

## DE JURE NEXUS LAW JOURNAL

Author:

Muskan Singhal

Symbiosis Law School, Noida

1<sup>st</sup> Year, BBA LL.B.

### INFRINGEMENT OF TRADEMARK- ANALYSIS

#### Abstract

*The purpose of a trade mark is to identify a manufacturer's or trader's goods in the eyes of the public, allowing him to profit over time from the reputation that he has built up for his goods by superior skill, effort, and enterprise. An authentic trade mark assures the purchaser of the make and quality of the item he is purchasing. Business competition, practise, and custom gave rise to the concept of trademarks and the legislation controlling their use. The Trade Marks Act has made taking legal action against trademark infringement a statutory entitlement.*

#### Keywords

*Trademark act, infringement, intellectual property*

#### Introduction

A customer-company relationship is built on this foundation, customers are more likely to trust products based on the company's brand and packaging. So, if a new company emerges with a logo that appears to be similar to an existing brand, or even if their tagline or packaging (with similar positioning of logo and fonts), that firm appears to have infringed company's Intellectual Property. In India, trademark rights are protected by the Trademark Act of 1999 as well as the common law remedy of passing off. The Controller General of Patents, Designs, and Trademarks is in charge of enforcing such protection under the Act. The Trademark Act of 1999 governs trademark protection, registration, and the prevention of trademark infringement. It also covers the trademark holder's rights, infringement penalties, damage remedies, and trademark transfer methods.

#### What is a trademark?

A trademark is a symbol that distinguishes one company's goods or services from those of other companies. Trademarks are protected by A trademark is a name, word, or symbol that distinguishes goods from those of other businesses. Marketing goods or services by procedure

becomes more easier with a trademark since product recognition is ensured and made simple. A trademark or symbol owner has the right to prevent a competitor from using it.. A term, phrase, design, or combination of words or phrases that identifies goods or services, distinguishes them from those of others, and identifies the source of your goods or services Trademark is defined in the Trademark Act, 1999 as,

*“Trademark means a mark capable of being represented graphically and which is capable of being distinguishing the goods or services of one person from those of others and may include the shape of goods, their package and combinations of colours”*

An example of trademark is Coca-Cola® for soft drinks

In the context of certain goods or services, trademark registration can give nationwide legal protection for your brand. It is entirely up to you whether or not to use trademark law to protect your brand.

## **Difference between trademark, patent, and copy rights?**

### **Trademark**

Trademark is a term, phrase, design, or combination of words and phrases that identifies your goods or services, distinguishes them from those of others, and identifies the source of your goods or services.

It helps you prohibit others from utilising a trademark that is similar to yours with related goods or services by preventing others from registering the trademark without your authorization.

### **Patent**

Chemical compositions, such as medicinal medications, mechanical processes, such as complicated machinery, or machine designs that are innovative, distinctive, and applicable to a specific industry

protects inventions and techniques from being copied, manufactured, used, or sold without the consent of the creator.

### **Copyrights**

Novels, music, movies, software code, pictures, and paintings that are original and exist in a tangible medium, such as paper, canvas, film, or digital format, are examples of artistic, literary, or intellectually developed works.

protects your only right to reproduce, distribute, perform, or exhibit the generated work, as well as preventing others from duplicating or exploiting it without the consent of the copyright holder.

## **Registration of a trademark?**

To apply for a trademark a person must adhere to the provisions enlisted under Section 18 of the Act. Any person applying for a trademark must do it in writing and in the way required for

registration, according to the Section. The application has to contain the name of the mark, goods and services, the class under which goods and services fall, the period of the use of the mark and the personal details of the applicant such as name and address

### **Infringement of trademark**

Infringement means violation of one's right. So, infringement of trademark means violation of trademark rights. Infringement of a trademark is when the registered owner of the trademark is denied the exclusive right to use it. A trademark is said to be infringed when the person who is not permitted or is not authorised to use the trademark uses the trademark or similar to it. According to section 29 of trademark act 1999

*“A registered trademark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trademark in relation to goods or services in respect of which the trademark is registered and, in such manner, as to render the use of the mark likely to be taken as being used as a trademark.”*

In such a situation the court will look up if the similar mark causes any confusion between the consumers

Therefore, according to the act a trademark is infringed if :

1. if the trademarks are a copy of registered trademark with a few additions or alternations
2. if the infringed mark is used in the course of trade
3. consumer when selecting a category of product

In the event that a registered trademark is infringed upon, the owner of the trademark has the right to sue for damages.

### **Following conditions must be met**

In case of infringement of a registered trademark, the person may file a suit for damages. For filing such a suit, the following conditions must be met:

The person filing the suit (plaintiff) must be the registered owner of the trademark.

The person who is infringing (defendant) must be using a mark that is similar to that of the plaintiff such that it can easily be confused as one another.

Such use by the defendant is not accidental in nature.

The use of the mark by the defendant must be in the course or similar goods or services to that which the trademark is registered to.

### **Remedies**

Trademark infringement remedies can take the form of an injunction, damages, or an account of profits, with or without a demand for the infringing labels and marks to be delivered for destruction or erasure.

### Section 135 of trademark infringement

1. injunction (subject to the terms, if any, as the Court sees fit) and, at the plaintiff's option, damages or an account of profits, with or without an order for the delivery-up of the infringing labels and marks for destruction or erasure, are among the remedies that a Court may grant in any suit for infringement or passing off referred to in Section 134

2. The order of injunction under subsection (1) may include an *ex parte* injunction or any interlocutory order for any of the following purposes: discovery of documents; preservation of infringing goods, documents, or other evidence that is related to the subject-matter of the suit; restraining the defendant from disposing of or dealing with his assets in a manner that may adversely affect plaintiff's ability to recover damages, costs, or other pecuniary remedies; and restraining the defendant from disposal

3. Despite anything in sub-section (1), the Court shall not grant relief in the form of damages (other than nominal damages) or profits in any case where the infringement complained of is in relation to a certification trademark or collective mark; or where the defendant satisfied the Court: that at the time he began to use the trademark complained of in the suit

4. where the defendant satisfied the Court: that at the time he began to use the trademark complained of in the suit, he was unaware of its

where the defendant satisfied the Court in a complaint for passing off:

that he was unaware and had no reasonable grounds for believing that the plaintiff's trademark was in use when he began to use the trademark complained of in the suit; and that once he became aware of the existence and nature of the plaintiff's trademark, he immediately ceased to use the trademark complained of.

### **Conclusion**

trademark act, 1999 protects trademarks, and there are ways to obtain techniques and means to infringe on trademarks. the following are the four most common reasons for trademark infringement. To deceive customers by causing them to be confused. To smear a competitor's image or trademark owner's reputation; to promote one's business by exploiting someone else's reputation in order to make quick money; to circulate counterfeit, low-quality goods in the market in the name and trademark of an already existing quality in the market in order to make quick money; to circulate spurious, low-quality goods in the market in the name and trademark of an already existing quality in the market in order to make quick money.

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