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Roses on Rubber: Inside Sumitomo's Groundbreaking Olfactory Trademark in India, The Science of Scents in IP: How Mathematical Vectographs Cleared India's Trademark Registry

~ *Tanya Kumari*

For more than a century, the concept of a "*mark*" under Indian law was based on what could be seen: words, logos, colours, or shapes. On 21 November 2025, the Trade Marks Registry quietly changed this. In an order issued by Controller General Prof. Unnat P. Pandit, the Registry approved Application No.5860303, submitted by Sumitomo Rubber Industries Ltd., Japan, for a "*Floral Fragrance/Smell Reminiscent of Roses as Applied to Tyres.*" This marked the first time India recognized an olfactory trademark, or a smell-based mark.¹

It may seem like a new and unusual development. But it is not. The decision challenges a long-standing doubt in trademark law: how can something that cannot be seen be registered?

The Rose That Took Two Years to Bloom

Sumitomo's rose-scented tyres are not a new idea in trademark law. The company registered the same scent in the United Kingdom in 1994 or 1996, becoming the world's first to do so². However, India's Trade Marks Act, 1999 sets a higher standard. Section 2(1)(zb) requires that

¹Ministry of Commerce and Industry, Notification No. TMR/DEL/SCH/2025/16, CGPDTM-11021(11)/1/2025/CGTMR/1784 (21 November 2025); Unnat P. Pandit, 'India's first smell mark: Sumitomo rose-scented tires', WIPO Magazine (13 Feb. 2026), <https://www.wipo.int/web/wipo-magazine/articles/indias-first-smell-mark-sumitomo-rose-scented-tires-89623>.

² Unnat P. Pandit, 'India's first smell mark: Sumitomo rose-scented tires', WIPO Magazine (13 Feb. 2026) (noting the UK registration of the identical mark since 1996, cited by the Controller General of Patents, Designs & Trade Marks, DPIIT, India, as persuasive precedent); 'Decoding India's first accepted Smell Trademark: 'Rose-Fragranced Tyres'', The Leaflet (2025) (recording the UK registration as No. 00002001416, dated 1996).

a mark must be “*capable of being graphically represented*.” The Draft Manual of Trade Marks (2015) explicitly stated that scent-based marks could not meet this requirement.³

When Sumitomo submitted its application, the Registry responded in August 2023, objecting to it under Sections 9(1)(a) and 2(1)(zb), arguing that the mark was neither inherently distinctive nor capable of being represented graphically.

Recognizing the novelty of the issue, the Registry took an unusual step by appointing senior intellectual property lawyer Pravin Anand as amicus curiae to help the tribunal. Over nearly two years, the case involved multiple hearings, as India’s trademark law had never previously addressed this specific issue.

The Science That Cleared the Registry: Mathematical Vectographs

Sumitomo's success came from its approach to evidence, not from legal arguments.

To meet the graphical representation requirement, three researchers from IIIT Allahabad developed a 7- dimensional mathematical vector model. This model mapped the scent across seven "essential smell" axes - floral, fruity, woody, nutty, pungent, sweet, and minty⁴. The rose fragrance was primarily positioned on the floral axis, creating a chart that was precise, reproducible, and clearly understandable without needing to smell the actual scent.

The Controller found this representation "detailed" and sufficient to clearly identify the scent's composition. He concluded that it met the standard that a graphical representation must be "clear, precise, self-contained, intelligible, objective, and durable"⁵Regarding distinctiveness, the Registry reasoned that since tyre rubber naturally has a rubbery smell, an added rose fragrance was arbitrary and not essential to the function of the product, aligning with the functionality doctrine used in scent-mark law around the world.

Learning From the World: A Comparative Register

India's decision was not made in isolation. It came about roughly three decades after other countries started to accept olfactory trademarks, and it clearly reflected their reasoning.

³ Draft Manual of Trade Marks (2015), Government of India, Office of the Controller General of Patents, Designs and Trade Marks.

⁴ BW Legal World, ‘Trade Marks Registry Accepts India's First Smell Mark’ (21 Nov. 2025).

⁵ Lawlex, ‘India's First ‘Smell Mark’ - Yes! It's Actually Happening!’ (Nov. 2025)

In the **United States – 1990**, the key case was *In re Celia Clarke, dba Clarke's Osewez*, where the Trademark Trial and Appeal Board allowed the registration of a "high impact, fresh, floral fragrance reminiscent of Plumeria blossoms" for sewing thread and embroidery yarn.⁶

The Board's reasoning that the scent was not an inherent characteristic of yarn and that Clarke was the sole supplier of scented thread in the market established two key principles later echoed in India: non-functionality and acquired distinctiveness.

In the **United Kingdom, in 1994-96**, Sumitomo's rose-tyre mark became the UK's first registered smell mark, along with other unusual examples like the *strong smell of bitter beer for dart flights*.⁷ However, the UK became stricter later on, rejecting the attempt to register Chanel No.5, as a perfume's scent is intrinsic to the product and therefore functional.⁸

In the **European Union, in 2002**, the Court of Justice of the European Union rejected an application for "*methyl cinnamate*" described as *balsamically fruity with a slight hint of cinnamon*, even though the applicant submitted a chemical formula, a written description, and a physical sample.⁹

The court determined that none of the proposed methods was sufficiently clear, accurate, or long-lasting, which effectively halted the registration of scent-related marks throughout the EU for over a decade. This situation changed with the 2015-2017 EU Trade Mark Reform Package, which completely eliminated the need for a graphical representation, replacing it with a simpler standard that requires the mark to be "represented on the Register."¹⁰

In Canada, the 2019 amendment to the Trademarks Act expanded the legal definition of "trademark" to explicitly include scent, taste, color, and texture as registrable non-traditional marks. Looking at this timeline, Sumitomo's registration in India appears less like an unusual occurrence and more like a logical step in a broader comparative pattern. Each jurisdiction has

⁶ *In re Celia Clarke, dba Clarke's Osewez*, 17 U.S.P.Q.2d 1238 (T.T.A.B. 1990).

⁷ Decoding India's first accepted Smell Trademark: 'Rose-Fragranced Tyres', The Leaflet (2025), noting UK Reg. No. 00002001416 (1996) for the Sumitomo mark and a separate UK registration for the 'strong smell of bitter beer' on darts' flights.

⁸ Vidhi Centre for Legal Policy, 'Fragrance as a Trademark'.

⁹ *Ralf Sieckmann v Deutsches Patent- und Markenamt*, Case C-273/00, ECJ Judgment of 12 December 2002.

¹⁰ EU Intellectual Property Helpdesk, 'Legal Challenges: Protecting Olfactory Trademarks in the European Union - Going to India' (22 Dec. 2025); EU Trade Mark Regulation 2015/2424 and Directive 2015/2436.

had to develop its own approach to the same fundamental problem: converting an olfactory experience into a legally recognized and publicly accessible record.

What the Registry Did Not Address

Legal experts have correctly pointed out that while the court's decision is conceptually important, it provides little guidance on how to enforce scent marks in practice¹¹.

How will courts determine infringement through an in-house smell testing panel, expert opinions, or specialized software that matches scent profiles? And how can scent marks be monitored for counterfeits, since smell cannot be assessed without opening the product, unlike a visible logo? The registry acknowledged that scent can be represented, but it offered few details on how to enforce such marks effectively.

Conclusion

Sumitomo's rose has achieved in India what it did in Britain three decades ago: it has pushed trademark law to extend beyond the visual. The 7-dimensional vector model is a clever technical approach, but its real importance lies in showing that Indian trademark law is finally open to the Sieckmann-Clarke approach, rather than viewing scent marks as an unsolvable issue. Whether this rose will survive future legal challenges regarding infringement, renewal, or well-known mark status under Section 11 remains uncertain.¹² For now, it has, quite literally, cleared the air.

¹¹Spicy IP, 'The Scent of the Sumitomo Trademark: What is the Celebration About?' (Nov. 2025).

¹²SCC OnLine Blog, 'India's First Olfactory Trade mark: Reading the Sumitomo Order with Critical Appreciation' (2026).