The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

TRADEMARK BULLYING: WHEN BIG BRANDS WEAPONIZE IP LAW AGAINST SMALL BUSINESSES

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Excerpt: *Trademark law exists to protect the consumers from brand confusion and to safeguard the goodwill of businesses. But what happens when this shield is used as an aggressive sword? Trademark bullying – the practice whereby large corporations use aggressive and disproportionate trademark threats against small businesses – is a rapidly growing concern and is largely unaddressed in Indian IP law. This blog examines the phenomenon of trademark bullying, its impact, the legal position in India and the need for meaningful reform.*

INTRODUCTION

Trademark law serves an important role in commercial regulation. It protects brand's goodwill and acts as a source identifier, ensuring that consumers can distinguish goods and services of one enterprise from those of the others. This reduces consumer's search cost and helps to maintain product quality. However, this protective function can become a tool of commercial pressure and aggressive enforcement particularly when exercised by dominant enterprises against small entities.

Imagine a small bakery in Pune, named 'Monster cakes' that has been operating for 5 years continuously. One random morning it receives a thick legal notice from the attorneys of 'Monster Drink', one of world's largest energy drink corporation, alleging trademark infringement. The bakery has never sold energy drink, its customers are local and no reasonable person would confuse cake shop with energy drink. The cost of defending in a frivolous lawsuit can run into lakhs of rupees and it will involve sacrificing a huge chunk of time. Therefore the bakery folds and gives in. It simply cannot afford to fight. This is trademark bullying.

The India's Trademark Act, 1999 attempts to address such phenomenon and provide remedy for the same through section 142.[1] The section penalises groundless threats of trademark infringement proceedings. However this section is generally underused and poorly understood, and therefore requires serious attention.

WHAT IS TRADEMARK BULLYING?

Trademark bullying is the act of using legally enforceable trademark rights, not to protect genuine consumer interests and brand reputation but to stifle competition by intimidating smaller businesses. Under this large corporations use their economic advantage to crush competitors or small units who lack resources to fight back.[2] This event rests at the intersection of market dominance, economic inequality and trademark law.

There is no statutory definition of trademark bullying in Indian law, or indeed in most jurisdictions. However, the United States Patent and Trademark Office (USPTO), in its 2012 Report to Congress on trademark bullying defined it as an act whereby trademark owner uses its rights "*to harass and intimidate another business beyond what the law might be reasonably interpreted to allow."*[3]

Trademark bullying is different from legitimate enforcement. When Amul takes action against a dairy brand that tries to copy its packaging or brand name then it falls under proper enforcement. However, when BigBasket tries to send cease-and-desist letter to a small grocery startup called 'Daily Basket' then it has the potential of crossing into bullying territory.[4]

IMPACT ON SMALL ENTITIES: THE CHILLING EFFECT

The most significant concern arising from aggressive enforcement is its effect on small businesses. Trademark bullying creates a disproportionate burden on small startups and enterprises. The cost of defending infringement claims is high for small entities making settlement a more practical option. In many cases mere initiation of proceeding or threat of litigation compels the small enterprises to rebrand or withdraw their mark completely. This is known as chilling effect whereby businesses avoid creative or

[1] Trade Marks Act, 1999, § 142, No. 47, Acts of Parliament, 1999 (India).

[2] Archana Bhageerathi, *Trademark Bullying: A Legal Means to Illegal Ends,* FOX MANDAL (May 8 2026, 10:00 AM),

[3] U.S Patent & Trademark Office, *Report to Congress: Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting* 1 (2011), https://www.uspto.gov/sites/default/files/trademarks/notices/TrademarkLitigationStudy.pdf (last visited May 9, 2026).

[4] Archie Ahirwar & Divyansh Bhansali, *Trademark Bullying: Curbing Competition Through Legal Intimidation*, NLIU CELL FOR STUDIES IN INTELECTUAL PROPERTY RIGHTS (May 8, 2026, 6:00 PM), https://csipr.nliu.ac.in/miscellaneous/trademark-bullying-curbing-competition-through-legal-intimidation-2.

distinctive branding choices due to the fear of costly litigations. As a result, trademark law which is intended to increase fair competition, may inadvertently discourage innovation and market entry.

LEGAL POSITION IN INDIA

The Trademarks Act, 1999 governs the registration, infringement (section 29)[5] and enforcement of trademarks in India. It grants the right to trademark owners to prevent others from using identical or deceptively similar marks in relation to similar or identical goods or services.

However, over the years large corporations have found its ways to exploit this framework. They either register over broad terms, creating wide exclusive zones, or make use of cost asymmetry of litigation as filing or threatening to file a suit costs relatively little to large corporations, but defending one costs great deal to small startups.[6]

The statutory counterweight for this is provided in Section 142 of the Act. The section allows any person aggrieved by groundless threats of trademark infringement proceedings to approach court and seek (a) a declaration that the threats are unjustifiable; (b) an injunction restraining such threats; and (c) damages for any loss suffered.[7] However section 142 has notable limitation, it ceases to apply as soon as the threat is converted into an actual formal lawsuit which renders large corporations an escape route. Furthermore, it is available only for registered trademarks.[8]

Indian courts have grappled with such issues in notable cases. The courts have adopted the traditional approach of protecting trademark rights particularly when there is likelihood of confusion among consumers. In *ITC Limited vs. Nestle India Limited (India)*[9] the court ruled in favour of Nestle India Ltd and held that large corporations cannot restrain the use of wide or generic expressions without clear evidence of confusion. This is done in order to balance brand rights with market freedom. In *Milmet Oftho Industries v. Allergan Inc*[10] the apex court held that a multinational company cannot throttle Indian

[5] Trade Marks Act, 1999, § 29, No. 47, Acts of Parliament, 1999 (India).
[6]Sanjana, *An Overview of Trademark Bullying in Commercial Environments*, KHURANA & KHURANA (May 9, 2026, 3:00 PM), https://www.khuranaandkhurana.com/2021/09/08/an-overview-on-trademark-bullying-in-commercial-environments.
[7] Trade Marks Act, 1999, § 142, No. 47, Acts of Parliament, 1999 (India).
[8] Sunil Kumar S & Pukhraj Agarwal, *Trademark Bullying Across Borders: A Comparative Analysis of Legal Frameworks in India, the United States, and the United Kingdom*, 6 INDIAN J.L. & LEGAL RES. 3743 - 3749, (2024), https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_29bb746126d74dc6aaba0138f5b3e70c.pdf.
[9] ITC Limited vs. Nestle India Limited (India) 2020 SCC OnLine Mad 5457.
[10] Milmet Oftho Industries v. Allergan Inc (2004) 12 SCC 624.

company if it has no intention to enter Indian market ; priority will be given to first bona fide user and not mere global presence.[11]

BALANCE BETWEEN PROTECTION AND FAIR COMPETITION

The issue of trademark bullying arises from imbalance in their enforcement. The growing tension between brand protection and competitive fairness is reflected in today's trademark regime. The entities with greater financial, legal and reputational capital are at better position to assert claims and sustain litigations. This discourages fair competition and reinforces market dominance.[12]

Although Indian law provides provision such as Section 142 to protect from groundless claims, the lack of awareness and cost of bearing litigation burden limits its effectiveness and hence creates a gap in legislation. Therefore it is required that reforms like judicial scrutiny for disproportionate claims, simplified alternate dispute mechanisms for small businesses, cost penalty for frivolous claims etc are adopted.

CONCLUSION

Trademark law plays an essential role in building consumer trust and protecting brand identity. But when enforcement becomes disproportionately aggressive, it undermines the very competitive fairness it is meant to protect. Small businesses forms a major part of economic ecosystem, and maintaining a balance between protection and access is crucial. The objective should always be to prevent misuse and encourage innovation, so that trademark law remains a shield for genuine rights.

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[11] Vignesh M. Guru, *Generic Marks, Secondary Meaning and Trademark Bullying in India*, 7 INT'L J.L. MGMT. & HUMAN. 815, 815–17 (2024), https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ijlmhs31&id=831&men_tab=srchresults.

[12] Shagun Thind, *Phenomenon of Trademark Bullying in India*, 6 Int'l J.L. Mgmt. & Human. 1234 (2023).