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TRADEMARK REGISTRATION PROCESS IN INDIA

~ Shaleen Singh

INTRODUCTION

Ask anyone who has spent a decade building a production house, a music label, or a streaming platform what their most valuable asset is, and the answer is rarely the camera equipment or the server racks. It is the name - the word or symbol that audiences have learned, often without quite realising it, to associate with a particular kind of story, sound, or experience. Indian law lets a business own that association through trademark registration, and for an industry built on franchises, recurring titles, recognisable mascots, and platform brands all competing for the same screens, that ownership is less a luxury than a survival tool. The Trade Marks Act, 1999 defines a "trade mark" broadly enough to capture this reality: a mark capable of being represented graphically and of distinguishing the goods or services of one person from those of another, a definition that extends even to the shape of goods, packaging, and combinations of colours.[1] What follows is a working account of how that protection is actually obtained in India, with particular attention to the quirks that surface once the "goods" in question are films, characters, channels, and apps rather than soap or steel.

THE LEGAL FRAMEWORK GOVERNING REGISTRATION

Trademark registration in India rests on two pillars. The first is the Trade Marks Act, 1999 itself, which replaced the older Trade and Merchandise Marks Act, 1958, in order to bring Indian law into line with the TRIPS Agreement and to introduce, among other things, protection for service marks for the first time. The second is the Trade Marks Rules, 2017, which supply the procedural machinery - the forms, fees, and timelines - through which the Act is administered, and which also digitised what had previously been a largely paper-based

[1] The Trade Marks Act, No. 47 of 1999, § 2(1)(zb) (India).

system, mandating electronic filing and trimming the number of prescribed forms from roughly seventy to about twenty-five.[2] The statute is administered by the Controller General of Patents, Designs and Trade Marks, working through Trade Marks Registry offices at Mumbai, Delhi, Kolkata, Chennai and Ahmedabad, though the shift to e-filing means an applicant rarely needs to set foot in any of them. A significant amendment in 2010 reworked several of these timelines and inserted an entirely new chapter permitting India's participation in the Madrid Protocol, a change that became operative once India formally acceded to the Protocol in July 2013.[3]

WHAT CAN BE REGISTERED IN THE MEDIA AND ENTERTAINMENT SPACE

Before any form is filed, it helps to know what the Registry will actually accept. Production house names, channel and OTT platform names, station idents, character names, and even certain sound logos can all function as trademarks, provided they are capable of distinguishing one source of entertainment services from another and do not fall foul of the absolute grounds for refusal - marks that are merely descriptive, generic, or devoid of any distinctive character.[4] Film and show titles occupy an unusually contested space within this scheme. The Supreme Court has been emphatic that copyright law offers a title no protection at all: in the dispute over the film "Desi Boyz", the Court held that a title built out of ordinary, commonly used words lacks the originality that copyright law demands, however central that title feels to the writer who coined it.[5] That leaves trademark law as the realistic avenue for protecting a title, and even there a generic or descriptive title will be refused registration unless the applicant can show it has acquired a secondary meaning in the public mind. The Delhi High Court found exactly that had happened with "SHOLAY" - a word that, once attached to a single 1975 film, no longer functioned merely as the Hindi word for embers but instantly summoned a specific story, score, and cast of characters in the minds of Indian audiences, a status the Court reaffirmed in a later dispute over an unauthorised "Ram Gopal Varma Ke Sholay".[6] Character names sit on a related but distinct spectrum: a character earns trademark-style protection only once it has built an independent commercial identity beyond the work in which it first appeared, a threshold the Bombay High Court found was not met by the everyday, domestic characters of a television

[2]The Trade Marks Rules, 2017, G.S.R. 282(E) (India).
[3]The Trade Marks (Amendment) Act, No. 40 of 2010, India Code (2010).
[4]The Trade Marks Act, No. 47 of 1999, § 9 (India).
[5]Krishika Lulla v. Shyam Vithalrao Devkatta, (2016) 2 SCC 521.
[6]Sholay Media & Entertainment Ltd. v. Parag Sanghavi, 2015 (4) PTC 546 (Del.); Sholay Media & Entertainment & Anr. v. Yogesh Patel & Ors., CS (COMM) No. 8 of 2016 (Del. H.C. May 9, 2022).

soap opera, in contrast to instantly recognisable figures who already routinely appear on merchandise shelves.[7]

STEP ONE: CLEARANCE SEARCH AND CLASSIFICATION

The registration process itself begins, in practice, well before any form reaches the Registry. A clearance search on the IP India public search database checks whether an identical or confusingly similar mark already exists on the register, and skipping this step is among the more common reasons applications run into avoidable trouble later. The next decision is classification. Section 7 of the Act requires goods and services to be classified in accordance with the international Nice Classification, which India has adopted in full - forty-five classes in total, the first thirty-four covering goods and the remaining eleven covering services.[8] For a media business, the relevant classes are rarely confined to one entry on that list: a streaming platform might reasonably need Class 41 for entertainment and production services, Class 38 for broadcasting, Class 9 for the app or software itself, and Classes 16, 25 and 28 the moment posters, branded apparel, or toys come anywhere near the business plan. A single application can cover several classes simultaneously, but the government fee is charged separately for each one, which means the classification stage is really where strategy and cost first collide.

STEP TWO: FILING THE APPLICATION

The application proper is filed in Form TM-A, almost always electronically through the IP India portal, under Section 18 of the Act, which permits any person claiming to be the proprietor of a mark to apply for its registration, whether alone or jointly with another.[9] The form calls for the applicant's particulars, a clear representation of the mark, the chosen classes, and a statement of whether the mark is already in use or merely proposed to be used; where an agent files on the applicant's behalf, a power of attorney in Form TM-48 must accompany the application. A foreign applicant who has already filed for the same mark in a Paris Convention member country within the preceding six months may claim that earlier filing date as a priority date in India. Once the formalities are verified and the fee paid, the Registry generates an application number, and that date becomes the reference point from which most subsequent statutory rights, including priority over later identical filings, are measured.

[7]Star India Pvt. Ltd. v. Leo Burnett (India) Pvt. Ltd., 2003 (2) Bom CR 655 (Bom.).
[8]The Trade Marks Act, No. 47 of 1999, § 7 (India).
[9]The Trade Marks Act, No. 47 of 1999, § 18 (India).

The fee schedule itself rewards smaller applicants: individuals, start-ups, and small enterprises currently pay a lower per-class government fee than other categories of applicant, and the gap is wide enough that confirming an applicant's eligible category before filing is worth the extra few minutes it takes.[10] Beyond Form TM-A, the system relies on a small family of companion forms that recur throughout the life of a registration - Form TM-O for opposition proceedings, Form TM-M for miscellaneous applications such as a response to an examination report or a request for well-known status, and Form TM-R when the time eventually comes to renew - and knowing which of these to reach for at each stage saves a good deal of avoidable correspondence with the Registry.

STEP THREE: EXAMINATION

An examiner then tests the application against two distinct sets of obstacles. Absolute grounds for refusal, set out in Section 9, exclude marks devoid of distinctive character, purely descriptive of the goods or services concerned, generic in ordinary trade usage, or likely to deceive the public or wound religious sensibilities.[11] Relative grounds, under Section 11, exclude marks identical or deceptively similar to an earlier registered or pending mark covering identical or similar goods or services.[12] In judging similarity, examiners and, later, courts continue to apply a test the Supreme Court laid down more than six decades ago in the Amritdhara case: that two marks must be compared as a whole, through the eyes of a person of average intelligence and imperfect recollection, rather than placed side by side and dissected letter by letter.[13] That test was refined, decades later, in the Cadila Healthcare judgment, which listed factors including phonetic and visual resemblance, the nature of the underlying goods or services, and the likely class of purchaser as relevant to any finding of deceptive similarity.[14] Where an examiner raises an objection, the applicant typically has thirty days to respond, often through Form TM-M, supported by evidence of distinctiveness or prior use, and the Registrar may schedule a hearing before deciding whether to accept, refuse, or accept the application subject to conditions or disclaimers.

STEP FOUR: PUBLICATION AND OPPOSITION

[10] The Trade Marks Rules, 2017, First Schedule (India).
[11] The Trade Marks Act, No. 47 of 1999, § 9, supra note 4.
[12] The Trade Marks Act, No. 47 of 1999, § 11 (India).
[13] Amritdhara Pharmacy v. Satya Deo Gupta, (1963) 1 SCR 353 (SC).
[14] Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73.

Once an examiner is satisfied, the mark is advertised in the weekly Trade Marks Journal, opening a window during which any member of the public - a competitor, a trade body, or simply someone who believes their own rights are threatened - may file a notice of opposition.[15] The 2010 Amendment trimmed the original four-month opposition window to three months, with a further one-month extension available on request, so the effective period in practice still runs close to four months from the date of publication.[16] An opposition is filed in Form TM-O, the applicant must respond with a counter-statement within two months of receiving it, and the dispute then proceeds through an exchange of evidence and, frequently, an oral hearing before the Registrar decides the matter. Disputes of this kind crop up with some regularity in the entertainment sector precisely because titles, channel names, and platform brands recur across otherwise unrelated industries that nonetheless end up competing for the same advertising slots, the same domain names, and increasingly the same merchandising shelves.

STEP FIVE: REGISTRATION, USE, AND RENEWAL

Where no opposition is filed, or where an opposition is ultimately decided in the applicant's favour, the Registrar issues a certificate of registration under Section 23, after which the proprietor may use the ® symbol and rely on the certificate as prima facie evidence of ownership in any later infringement proceeding.[17] Registration runs for ten years from the date of the original application and can be renewed indefinitely in further ten-year cycles through Form TM-R, provided the renewal is filed within the window prescribed before or shortly after expiry.[18] A mark left unused for a continuous period of five years, however, becomes vulnerable to a rectification application seeking its removal from the register - a real risk for production houses in the habit of registering film titles defensively, years before a project is greenlit, and then quietly letting them lapse into disuse once the project itself is shelved.

WELL-KNOWN MARKS AND THE PARTICULAR CONCERNS OF THE ENTERTAINMENT SECTOR

Two further features of Indian trademark law deserve particular attention from anyone working in media and entertainment. The first is the well-known mark mechanism. Sections 11(6) to 11(9) of the Act list the factors relevant to recognising a mark as well known - public

[15]The Trade Marks Act, No. 47 of 1999, § 21 (India).
[16]The Trade Marks (Amendment) Act, No. 40 of 2010, § 8, India Code (2010), supra note 3.
[17]The Trade Marks Act, No. 47 of 1999, § 23 (India).
[18]The Trade Marks Act, No. 47 of 1999, § 25 (India).

recognition, the duration and geographical spread of its use, advertising expenditure, and a record of successful enforcement among them - and Rule 124 of the 2017 Rules created, for the first time, a direct administrative route by which a proprietor can ask the Registrar to make that determination on application, without first having to win an opposition or an infringement suit.[19] Courts had already been recognising well-known status through litigation for decades before Rule 124 existed; the Delhi High Court's recognition of "Benz" as a mark entitled to protection even outside the automobile trade is an early illustration of how far such protection can stretch once a mark is found to be well known.[20] The Delhi High Court has since had to work out how the two routes interact, holding, in a dispute over an airline's mark that a civil court had already declared well known, that inclusion on the Registrar's published list still required compliance with the procedure set out in Rule 124 itself.[21] For media brands with franchise ambitions, securing well-known status - by either route - is often the difference between policing infringement title by title and holding a single declaration broad enough to deter most copying before it starts.

INTERNATIONAL PROTECTION: THE MADRID PROTOCOL ROUTE

The second feature worth noting is the international dimension. Chapter IVA of the Act, inserted by the 2010 Amendment and made operational once India joined the Madrid Protocol in 2013, allows an applicant based in India to file a single international application through the World Intellectual Property Organization, designating multiple member countries in one filing rather than instructing local counsel separately in each one.[22] For a production house or OTT platform with ambitions beyond the domestic market - and increasingly few in this industry have none - this route can be considerably more efficient than the country-by-country alternative, though it still requires a corresponding Indian application or registration to serve as the "basic mark" on which the international filing rests.

CONCLUSION

None of this makes trademark registration in India especially mysterious, but it does make it considerably more layered than a simple form-filing exercise once the subject matter is a film

[19] The Trade Marks Act, No. 47 of 1999, §§ 11(6)-11(9) (India); The Trade Marks Rules, 2017, r. 124 (India).
[20] Daimler Benz Aktiengesellschaft v. Hybo Hindustan, AIR 1994 Del 239.
[21] TATA SIA Airlines Ltd. v. Union of India, W.P.(C)-IPD 64/2021 (Del. H.C. May 25, 2023).
[22] The Trade Marks Rules, 2017, pt. VI, ch. IV (India); The Trade Marks (Amendment) Act, No. 40 of 2010, ch. IVA, India Code (2010), supra note 3.

title, a fictional character, or a streaming brand rather than a packaged consumer good. The procedural skeleton - search, classify, file, examine, publish, oppose if necessary, register, and renew - is identical across industries. What changes for media and entertainment is the substantive scrutiny applied at nearly every stage along the way: titles must clear a secondary-meaning hurdle that copyright law refuses to offer them at all, characters must demonstrate an independent commercial life before a court will treat them as more than incidental to the work that created them, and brand owners with genuine reach have good reason to pursue well-known status rather than rest on registration alone. Getting the classification right, building an evidentiary record of use early, and filing well before a project's first promotional poster goes up remain the most reliable ways of finding out which of these hurdles applies before a competitor does it first.