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Title: Trademark Registration Process in India and its Infringement in Digital Marketplace

- Mohd Kaif Ali

1. Introduction

A trademark is any word, name, symbol or device used to identify and distinguish goods and/or services from those of others. Trademarks also indicate the source of the goods, even if that source is unknown to the consumer. In modern times, a consumer usually does not know the manufacturer of the goods personally, unlike before the beginning of the Industrial Revolution, when there were a limited number of manufacturers and every consumer used to know the manufacturer personally. In the modern commercial world, a trademark serves as a valuable intellectual property asset that distinguishes the goods or services of one enterprise from those of another. Trademarks help consumers identify the source and quality of products and enable businesses to establish goodwill and brand recognition in the marketplace. With increasing competition and globalization, the protection of trademarks has become essential for businesses of all sizes.

Apart from these, trademarks can be logos, aromas, sounds, personal brand names, slogans, smells, etc. Even specific colours can be trademarked under specific brands, such as [UPS Brown](#) (also known as [Pullman Brown](#)), [Home Depot orange](#), [Tiffany blue](#) or [John Deere green](#), etc.

In simple words, A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.

This article examines the trademark registration process in India and explores the challenges posed by trademark infringement in the digital marketplace.

2. What is a trademark?

A trademark is the characteristics or combinations of characteristics capable of distinguishing the goods and/or services of one enterprise from those of other enterprises. Trademarks fall under the ambit of intellectual property rights and are protected by national and international laws. Examples of trademarks include the Nike “Swoosh” symbol, the arched M for McDonald’s or the bitten apple symbol for Apple computers, etc.

Well-known trademarks such as Apple, Nike, Adidas, Coca-Cola, and Tata enjoy substantial legal protection because they represent quality, reputation, and consumer trust. Trademarks enable businesses to create a unique market presence and prevent unfair competition.

Legal Framework Governing Trademarks in India

Trademark law in India is primarily governed by:

- [The Trade Marks Act, 1999](#).
- [The Trade Marks Rules, 2017](#).
- The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- Relevant judicial precedents of Indian courts.

India is also a member of several international treaties relating to trademark protection, including:

- The Paris Convention for the Protection of Industrial Property.
- The TRIPS Agreement under the World Trade Organization.
- The Madrid Protocol for international trademark registration.
- These international obligations ensure that Indian trademark law remains aligned with global standards.

Legal Definition of Trademark in India

The Trademarks Act, 1999 defines a trademark under **Section 2(1)(zb)** as:

“A mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging and combination of colours.”

[Section 2\(1\)\(i\)\(viii\)\(zb\)](#) in the Trade Marks Act, 1999 defines trademark as a mark which is:

- capable of being represented graphically;
- capable of distinguishing the goods or services of one person from those of others;
- may include the shape of goods, their packaging and combinations of colours.

The law also explains the meaning of the word “**mark**” under **Section 2(1)(m)**. A mark may include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or even shapes, packaging, and colour combinations.

Thus, a trademark is not limited to words or logos alone. It can be a sound (like the Nokia ringtone), a colour (like Cadbury purple), or even the unique shape of a Coca-Cola bottle.

Why the Trademarks Act, 1999 was needed

India’s earlier trademark law, the Trade and Merchandise Marks Act of 1958, was increasingly inadequate as global commerce expanded. A major trigger for reform was India’s ratification of the [Agreement on Trade-Related Aspects of Intellectual Property Rights \(TRIPS\)](#) as part of joining the World Trade Organisation in 1995. TRIPS set minimum standards of IP protection that member countries were obligated to meet.

The 1999 Act, which came into force in 2003, addressed these obligations in several concrete ways. It introduced service mark registration for the first time, meaning businesses in the services sector – banks, hospitals, software companies – could now register their marks just like manufacturers of goods. It allowed multiclass applications, so an applicant could seek registration across multiple categories of goods and services in a single filing. It extended the registration period to ten years, renewable indefinitely. It also recognised the concept of well-known trademarks and provided for collective marks and certification marks – categories that were absent from the earlier law.

3. Functions of a Trademark

The following functions are performed by a trademark:

1. **Identifies Source of Goods or Services:** A trademark tells consumers where the product or service comes from. For example, the Airtel logo assures customers that they are using Airtel’s telecom service.
2. **Assures Quality:** Trademarks build consumer trust by linking products to a certain level of quality. A Raymond suit or a Royal Enfield motorcycle carries an assurance of reputation and performance.

3. **Creates Brand Awareness:** Trademarks are a tool for marketing. They make products memorable and help companies build goodwill.
4. **Provides Legal Protection:** Registering a trademark gives legal rights against misuse, counterfeiting, and fraud.
5. **Distinguishes Products:** In a crowded marketplace, trademarks ensure that consumers can easily separate one brand from another.

4. Types of Trademarks

There are [several types of trademarks](#), each serving a specific purpose.

Type of Trademark	Description	Examples
Word Marks	Protect names, words, or slogans.	“Nike”, “Just Do It”
Logo/Device Marks	Protect logos or symbols without words.	McDonald’s Golden Arches
Combination Marks	Combine words with logos.	Coca-Cola scripted logo, Adidas word + stripes
Shape Marks	Protect product shapes or packaging.	Coca-Cola bottle, Toblerone chocolate bar
Colour Marks	Protect specific colour schemes.	Cadbury purple, Tiffany blue
Sound Marks	Protect unique sounds or jingles.	Nokia ringtone, Intel jingle
Motion Marks	Protect moving images or animations.	MGM lion animation, 20th Century Fox intro
Service Marks	Identify and distinguish services instead of goods.	Logos of hotels, airlines, educational institutions
Certification Marks	Indicate quality or standard set by an authority.	ISI mark, Woolmark, India Organic
Collective Marks	Used by members of an association or organisation.	“CA” mark used by Chartered Accountants
Trade Dress	Protects overall look and feel of packaging or product.	Red soles of Christian Louboutin shoes, Rolls Royce grille design

Essentials of a Valid Trademark

Not every mark can be registered. For a trademark to be valid:

- It must qualify as a mark under the Act.
- It must be used for commercial purposes.
- It must be distinctive, meaning it is capable of identifying the product's source.
- It must not be deceptive, generic, or descriptive without uniqueness.

Spectrum of Distinctiveness

The strength of a trademark is judged by its **distinctiveness**. The spectrum of distinctiveness include:

Type of Mark	Description	Examples
Fanciful Marks	Invented words with no meaning; strongest protection.	Kodak for cameras
Arbitrary Marks	Common words used in an unrelated context.	Apple for electronics
Suggestive Marks	Suggest characteristics of product with imagination.	Jaguar for fast cars
Descriptive Marks	Directly describe the product; weak protection unless secondary meaning develops.	Lenskart (cart of lenses)
Generic Marks	Common words for products; not protectable as trademarks.	"Milk" for milk

Trademark Symbols in India

- **TM (™)**: Used for goods to claim rights, even without registration.
- **SM (™)**: Used for services, similar to TM.
- **®**: Used only for registered trademarks. Using ® without registration is punishable.

How trademark registration works

Trademark registration in India is administered by the **Controller General of Patents, Designs and Trade Marks**, under the Ministry of Commerce and Industry. The process begins with filing an application at the Trademarks Registry in the appropriate jurisdiction. India follows the Nice Classification (NCL) system, which divides goods and services into 45 classes – Classes 1 to 34 for goods and Classes 35 to 45 for services. An applicant must specify the class or classes under which registration is sought.

Once filed, the Registrar examines the application against the absolute grounds for refusal under Section 9 (such as lack of distinctiveness, descriptiveness, or likelihood of confusion) and the relative grounds under Section 11 (such as similarity to an earlier registered mark). If accepted, the application is advertised in the Trademarks Journal, and any member of the public – a competitor, a consumer, or any other party – may file an opposition within four months of publication. If no opposition is filed, or if opposition proceedings conclude in the applicant's favour, the mark proceeds to registration.

A registered trademark is valid for ten years from the date of application and can be renewed indefinitely for successive ten-year periods. Registration confers the exclusive right to use the mark in connection with the goods or services for which it is registered and gives the proprietor the legal standing to sue for infringement under Section 29 of the Act.

5. Trademark Registration Process in India

1. Trademark Search

The first step in trademark registration is conducting a trademark search. This helps determine whether the proposed trademark is already registered or pending registration.

A trademark search can be conducted through the online database maintained by the Trademarks Registry. The search minimizes the risk of objections and legal disputes during the registration process.

The applicant should ensure that the proposed mark is:

- Distinctive.
- Not descriptive.
- Not generic.
- Not identical or deceptively similar to an existing trademark.

2. Filing of Trademark Application

After completing the trademark search, the applicant may file an application for registration.

The application can be submitted:

- Online through the official Trademark Registry portal.
- Physically at the appropriate Trademark Registry office.

The application must contain:

- Name and address of the applicant.
- Representation of the trademark.
- Description of goods or services.
- Appropriate trademark class.
- Date of first use, if applicable.

India follows the Nice Classification system, which divides goods and services into forty-five classes.

3. Examination of Application

After filing, the Trademark Registrar examines the application.

The examination process includes:

- Verification of procedural compliance.
- Assessment of distinctiveness.
- Identification of conflicts with existing trademarks.
- Examination of absolute and relative grounds for refusal.

The Registrar may:

- Accept the application.
- Raise objections through an Examination Report.

Common grounds for objection include:

- Lack of distinctiveness.
- Descriptive nature of the mark.
- Similarity with an existing trademark.
- Potential to mislead consumers.

4. Response to Examination Report

If objections are raised, the applicant must submit a written reply within the prescribed period.

The applicant may provide:

- Legal arguments.
- Evidence of prior use.
- Proof of acquired distinctiveness.

Where necessary, the Registrar may schedule a hearing before making a final decision.

5. Publication in the Trademark Journal

If the Registrar is satisfied, the trademark is published in the Trademark Journal.

Publication serves two purposes:

- It informs the public about the proposed registration.
- It allows third parties to oppose the registration.

6. Opposition Proceedings

Any person may oppose the trademark within four months of publication.

Grounds for opposition may include:

- Prior ownership.
- Similarity with an existing trademark.
- Bad faith application.
- Lack of distinctiveness.

Both parties are allowed to present evidence and arguments before the Registrar.

7. Registration and Certificate

If no opposition is filed, or if the opposition is unsuccessful, the trademark is registered.

The Registrar issues a Certificate of Registration granting exclusive rights to the proprietor.

8. Renewal

A registered trademark remains valid for ten years from the date of application.

It may be renewed indefinitely for additional periods of ten years upon payment of the prescribed fee.

Failure to renew will result in the cancellation of the trademark, inviting potential infringement or misuse risks.

6. Trademark Infringement in the Digital Market

The rapid expansion of the digital economy has significantly increased the risk of trademark infringement. As businesses increasingly rely on e-commerce platforms, social media, online advertising, and mobile applications to reach consumers, unauthorized use of trademarks has become more prevalent. Trademark infringement in the digital market occurs when a person or entity uses a registered trademark, or a deceptively similar mark, without authorization in a manner that is likely to cause confusion among consumers regarding the source, sponsorship, or affiliation of goods and services. Common forms of digital trademark infringement include cybersquatting, unauthorized use of trademarks in domain names, keyword advertising, counterfeit sales on e-commerce websites, fake social media accounts, and misuse of brand logos in online promotions. Such practices not only dilute the distinctiveness and goodwill of trademarks but also mislead consumers and cause financial losses to legitimate businesses. The borderless nature of the internet and the anonymity available to online infringers make enforcement particularly challenging. Consequently, trademark owners must actively monitor digital platforms and utilize legal remedies available under the Trade Marks Act, 1999, as well as intermediary liability and domain name dispute resolution mechanisms, to protect their brand identity in the online marketplace.

Forms of Trademark Infringement in the Digital Environment

1. Cybersquatting

Cybersquatting refers to the registration of domain names that are identical or similar to well-known trademarks.

For example:

- Registering "amaz0n.com" instead of "amazon.com."
- Registering domain names containing famous brands to attract internet traffic.

Cybersquatters often attempt to sell such domain names to trademark owners at inflated prices.

2. Meta Tags and Keyword Advertising

Search engines use keywords to display advertisements.

Trademark infringement may occur when advertisers use competitors' trademarks as keywords to divert customers.

For example:

A seller may use a competitor's trademark in online advertisements to attract consumers searching for that competitor's products.

This practice creates confusion and may constitute trademark infringement under certain circumstances.

3. Counterfeit Products on E-Commerce Platforms

One of the most significant challenges in the digital economy is the sale of counterfeit goods through online marketplaces.

Counterfeit products often bear unauthorized trademarks and imitate genuine goods.

Popular categories include:

- Fashion products.
- Electronics.
- Cosmetics.
- Pharmaceuticals.

Consumers may mistakenly purchase counterfeit goods believing them to be genuine products.

4. Social Media Infringement

Social media platforms have become important tools for brand promotion.

Trademark infringement on social media may occur through:

- Fake business accounts.
- Unauthorized brand pages.
- Misleading advertisements.
- Impersonation of trademark owners.

Such activities damage the goodwill and reputation of legitimate businesses.

5. Mobile Application Infringement

Many infringers create mobile applications using names or logos similar to well-known trademarks.

This practice may deceive consumers and divert business from legitimate trademark owners.

6. Online Marketplaces and Platform Liability

Online platforms sometimes host listings that infringe trademark rights.

A critical legal issue concerns the extent to which intermediary platforms should be held responsible for infringing content posted by third-party sellers.

Indian courts have increasingly addressed this issue through evolving jurisprudence.

7. Judicial Approach to Digital Trademark Infringement

Indian courts have actively protected trademark rights in the digital environment.

1. Yahoo! Inc. v. Akash Arora

In this landmark case, the Delhi High Court recognized that domain names deserve protection similar to trademarks.

The Court restrained the defendant from using a deceptively similar domain name likely to confuse internet users.

2. Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.

The Supreme Court held that domain names perform the same function as trademarks and are entitled to legal protection.

The decision strengthened the protection of online brand identities.

3. Christian Louboutin SAS v. Nakul Bajaj

The Delhi High Court addressed the liability of e-commerce platforms facilitating the sale of trademark-infringing products.

The Court emphasized the need for due diligence by online intermediaries.

4. MakeMyTrip (India) Pvt. Ltd. v. Booking.com BV

The case examined issues relating to keyword advertising and online trademark use, highlighting the complexity of trademark disputes in digital commerce.

8. Remedies Against Digital Trademark Infringement

Trademark owners have various remedies available under Indian law.

1. Civil Remedies

The proprietor may seek:

- Temporary injunctions.
- Permanent injunctions.
- Damages.
- Account of profits.
- Delivery and destruction of infringing goods.

2. Criminal Remedies

The Trade Marks Act, 1999 provides criminal penalties for trademark infringement, including:

- Imprisonment.
- Fines.
- Seizure of counterfeit goods.

3. Administrative Remedies

Trademark owners may also pursue:

- Domain name dispute resolution proceedings.
- Takedown requests on e-commerce platforms.
- Social media reporting mechanisms.
- Customs enforcement against counterfeit imports.

Challenges in Enforcement

Despite legal protections, enforcement remains challenging.

Major challenges include:

1. Cross-Border Nature of Infringement

Digital infringement often involves parties located in different countries, creating jurisdictional difficulties.

2. Anonymous Infringers

Many online infringers conceal their identities through fake profiles and anonymous registrations.

3. Rapid Dissemination

Infringing content can spread quickly across multiple platforms before legal action can be initiated.

4. Technological Complexity

Emerging technologies such as artificial intelligence, blockchain, and virtual marketplaces create new legal issues for trademark enforcement.

Future of Trademark Protection in the Digital Age

The increasing digitalization of commerce requires continuous adaptation of trademark law.

Future reforms may focus on:

- Stronger intermediary obligations.
- Improved online enforcement mechanisms.
- Enhanced international cooperation.
- AI-assisted monitoring of infringement.
- Faster dispute resolution systems.

Businesses must also adopt proactive strategies, including trademark monitoring, digital brand protection programs, and prompt enforcement actions.

9. Conclusion

Trademark registration is a crucial legal mechanism for protecting business identity and commercial goodwill. The registration process under the Trade Marks Act, 1999 provides trademark owners with exclusive rights and effective legal remedies against unauthorized use. In the digital era, trademarks have become even more valuable due to the growing importance of online commerce, social media, and digital marketing.

However, the digital marketplace has also created new forms of trademark infringement, including cybersquatting, keyword advertising misuse, counterfeit sales, social media impersonation, and unauthorized domain name registrations. Indian courts have responded by

extending traditional trademark principles to digital environments and strengthening protection for trademark owners.

As technology continues to evolve, trademark law must adapt to address emerging challenges while balancing innovation, competition, and consumer protection. Effective registration, vigilant monitoring, and timely enforcement remain essential for safeguarding trademarks in the modern digital economy.

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