. 239 (India).

[^25]: *Satyam Infoway Ltd. v. Sifynet Sols. (P) Ltd.*, (2004) 6 S.C.C. 145 (India).

[^26]: *Kores (India) Ltd. v. M/s Khoday Eshwarsa & Son*, A.I.R. 1984 Bom. 218 (India).

[^26b]: *Nat'l Bell Co. v. Metal Goods Mfg. Co.*, A.I.R. 1971 S.C. 898 (India).

[^27]: [Citation removed — "*Reckitt & Colman of India Ltd. v. Sole Trustee, Lok Vridhhi Dharamarth Trust (1996)*" could not be verified in A.I.R., S.C.C., or PTC reporters and is not confirmed to exist. The assignment proposition in § 6.7 now rests directly on Trade Marks Act §§ 37–42.]

[^28]: Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, 2658 U.N.T.S. 101.

[^29]: Trade Marks Rules r. 124.

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