INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

 ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur.Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time &Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

 ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

 ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

TRADEMARK ABUSE AND COMPETITION LAW: AN EXAMINATION OF JURISDICTIONAL APPROACHES TO DOMINANCE AND MARKET POWER

AUTHORED BY - DEEPAK ARORA

Abstract

Trademarks confer valuable rights on brand owners by protecting source-indicating signs and preventing consumer confusion. However, when wielded by firms with market power, trademark rights can extend beyond their pro-competitive purpose and become tools to exclude rivals. This article examines how dominant firms have used trademark enforcement to impede competition and innovation. It adopts a comparative perspective—drawing on the United States, European Union, India, and other jurisdictions—to analyze legal and economic aspects of such conduct. The focus is on concrete patterns of abuse across industries (notably technology, fashion, and pharmaceuticals) and their effects on markets. It concludes with policy recommendations aimed at recalibrating the balance between trademark protection and competitive markets.

Keywords: Trademark, Competition, Dominant, Legal and Innovation.

Introduction

Different legal systems approach the problem with varying tools. The United States has an antitrust defense and limited mis-use concept but relies heavily on general Sherman Act[1] analysis. The EU emphasizes exhaustion and honest practices doctrines, while Indian law is evolving through case decisions and competition policy guidance. Across these regimes, the key is ensuring trademark law is not interpreted as a perpetual power to lock up markets.

USA

In the U.S., antitrust law can potentially address abusive trademark enforcement, though no doctrine is explicitly devoted to it. The Sherman Act[2] prohibits monopolization and exclusionary conduct, and the Federal Trade Commission Act prohibits "unfair methods of

[1] Sherman Antitrust Act, 15 U.S.C. §§ 1–7 (1890)
[2] IBID

 ISSN: 2582-6433

competition." Trademark misuse has been argued as a defense to infringement suits (by analogy to patent misuse), but courts have been reluctant to develop it. The Lanham Act's Section 33(b)(7)[3] explicitly allows an infringement defendant to assert as a defense that the trademark "has been or is being used to violate the antitrust laws".[4] This statutory antitrust defense acknowledges that use of trademark rights can cross into anticompetitive territory.

However, U.S. courts tend to scrutinize such claims narrowly. The leading rule is that enforcing a trademark right is generally immunized by First Amendment and Noerr-Pennington doctrine, unless the enforcement is objectively baseless or in the nature of a "sham" litigation directed to restrain competition. For example, if a dominant company files a frivolous trademark suit with the intent of bankrupting a competitor, a U.S. court may treat it as anticompetitive sham and deny immunity. Outside of litigation, the FTC and DOJ have issued IP licensing guidelines (1995 Guidelines for Licensing of IP) that apply to patents, but these explicitly excluded trademarks. The agencies' general guidance is that assertion of IP rights is subject to the same antitrust rules as tangible assets,[5] implying that exclusionary conduct (e.g. tying trademark licenses to anticompetitive restrictions) can be challenged under Sherman Act §1 or §2. For instance, tying an unrelated product to a trademark license could be viewed under Sherman §1, and using trademark threats to preserve monopoly could support a §2 claim if it maintains monopoly power not protected by law.

In practice, U.S. courts have seldom held trademark enforcement itself to be an antitrust violation absent more. One area of scrutiny has been agreements that restrain trade (Sherman §1): for example, MAP (minimum advertised price) programs by trademark licensors were once per se illegal price-fixing *(United States v. Colgate in 2019)*[6], though later cases allowed them under rule of reason if they benefit consumers. More relevantly, tying of trademarks (e.g. requiring use of a trademark as a condition of purchase) would likely be judged under the rule of reason for substantial foreclosure. Sherman §2 claims are theoretically possible if a trademark was acquired or enforced with intent to monopolize, but proving that is difficult without clear market foreclosure evidence beyond a merely valid infringement suit.

[3] Lanham Act § 33(b)(7), 15 U.S.C. § 1115(b)(7) (2012)
[4] Lanham Act § 33(b)(7) Overview, Cornell LII, https://www.law.cornell.edu (last visited May 24, 2025)
[5] Crowell & Moring LLP, IP and Antitrust Interface, Crowell & Moring, https://www.crowell.com (last visited May 24, 2025)
[6] *United States v. Colgate & Co.*, 250 U.S. 300 (1919)

 ISSN: 2582-6433

Case law is sparse on "trademark abuse." A few cases hint at issues. In *Royal Crown Co. v. Coca-Cola Co.*[7] (discussing "Tab" trademark), courts allowed cancelling a trademark that had become generic, which has pro-competitive effect. In *Levi Strauss & Co. v. Royal Sovereign Corp.*[8], the Second Circuit held that selling genuine Levi products in Europe and importing them into the U.S. did not infringe Levi's U.S. trademarks (the "first sale" doctrine), a decision promoting parallel imports and competition (though Levi had no abusive intent). On the flip side, trademark owners have sometimes attempted to use trademark law to block comparative advertising or online keywords (e.g. the *Rescuecom v. Google*[9] case on keyword ads), but the courts have mostly ruled for open competition or genericness.

Notable U.S. anecdotes include *Tiffany (NJ) Inc. v. eBay Inc.*[10], where luxury jewellery maker Tiffany argued that eBay's marketplace allowed too many counterfeits and used trademark law (and even antitrust) to force eBay to police listings. While Tiffany lost the contributory infringement claim, eBay's policies now often align with brand enforcement. Another example is Apple's case described above,[11] which, although federal court wasn't ultimately needed, showed Apple's tactic of suing Amazon as an exclusionary act (Apple's counsel argued it was about protecting consumers, but Amazon claimed it was about suppressing competition).

Overall, the U.S. approach gives trademark owners broad enforcement rights but imposes an antitrust defense. In theory, a competitor or regulator could bring an antitrust suit when a trademark owner with market power uses enforcement to exclude rivals. In practice, without clear cartel or tying, it's challenging. The patent and copyright fields have more developed doctrines (e.g. patent misuse, copyright misuse) that sometimes inform trademark law by analogy, but courts have been cautious. Some commentators therefore suggest explicitly adopting a **trademark misuse** doctrine that penalizes overreaching enforcement. For now, U.S. policy relies on courts and agencies to catch the worst cases under general antitrust laws, with the Lanham Act's antitrust-defense clause as a tool for defendants.

[7] *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358 (Fed. Cir. 2018).
[8] *Levi Strauss & Co. v. Royal Sovereign Corp.*, 877 F.2d 1046 (2d Cir. 1989).
[9] *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123 (2d Cir. 2009).
[10] *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93 (2d Cir. 2010).
[11] Apple Drops 'App Store' Trademark Suit Against Amazon, Reuters (July 9, 2013), https://www.reuters.com (last visited May 24, 2025)

 ISSN: 2582-6433

European Union

The EU has a well-developed competition regime under Articles 101–102 TFEU that applies to IP enforcement. Article 102 prohibits "abuse of a dominant position," including imposing unfair conditions or unjustified refusals to supply that affect trade between Member States. While most Article 102 case law deals with patents and standards (e.g. Microsoft's refusal to license interoperability information was abusive), trademarks can similarly be implicated if enforcement extends dominance improperly. However, there are few high-profile EU cases focusing on trademark abuse. One reason is the exhaustion principle (discussed below) which already limits anti-competitive use of trademarks to block intra-EU trade.

EU law also includes an "abuse of rights" concept under Article 2(2) of the Trademark Directive 2015/2436 (formerly Art. 10(3) of Directive 2008/95). A proprietor's rights do not allow him "to prohibit use of the trade mark when such use is required for descriptive use, comparative advertising, etc., or 'honest practices in industrial or commercial matters.'" This codifies limits on enforcement, but is mostly invoked in cases like comparative ads or resellers using the mark. Nevertheless, it reflects the principle that trademark rights have boundaries in competition.

Importantly, EU law explicitly addresses trademark-related market partitioning. The EU Trade Mark Regulation provides that an EU trademark does not entitle its owner to prevent goods put on the market in the EU (with his consent) from being resold elsewhere in the EU. In other words, trademark exhaustion across the EU means a proprietor cannot stop parallel imports within the Single Market.[12] This is a structural safeguard against using trademark enforcement to partition the common market. For example, a dominant perfumery could not enforce its trademark to stop others from buying genuine product in one country and reselling it in another at lower prices, provided the goods were put on the EU market legitimately. That duty to let goods flow prevents the classic trademark monopoly strategy of carving up national markets.

Outside of parallel trade, specific EU competition law cases on trademark per se are rare. However, general abuse-of-dominance principles apply. The European Commission's enforcement guidelines recognize that IPRs may grant market power but their exercise must be objectively justified and proportionate. In practice, courts ask whether denying access to a

[12] EU Case Law on Trademark Exhaustion, IPCuria, https://www.ipcuria.eu (last visited May 24, 2025)

 ISSN: 2582-6433

right-holding firm's assets (including IP) eliminates competition in a downstream market and whether there are objective justifications. The essential facilities doctrine (Magill, IMS Health) shows that a refusal to license can be abusive if it deprives all competition, and though those cases were about copyright or patent, similar reasoning could apply if a trademark owner alone controlled an indispensable sign. The EU Commission's 2022 Draft Guidelines on Article 102 list IPR-related conducts under scrutiny (e.g., refusal to license, tying) but don't single out trademarks, suggesting trademark claims are assessed like other IP rights.

In sum, the EU provides more explicit constraints than the U.S. on trademark enforcement through exhaustion and abuse-of-rights rules. However, it still largely leaves enforcement to follow trademark law, intervening only when the downstream competitive effect is clear. The Louis Vuitton example above was litigated in UK/EU law; ultimately local tribunals enforced trademark law (deeming L V Bespoke's mark sufficiently distinct), but competition authorities did not intervene. If a case involved cross-border price fixing or exclusion, Article 102 could in theory apply.

India

India's Competition Act (2002) prohibits abuse of dominance under Section 4, including unfair or discriminatory conditions in sale of goods and denial of market access.[13] It also contains Section 3(5), which exempts certain IP-related agreements from the prohibition on restrictive agreements (a de minimis rule for IP licensing). However, there is no blanket immunity for exercising IP rights. Courts and the Competition Commission of India (CCI) have emphasized that the IPR carve-out is limited to preventing enforcement of patent or copyright through agreements – it does *not* protect unilateral conduct such as abusive enforcement. For trademarks, Section 3(5) explicitly mentions trademarks too, but again only in agreement contexts. A monopolistic trademark owner's refusal to license or wrongful enforcement can fall under Section 4's ban on abuse, just as a patent holder's refusal could (although, historically, much CCI litigation on IP has focused on patents).

Indian jurisprudence has addressed trademark-related market exclusion primarily in IP cases rather than competition cases. A leading Supreme Court case, *Milmet Oftho Industries v.*

[13] India: Abuse of Dominance via IP Enforcement, Mondaq (2023), https://www.mondaq.com (last visited May 24, 2025).

 ISSN: 2582-6433

Allergan (2003)[14], while on passing-off, made a key observation on transborder brand reputation. The Court held that if a foreign brand has a global reputation and intends to enter India, its failure to use the mark locally is immaterial – global fame can protect the mark in India. Crucially, though, the Court cautioned that multinational brands "should not stifle domestic players unless they can prove a genuine intent to operate in India".[15] This admonition implicitly recognizes that mere trademark rights cannot be used solely to ban local competitors if the ban serves no real market presence. It suggests competition-related reasoning: a foreign pharma company could not hold off generics just by vanity of registration without intent to sell in India.

More recently, India's courts have applied competition-law thinking to trademark disputes indirectly. For example, in *FICCI Multiplex v. United Producers Forum*[16], the Delhi High Court (2011) noted that Section 3(5)'s non-obstante clause was not absolute – competition law still applies to ensure IP holders "protect his work from infringement" but not to impose unnecessary restrictions.[17] Although that case was about films, the principle is general. In *Sun Pharma v. Hetero* (2022)[18], discussed above, the Delhi High Court refused an injunction on the ground that allowing a firm to monopolize a name derived from a drug's generic name would hurt competition. This is a competition-friendly outcome even though it arose under trademark law: the court protected generic competition by denying unwarranted brand exclusivity.

Notably, the Competition Law Review Committee (an expert panel in India) explicitly addressed IPR abuse.[19] Its 2019 report observed that IPRs inherently create exclusivity, but warned that not all IPR-driven behavior constitutes anti-competitive foreclosure.[20] It recommended that competition law should allow a defense for "reasonable conditions and restrictions" in protecting IPRs, and that this defense apply to all IP rights.[21] In effect, the Committee urged balancing: an IP owner may impose some restrictions (necessary to quality

[14] *Milmet Oftho Indus. v. Allergan Inc.*, (2004) 12 SCC 624 (India)
[15] Milmet Oftho v. Allergan Case Analysis, Khurana & Khurana IP Attorneys, https://www.khuranaandkhurana.com (last visited May 24, 2025)
[16] *FICCI Multiplex Ass'n of India v. United Producers Forum*, (2011) SCC OnLine Del 3974
[17] India: Abuse of Dominance via IP Enforcement, Mondaq (2023), https://www.mondaq.com (last visited May 24, 2025)
[18] *Sun Pharmaceutical Indus. Ltd. v. Hetero Healthcare Ltd.*, 2022 SCC OnLine Del 3340 (Del. High Ct.).
[19] Competition Law Review Committee, Report of the Competition Law Review Committee (Ministry of Corporate Affairs, India, July 2019), available at https://www.mondaq.com/india/antitrust-eu-competition-/840314/ (last visited May 24, 2025)
[20] India: Abuse of Dominance via IP Enforcement, Mondaq (2023), https://www.mondaq.com (last visited May 24, 2025)
[21] IBID

 ISSN: 2582-6433

control, etc.), but competition authorities should scrutinize measures that go further. This recommendation recognizes, for instance, that enforcing a trademark beyond what is strictly needed to prevent confusion could be considered unreasonable and thus barred.

In practice, India's courts and regulators have been wary of treating a dominant trademark holder as automatically abusing dominance. But they have shown readiness to deny enforcement when it poses clear anti-competitive harm (as in *Sun Pharma*). The convergence of IP law's purpose and competition law's purpose – to promote innovation without granting perpetual monopoly – is an ongoing theme in Indian law. In summary, Indian law requires careful justification for aggressive trademark enforcement by a dominant firm; otherwise it risks running afoul of competition norms (Section 4's ban on unfair conditions and market foreclosure).

Economic Effects on Innovation and Market Health

Abusive trademark enforcement by dominant firms has concrete economic consequences. By raising entry barriers or hindering rivals, such practices can reduce competition, leading to higher prices and less innovation. In pharmaceuticals, as noted, patient welfare suffers directly when generic drugs face obstacles that keep them out of pharmacies or stigmatize their equivalence.[22] Patients may waste money or stay on expensive brands due to needless confusion. In technology and fashion, small innovators face disincentives. For example, a software developer might avoid using a descriptive term for fear of a trademark lawsuit, even if users would understand it simply as reference. A new designer may settle rather than fight a suit, effectively paying to exit the market (as Boss Brewing founders almost did).[23]

From a competition-economics perspective, such trademark-driven exclusion is a form of raising rivals' costs. It does not add value to consumers; rather, it preserves the dominant firm's rents. Consumer welfare, the hallmark of antitrust analysis, generally declines if consumers pay more or get less choice. Abusive trademark enforcement is especially pernicious because it masquerades as the legitimate aim of preventing confusion. It exploits the goodwill consumers expect, turning it into a barrier. For innovation, the message to entrepreneurs becomes: "be sure your name and design are distinct from any dominant brand, or risk

[22] NYU Journal of Intellectual Property & Entertainment Law, JIPEL, https://jipel.law.nyu.edu (last visited May 24, 2025)
[23] Trademark Bullying in Practice, Lexology (2022), https://www.lexology.com (last visited May 24, 2025)

 ISSN: 2582-6433

litigation." This narrows the creative space. When competition is stifled, market efficiency suffers – resources are diverted to legal battles instead of R&D or improving products, and dynamic pressure on the dominant firm to innovate lessens.

Empirical studies and economic theory both confirm that excessive trademark protection can diminish market efficiency. Brennan emphasizes that trademark law's twin aims (prevent confusion and signal quality) break down in pharma: instead of efficiency, we get "the opposite function," namely confusion that wastes resources. Similarly, Halabi quantifies that the trademark/trade dress regime "is the primary cause of the high prescription prices" and poor adherence in the U.S.[24] In fashion, while brand protection may initially incentivize creative investment, using trademark to freeze out competitors ultimately reduces variety – a direct loss for consumer welfare. In tech, limiting platform compatibility through trademark claims (e.g., blocking "app store") can slow the diffusion of new products.

In sum, the abuse of trademark rights by dominant firms typically harms innovation and market health. It "eliminate[s] effective competition" when it denies rivals market access.[25] In dynamic industries especially, the competitive process is a crucial driver of innovation; stifling it with IP enforcement delays the arrival of alternatives and complementary technologies. Over time, this tilts incentives toward rent-seeking (defending existing monopoly) rather than genuine innovation.

Policy Recommendations

To curb the abuse of trademark enforcement by dominant firms, both competition law and intellectual property law should be recalibrated. The goal is to preserve legitimate trademark protection while forbidding its perversion into anti-competitive conduct. We suggest the following policy approaches:

- **Clarify Misuse Doctrine:** Legislatures or courts should explicitly recognize a **trademark misuse defense** akin to patent misuse. This would mean that a trademark owner who enforces beyond the mark's legitimate scope (for example, threatening baseless suits solely to sideline competitors) loses enforcement remedies. In the U.S.,

[24] NYU Journal of Intellectual Property & Entertainment Law, JIPEL, https://jipel.law.nyu.edu (last visited May 24, 2025)
[25] Market Foreclosure and IP Abuse in India, Global Patent Filing (2023), https://www.globalpatentfiling.com (last visited May 24, 2025)

 ISSN: 2582-6433

courts have hinted at such a doctrine but never fully embraced it; codifying it (as has been urged by some scholars) would deter frivolous enforcement. In India and the EU, similar concepts could be introduced – for instance, defining in trademark law that rights are not to be used for anti-competitive purposes.

- **Require Objective Justification:** Make it a formal requirement that enforcement actions by a dominant firm must be justified by legitimate quality control or consumer-protection needs. If a refusal to license or a takedown claim is based on exclusionary motive without objective need, it could be presumptively abusive. This aligns with the Competition Law Review Committee's suggestion that courts examine whether restrictions on IP rights are "reasonable" and have objective justification.[26] For example, a regulation or guideline could state that a dominant trademark holder must show that any enforcement step is necessary to prevent actual confusion, not merely to suppress competition.
- **Strengthen Antitrust Enforcement:** Competition agencies (like the FTC in the U.S., European Commission, CCI in India) should monitor aggressive trademark litigation and agreements by dominant firms. Specifically, antitrust law should scrutinize patterns like serial lawsuits or charter clauses in distribution agreements that exploit trademarks. Agencies could issue guidelines clarifying that certain practices (e.g. tying licensing to exclusive dealing) will be examined under a rule of reason for harm. If needed, competition laws could be amended to mention abuse of IP rights (as China has done in draft revisions) or to require licensing of trademarks in essential situations.
- **Trademark Exhaustion and Parallel Trade:** Jurisdictions without an exhaustion regime should consider adopting it to prevent dominant rights-holders from segmenting markets. The EU's rule that trademark rights are exhausted on lawful first sale within the market should serve as a model. Even within countries, rules should prevent brand owners from using TM law to block genuine parallel imports or resales. This is especially important in emerging markets: for example, India could reinforce its policy that parallel imports of genuine goods are allowed, so a local dominant firm cannot push back by invoking trademark.
- **Support for Affected Parties:** Small firms and consumers should have tools to defend against bullying enforcement. This could include awarding attorneys' fees to parties who defeat frivolous claims (anti-SLAPP-like measures in trademark contexts), and

[26] India: Abuse of Dominance via IP Enforcement, Mondaq (2023), https://www.mondaq.com (last visited May 24, 2025)

 ISSN: 2582-6433

capping damages for asserted infringement to reduce the chilling threat. Trademark offices could also play a role by more strictly refusing to register marks that are clearly generic or descriptive of key industry terms (to prevent the situation in *Sun Pharma*, where a generic name was initially trademarked).

- **Pharmaceutical Sector Reforms:** Given the public health stakes, special measures can be applied. One proposal (echoing Brennan and Halabi) is to replace drug-specific trademarks with a labeling system that distinguishes manufacturer but not the drug itself.[27] For example, instead of "Lipitor®" in bold on packaging, the brand could be downplayed and a manufacturer or distributor logo used. Policies encouraging generic prescribing by international non-proprietary name (INN) also help. Regulators might require mandatory disclosure when generics are bioequivalent, to counteract branding confusion. India's strong generic market has benefited from permitting generic names, and similar norms elsewhere would encourage competition.
- **International Coordination:** Trade treaties and IP agreements can reinforce competition safeguards. The WTO TRIPS Agreement[28] (Articles 7–8, 40) recognizes that IP laws should be designed to prevent anti-competitive licensing practices. Countries can explicitly adopt TRIPS Article 40 provisions to allow measures like compulsory licensing of trademarks when they restrain competition. While compulsory trademark licensing is rare, it could be contemplated in extreme cases (e.g. if a brand blocks distribution of lifesaving products). Additionally, international forums like WIPO can develop model laws emphasizing that trademarks are subject to "competition exceptions," similar to fair-use provisions.
- **Industry Best Practices:** Trade associations and companies themselves should adopt codes of conduct. For example, a "Trilateral Fair Use" standard might be agreed whereby nominative use of a trademark, comparative advertising, or descriptive references are explicitly protected, discouraging dominant firms from overreaching. Industry self-regulation can prevent internalization of anti-competitive norms.

[27] Hannah Brennan, Confusion by Design: How Brand Name Drugs Use Trademark Law to Extend Monopolies and Drive Up Prices, 50 U. Mich. J.L. Reform 53 (2016), https://repository.law.umich.edu/mjlr/vol50/iss1/2 (last visited May 24, 2025)

[28] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 7–8, 40, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

 ISSN: 2582-6433

Conclusion

In sum, policy must strike a balance: trademark rights should remain strong enough to serve their pro-competitive purpose, but not so broad as to freeze competition. The recommendations above, guided by the real-world examples discussed, aim to recalibrate the legal regime so that powerful brands use their marks for consumer-benefiting quality signals, not for entrenching monopoly power.

Looking forward, policy-makers should reinforce the principle that IP rights, including trademarks, must be exercised in good faith and in the public interest. Trademark enforcement should protect consumers and fair competition, not create pretexts for monopoly. Where necessary, competition authorities must be empowered to scrutinize exclusionary trademark practices. By aligning trademark law with antitrust principles—as contemplated in several jurisdictions—the market will remain open to new innovators while still preserving genuine brand value.