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SOUND MARKS IN COMPARATIVE PERSPECTIVE: INDIA, THE EUROPEAN UNION AND THE UNITED STATES

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ABSTARCT

This article explores the concept and legal framework of sound marks as a type of non-conventional trademarks, with a comparative study of India, European Union and the United States. Sound marks, which are perceived aurally, are increasingly important in branding strategies as they allow consumers to connect sounds with specific brands. But these marks can be difficult to register, with representations, distinctiveness and functionality being key concerns. It examines the shifting legal regimes on sound marks in these countries. The European Union has evolved from the graphic representability test to the digital world with the 2017 European Union Trade Mark Regulation (EUTMR), allowing for easier registration via audio files. The United States, under a liberal approach under the Lanham Act, focuses on acquired distinctiveness and has a robust functionality doctrine to avoid monopolisation of functional sounds. India, on the other hand, has established procedural recognition under the Trade Marks Rules, 2017, but still faces challenges due to the lack of clear statutory provisions and judicial precedents. Moreover, the paper discusses similarities and differences in the approach towards sound marks, such as requirements for representation, determination of distinctiveness, and the doctrine of functionality. Although there is a convergence in the international approach, there remain differences, particularly in India's emerging regime.

The paper suggests that improving legal certainty and building jurisprudence is vital to ensure sound marks continue to play their role as effective indicators of origin in a dynamic market.

Keywords: Sound, Non-Traditional Marks, Distinctiveness, Graphical Representation, Sieckmann.

INTRODUCTION

With the evolution of trademark law from traditional visual representations, sound marks are now recognized as a powerful brand building strategy. A sound mark, made up of a distinctive tune, sound or series of sounds, serves as an aural sign of origin, allowing customers to identify certain sounds with particular products or services. Distinct from traditional trademarks, sound

marks take up ‘sonic space’ and are perceived by consumers, giving rise to distinct doctrinal and practical issues in their registration and enforcement.

The present paper aims to answer the primary research question: **How adequately do the respective legal frameworks for sound marks in India, the European Union and the United States ensure their effective registration and protection, and what are the issues in the respective regimes?** A secondary question is whether the prevailing standards of representation, distinctiveness and functionality are sufficient to cope with the practices of sonic branding.

This study employs a doctrinal and comparative approach. It includes an examination of the law, regulations and significant case law in the three jurisdictions. It also involves the use of secondary sources such as academic publications and policy documents to put developments into context and to highlight legal loopholes.

The paper is structured in a two-fold way. It starts with a discussion on the concept and features of sound marks, and the analysis of the legal framework in the European Union, noting its shift to technology-neutral representation standards. The paper proceeds to examine the United States, paying particular attention to its flexible approach to registration and the strong doctrine of functionality. Then, it reviews the Indian system, with a focus on procedural advancements and statutory problems. Factors of similarity and difference are highlighted in a comparative analysis section. The article ends with an assessment of the effectiveness of the regimes and calls for more clarity and harmonization.

2.1 SOUND MARKS IN THE EUROPEAN UNION

2.1.1 Legislative Framework

The present EU legislation on trade mark registration, also covering sound marks, is predominantly based on the European Union Trade Mark Regulation (EUTMR), Regulation (EU) 2017/1001, which became effective on 1 October 2017, replacing the previous Community Trade Mark Regulation (EC) 207/2009.¹

The most substantive modification brought about by the 2017 EUTMR² concerning non-traditional marks was the rejection of the graphic representability provision. The former Article 4 of Regulation 207/2009.³ required the sign to be able to be represented graphically. This is

¹ Council Regulation (EC) No 207/2009 on the Community trade mark [2009] OJ L78/1

² Regulation (EU) 2017/1001 (n 42)

³ Regulation (EC) 207/2009 (n 1) art 4

substituted in Article 4 of the 2017 EUTMR by a stipulation that the mark shall be able to be symbolized on the Register of European Union trademarks, in a manner that allows the competent authorities and the public to identify the clear and definite subject matter of the protection which the mark confers upon its owner. This clear and precise subject matter formulation is obviously based on the Sieckmann standards, but the representability requirement is now decoupled of the specifically graphic medium, allowing digital audio files to be the main form of representation of sound marks.

The detail is implemented in Commission Delegated Regulation (EU) 2018/625. The latter specifies that sound marks will be described in terms of either providing an audio file that reproduces the sound or a faithful reproduction of the sound in musical notation (article 3(3)(g) thereof).⁴ Under the examination guidelines by the EUIPO, it is further stated that audio files should be in MP3 format, should not be bigger than two megabytes and must show the mark in its full size.⁵ In the case of the use of musical notation, it should be detailed enough so that the examiner and the masses can determine the mark with accuracy. The practical impact of the 2017 amendment is that the most dependable and desirable path to registration of sound marks is the submission of a high-quality MP3 recording, eliminating the uncertainties that existed previously when trying to make a sound graphical.

2.1.2 Essential Requirements for Registration

Representation Requirement

The EU, post-2017, representation requirement is that the applicant is required to provide an MP3 audio file of the mark or an accurate musical notation. EUIPO will reject a representation that is unclear or one that is unable to mark the sound with an adequate precision.⁶ An audio sample of the sound (such as the sound of a dog barking) cannot be used as a stand-alone representation, although it can be included with an audio file as a description. This stance is a big liberalization of the pre-2017 regime, where numerous sound mark applications were rejected at the representation phase due to the applicants trying to use an onomatopoeic description or a vague musical comment.

⁴Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 [2018] OJ L104/1, art 3

⁵ EUIPO, “Examination of Applications for EU Trade Marks” (Guidelines for Examination, Part B, Section 2, Chapter 3, January 2024) <<https://euipo.europa.eu>> accessed 12 February 2026

⁶EUIPO, “Acceptable File Formats for Sound Marks” (EUIPO Practice Note, 1 October 2017) <<https://euipo.europa.eu>> accessed 12 February 2026

Distinctiveness

The sound mark, just like any other mark, should have distinctive character to the goods or services to which registration is being applied, in accordance with the Article 7(1)(b) EUTMR⁷. The decision of the CJEU in *Shield Mark* made it clear that sounds do not necessarily lack distinctive character and the issue of distinctiveness should be evaluated on the same basis as any other mark.⁸ The examination guidelines of the EUIPO, however, observe that most of the sounds will be determined not to be of distinctive character on an ab initio basis owing to them being either a single musical note or a common melody or a sound normally heard in the environment or a sound that is directly related to the goods or services in question.

In *Krauss* case⁹, the OHIM Board of Appeal illustrates the strictness of the EU distinctiveness enquiry of sound marks. The Board believed that a mere descending scale played on a piano was not necessarily distinctive in educational services since it was made up of musical elements which were insignificant and ordinary in the market in question. Distinctiveness may however be obtained by use and the applicant was invited to submit evidence of acquired distinctiveness under Article 7(3) EUTMR.¹⁰

The General Court provided an answer to this question, in *Mars GmbH v OHIM*¹¹, and affirmed that distinctiveness of a sound mark is considered by the viewpoint of the relevant population, the average consumer, reasonably informed and reasonably attentive and circumspect and that the level of attention of the relevant population may need to vary depending on the type of goods or services in question. In the case of everyday consumer goods, the corresponding public is fairly well assumed to be at a relatively low attention level, which, ironically, can be a barrier to creating audible distinction in relation to a sound mark, since in low-attention buying situations, the public might not interpret auditory stimuli as branding signals.

Non-Deceptiveness and Grounds of passing

In addition to uniqueness, a sound mark should not be a victim of absolute grounds of refusal as stipulated in Article 7 EUTMR¹². Within the framework of sound marks the most practically important additional ground is the fact that the mark should not be opposite to the public policy or other accepted principles of morality (Article 7(1)(f))¹³, and shall not be of such character

⁷ Regulation (EU) 2017/1001 (n 1) art 7(1)(b)

⁸ *Shield Mark BV v Joost Kist* (55)– (62); Christofer Groenhart, “Sound Marks in Europe after *Shield Mark*” (2004) 26 EIPR 391

⁹ *Application by Joachim Krauss* (R 781/1999-4) (OHIM Board of Appeal, 25 August 2003)

¹⁰ Regulation (EU) 2017/1001 (n 1) art 7

¹¹ *Mars GmbH v OHIM* (T-28/08) (2010) ECR II-97 (General Court) (30)– (35)

¹² Regulation (EU) 2017/1001 (n 1) art 7

¹³ *Ibid*

as to mislead the public about the nature, quality or geographical origin of the goods or services (Article 7(1)(g))¹⁴. Such grounds are unlikely to occur in the sound mark context but might come into play where a sound mimics, such as a government emergency signal or a folk element of a musical composition relating to a specific geographical area.

2.1.3 Landmark Cases

The EU law of sound marks is based on two main foundation cases of the CJEU: *Sieckmann*¹⁵ and *Shield Mark*¹⁶. This case has a deeper meaning than the immediate facts, as they gave the intellectual scaffolding, on which the practice of examination of the EUIPO was based, and in the context of which the 2017 legislative reform was designed.

Though the case in *Sieckmann* involved a smell mark, the formulation of the seven-criteria test of graphic representability by the Court became the ground-level doctrinal test of all non-traditional representations of marks in the EU. The case is important since it declared that the graphic representability condition, in the form that it existed, was substantive, not merely administrative: a graphical representation, which did not meet all seven conditions, was a legal defect, and the execution could not be continued. The rationale of the Court was based on the fact that the general interest of the people is to have clarity and accessibility of trade mark registers in order to enable the traders to know with a certain degree of confidence what is safeguarded.

The case of *Shield Mark BV v. Joost Kist*¹⁷ was a decisive influence to the approach of the European Union to sound trademarks. The case was brought about by Shield Mark BV who had registered numerous sound signs previously with the Benelux Trade Marks Office, musical notations of the first nine notes of Für Elise, series of written notes, onomatopoeic terms like Kukelekuuuuu, and a mention of a cockcrow, against a consultant who used similar sounds in advertising and software. A Dutch court awarded relief on the basis of civil liability principles, but dismissed the trademark claim, referring to the ECJ on whether sounds could be trademarks, and how they would have to be represented.

The Court made it clear that the sounds do not fall outside the protection of the trademarks under the Directive, so long as they can differentiate the goods or services of one undertaking

¹⁴ Ibid

¹⁵ *Sieckmann v. Deutsches Patent- und Markenamt*, Case C-273/00, (2002) ECR I-11737 (European Court of Justice)

¹⁶ *Shield Mark* (n 8)

¹⁷ Ibid

to another and can be represented in a way that allows the legal certainty standards to be fulfilled. Based on its previous argument in *Sieckmann*¹⁸, the Court stressed that the representation should be clear, precise, self-contained, readily available, readable, long-lasting, and objective. It disapproved of written descriptions or simple onomatopoeia as inadequate because they are not consistent and do not specify the area of protection. Similarly, it was not sufficient to write a list of notes without specifying the pitch or length.¹⁹ In comparison, a musical stave that implied clef, notes, rests and accidentals was considered to meet the standard since it represented the structure of the melody.

The amalgamation of *Sieckmann* and *Shield Mark* resulted in the establishment of a regime that was in theory friendly to sound marks that were expressed in musical notation but in practice challenging to those sounds that could not be readily expressed in the musical notation paradigm, ambient sounds, animal sounds, machine sounds, and words. This challenge was met in the 2017 EUTMR reform, which allowed audio files to be submitted, and it has become the most common type of sound mark representation at the EUIPO.

Later cases also delved into the boundaries of graphical representation. In the effort to register the well-known lion-roar, the application was represented in a spectrogram.²⁰ The authorities, however, denied registration, as they believed that the visual depiction was not complete and could not be interpreted reliably.

2.2 SOUND MARKS IN THE UNITED STATES OF AMERICA

2.2.1 Legislative Framework

United States has a lead in intellectual property history since it is the first country to give legal rights to sound trademarks. The law of trade marks in the United States is primarily the Lanham Act 1946 (15 USC § 1051 et sq). The Lanham Act does not specify the terms trademark through a closed list of types of signs that are eligible to be used as a trademark; section 45 defines a trademark as any word, name, symbol, or device or a combination thereof to identify and distinguish goods and to designate their origin.²¹ The TTAB and the courts have construed the term “device” with much latitude and it is on this subclause that sound marks have been

¹⁸ *Sieckmann* (n 15)

¹⁹ Vatsala Sahay, ‘Conventionalising Non-Conventional Trademarks of Sounds and Scents: A Cross-Jurisdictional Study’ (2019) 6 *NSLR* 129

²⁰ *Metro-Goldwyn-Mayer Lion Corp v OHIM* (Community Trade Mark Application No 143 891) Case R 781/1999-4 (Fourth Board of Appeal, 27 March 2000)

²¹ *Lanham Act* 1946 (n 14) § 1127

accepted as registrable.

The United States was comparatively early in the international context to adopt sound mark registration, having registered the NBC musical chimes, three notes (G-E-C), in 1971.²² This registration preceded the formal jurisprudential development of the requirements to register a sound mark and was based on the simple application of the device clause and the longstanding principle that a mark must serve to designate the commercial origin of goods or services. NBC chimes were first recorded on the supplemental register and later transferred to the principal register, on evidence of acquired distinctiveness, establishing the paradigmatic two-stage process that numerous further sound mark applicants have gone through.

2.2.2 Essential Requirements for Registration

Inherent or Acquired Distinctiveness

The essential condition of any US trade mark is that the sign should be able to be used as a source identifier. In the case of non-traditional marks the ruling of the Supreme Court in *Qualitex Co v Jacobson Products Co.*²³ is the most senior decision, that granted protection of trade marks to colour marks and in the process, struck a blow in support of the general rule which states that virtually anything can be a trademark as long as it can have the major role of identification of source in the minds of the consumers.²⁴ Although *Qualitex* was about colour, its logic is regularly invoked in relation to sound marks.

The TTAB has determined that sound marks have an especially difficult road to inherent distinctiveness, and that the majority of sound marks will be required to exhibit acquired distinctiveness, secondary meaning, before they can pass on to registration on the principal register. In the case *In re General Electric Broadcasting Co case.*²⁵, General Electric sought to register the sound of a ship's bell striking the hours as a mark for radio broadcasting services. The TTAB rejected the application on the ground that the chime sequence was generic in the context of maritime-themed radio programming and therefore incapable of functioning as a source identifier, even with evidence of substantial use.

This ruling paved the way to the significant rule that functionality and genericness may defeat a sound mark application notwithstanding the amount of use, and that the TTAB will determine

²² National Broadcasting Co (NBC), US Trademark Registration No 0523616 (1971) (the NBC chime, comprising the musical notes G-E-C, one of the earliest registered sound marks in the world)

²³ *Qualitex Co. v. Jacobson Products Co.* 514 U.S. 159 (1995)

²⁴ *ibid* 162–163

²⁵ *In re General Electric Broadcasting Co* 199 USPQ 560 (TTAB 1978)

what is the primary meaning of the sound to the consuming population in question. Registration will be denied where the primary meaning of a sound is descriptive, generic or functional and not source-identifying.

Graphical/ Descriptive Representation and Filing Requirements

The registration today is a rather technical process: the applicants have to upload a digital audio file, usually in a popular format, such as .mp3 or .wav, without exceeding 5 MB. In conjunction with this recording, the filer should have a precise written description of the sound that is accurate and specific in describing any music, vocalization or lyrics.²⁶ The USPTO does not mandate musical notation as the main means of representation, as is done in the EU, but may be provided as an auxiliary. Sonogram or spectrogram is also fine. The description in writing should be sufficiently detailed that to determine the mark uniquely and a vague or impressionistic description will be challenged.

The US system of representation is quite more liberal than the pre-2017 EU regime, but generally similar to the current EUIPO practice. The audio file and the written description offer a sensible compromise between convenience (the audio file enables any human to listen to the mark) and accuracy (the description makes sure that the limits of protection are well-established). This has been a practical way that has worked and has helped in the registration of a fairly strong body of sound marks in the USPTO register.

Non-Functionality

One of the major restraints on protection of sound marks in the US is the functionality doctrine. Under *Qualitex*, a feature of a product is functional and cannot be registered as a trade mark, because it is either: essential to the use or purpose of the article or: has an effect on the cost or quality of the article.²⁷ This doctrine was restated and further explained by the Supreme Court in *TrafFix Devices Inc v Marketing Displays Inc.*,²⁸ believing that functional features cannot be monopolised under the trade mark law even in circumstances where they have acquired secondary meaning since so doing would be detrimental to competition.

The functionality doctrine in the sound mark context functions to rule out sounds that are communicative, operational or alert. The TMEP specifically gives that sounds which are simply signals or alerts like a door chime, an emergency alarm or a telephone ring, shall not be

²⁶ International Trademark Association, 'Filing a Trademark Application in the United States' (31 August 2019) <<https://www.inta.org/fact-sheets/filing-a-trademark-application-in-the-united-states/>> accessed 14 February 2026

²⁷ *Qualitex* (n 23) 164–165

²⁸ *TrafFix Devices, Inc. v. Marketing Displays, Inc.* 532 U.S. 23 (2001)

registered on functionality grounds where such protection would preclude competitors using functionally similar sounds.²⁹ The best-known application of this doctrine in the sound mark context is the unsuccessful Harley-Davidson application of the unique exhaust sound of its V-twin engine, known as potato-potato.³⁰ Though the application made by Harley-Davidson was eventually not adjudicated but was rather abandoned, the TTAB proceedings caused a lot of debate as to whether a mechanically-produced engine sound could ever be non-functional.

2.2.3 Landmark Cases and Modern Developments

In addition to *In re General Electric Broadcasting* and the *Harley-Davidson* cases, there are a number of TTAB cases that have influenced the current US sound mark environment. *In re Vertex Group LLC*³¹, the TTAB denied a registration of the sound of an alarm beeping, after finding that the sound was functional in the consumer safety products market, as it was an alert, and that registration of a trade mark would unfairly limit competition by blocking the use of a standard auditory warning signal. The ruling highlights the aggressiveness with which the TTAB enforces the functionality doctrine on sounds, which, despite any secondary meaning, have a utilitarian role.

The ruling by the TTAB in *Nextel Communications Inc v Motorola Inc*³² is of special interest since it affirmed that a distinctive and non-functional sound could be registered by means of acquired distinctiveness. The chirp sound of Nextel, the two-way radio chirp that was used when the company's Direct Connect push-to-talk service was in use, which was known as the chirp, was found to have gained distinctive attributes over years of massive usage in advertising and on-air broadcasts, and the TTAB affirmed the registration against the Motorola challenge. The paradigmatic US case of a commercially significant sound mark that has made it through the secondary meaning to registration is the Nextel decision.

Recent trends in the US are the registration of more and more audio logos and branded sounds by technology, entertainment and consumer goods companies. The roar of the MGM lion (registered 1986)³³, the Intel Corporation bong jingle³⁴ and the Tarzan yell is an example of a corpus of established registered sound marks. Moreover, the unique vocal cues, like the AFLAC duck quack or the Homer Simpson trademark D'OH exclamation, show how such a

²⁹ USPTO, *Trademark Manual of Examining Procedure* (TMPEP) § 1202.15

³⁰ *Harley-Davidson Motor Co v Suzuki Motor Corp* Serial No 74485223 (TTAB, 2002)

³¹ *In re Vertex Group LLC* 89 USPQ 2d 1694 (TTAB 2009)

³² *Nextel Communications Inc v Motorola Inc* 91 USPQ 2d 1393 (TTAB 2009)

³³ *MGM lion roar*, US Trademark Registration No 1395550 (1986)

³⁴ *Intel Corporation jingle*, US Trademark Registration No 2315261 (2000)

short, recognizable sound can be used as a strong and trademarked brand name.³⁵

The recent surge in the development of smart speakers, branded audio assistants and sonic branding in online advertising has sparked a renewed interest in sound mark strategy and the volume of US sound mark applications has risen significantly in the post-2015 era. This development is reflected in the TMEP guidance on sound marks, last revised in 2025, which places more explicit demands on the submission of digital audio files and provides more specifications on how to evaluate acquired distinctiveness.

2.3 SOUND MARKS IN INDIA

2.3.1 Legislative Framework

The Trade Marks Act 1999³⁶ (TMA 1999) is the main statute in the Indian legal framework of trademarks, Section 2(1)(zb) in the TMA 1999 describes a trade marks as a mark that can be described in graphic form and can be used to identify the goods or services of one individual as opposed to another.³⁷ In section 2(1)(m), “Mark” means a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination of the same.³⁸

Original TMA 1999 did not explicitly mention the sounds in the definition of mark. This exclusion proved to be critical since the inclusive definition used in section 2(1)(m) applied by the office and the courts was one where it was viewed as a closed list and thus any other category of marks not listed, such as sounds and smells, was considered not to be covered under the statutory scheme. This was contrary to TRIPS where member states must allow registration of any sign that can differentiate goods or services, and the international trend of registration of non-traditional marks.³⁹

The most important legislative event was the Trade Marks Rules 2017. Rule 26(5) of the 2017 Rules contains: “Where a registration of a trade mark consisting of a sound is sought, the reproduction of the mark shall be filed in the MP3 format up to a maximum of thirty seconds of duration recorded in a medium that can replay it.”⁴⁰ This clause was the first one to offer a clear procedural method of application of sound marks in India. It is however important to note

³⁵ *TrafFix Devices* (n 28)

³⁶ *Trade Marks Act, 1999*, No. 47 of 1999, India

³⁷ *Trade Marks Act 1999 (India)* s 2(1)(zb)

³⁸ *Ibid* s 2(1)(m)

³⁹ *Trade Marks Act 1999* (n 36); Venkatesh Iyer, “Non-Conventional Trade Marks under Indian Law” (2016) 21 *Journal of Intellectual Property Rights* 143, 145

⁴⁰ *Trade Marks Rules 2017* India

that Rule 26(5) only deals with the formal requirement of representation; it does not give substantive requirements in assessing distinctive character nor does it make amendments to the definition of mark in the TMA 1999 itself.

2.3.2 Prerequisites to Registration in India.

Graphic Representation

In India the threshold question is whether the requirement of graphic representability in section 2(1)(zb) TMA 1999⁴¹ is met by an MP3 file of audio (not exceeding 30 seconds) content provided under Rule 26(5). The administrative role that it can play has been adopted by the Controller General of Patents, Designs and Trade Marks (CGPDTM), which considers the MP3 filing to meet the representability criterion as well as a written description of the sound.⁴² This is an administrative role, albeit pragmatic, whereas there is no such explicit legislative or judicial approval as in the EU (since 2017 EUTMR) or the US (by long-standing TTAB practice). The statutory omission of the word sound in the list of marks in section 2(1)(m) of the TMA 1999, has not been addressed by statute and this poses some uncertainty in the law as to whether a sound mark registration in India would succeed in a challenge to its validity.

Distinctiveness

The TMA 1999 stipulates that a mark has to be in a position to identify the goods or services of one individual as opposed to those of others. Section 9(1) establishes the absolute reasons of refusal; the mark should not be devoid of any distinctive character or it should consist solely of marks or indications that can be used in trade to indicate the type, quality, quantity, intended use, value, geographical source or other features of the goods or services.⁴³ The same principles are applicable to non-traditional marks such as sound marks. A sound, therefore, has to serve as a source identifier, so that consumers can tell the difference between the goods or services of one undertaking and another.

The Indian context, however, has relatively limited judicial guidance that specifically covers the specificity of sound marks. Although some sound marks are registered, the lack of elaborate jurisprudence has led to the utilization of the general framework of distinctiveness. The Manual of Trade Marks Practice and Procedure, issued by the Controller General of Patents, Designs and Trade Marks, gives procedural advice, but does not give much detail on distinctiveness

⁴¹ Trade Marks Act 1999 (n 36)

⁴² Controller General of Patents, Designs and Trade Marks (India), "Manual of Trade Marks Practice and Procedure" (2015) Chapter 5 <<https://ipindia.gov.in>> accessed 16 February 2026

⁴³ Trade Marks Act 1999 (n 36) s 9(1)(a); Trade Marks Rules 2017 (n 40)

standards regarding sound marks. In turn, the analysis of such marks can, in reality, entail a certain case-by-case analysis.

2.3.3 Applications and Emerging Developments

The sound mark registration landscape in India has developed as something of an unheard-of rarity into a brand identity strategic device, yet the list of registered marks is exclusive. This started in 2008 with Yahoo! Inc.⁴⁴, which had registered the first ever sound mark in India on its trademark yodel. This established a pivotal precedent, showing that sounds could satisfy the statutory definition of graphical representation, using musical notation. Soon, the ICICI Bank⁴⁵ was the first Indian organization to do so in 2011, when it registered its corporate jingle demonstrating that local financial institutions could use non-traditional trademarks to differentiate their services in an oversaturated market.

Since these initial milestones in the years that followed, the Indian market has seen the establishment of a number of sonic identities, which are now legally established. Large telecommunication and consumer goods corporations have been able to obtain protection of tunes that have gained immense secondary meaning by repetition. The significant ones are Airtel signature theme which is composed by A.R Rahman⁴⁶ and the Britannia four note chime⁴⁷. Other notable registrations are the Titan watch theme, which is a symphony of Mozart (No. 25)⁴⁸ and the Nokia tune⁴⁹. These registrations point to a transition in which the average consumer has now learned to relate particular sets of music to be directly connected to a given source of goods or services.

The recent news of 2025 and 2026 suggests the area of sound marks is expanding in new areas such as hospitality and electric vehicles. For example, recently, The Taj (IHCL)⁵⁰ secured its

⁴⁴ *Yahoo! Inc's Application for Registration of Sound Mark (Yahoo! Yodel)*, Trade Mark Application No 1420518 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2008)

⁴⁵ *ICICI Bank Ltd's Application for Registration of Sound Mark (Startup Jingle)*, Trade Mark Application No 3287580 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2016)

⁴⁶ *Bharti Airtel Ltd's Application for Registration of Sound Mark (Airtel Signature Tune)*, Trade Mark Application No 2149057 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2011)

⁴⁷ *Britannia Industries Ltd's Application for Registration of Sound Mark (Four-Note Britannia Chime)*, Trade Mark Application No 1248143 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2003)

⁴⁸ *Titan Company Limited's Application for Registration of Sound Mark (Titan Musical Theme)*, Trade Mark Application No 1389162 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2005)

⁴⁹ *Nokia Corporation's Application for Registration of Sound Mark (Nokia Tune)*, Trade Mark Application No 1468536 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2006)

⁵⁰ *Indian Hotels Company Limited's Application for Registration of Sound Mark (Taj Hospitality Sound Logo)*, Trade Mark Application No 3253614 (Office of the Controller General of Patents, Designs and Trade Marks, India, 2016)

first sound mark in the hospitality industry in India and became the first to own a sound mark in India in the hospitality industry with respect to a particular sonic identity. Similarly, with the shift in the automotive sector towards electric vehicles (EVs), other brands such as TVS Motors have considered registering some electronic startup codes. However, this still does not result in a high count of sound marks, compared to other marks. This is because of the high threshold of the graphical representation, where a clear musical notations or spectrograms are required and the difficulty in proving that the sound was not only functional or decorative, but also an indication of commercial origin.

2.4 COMPARATIVE ANALYSIS: CONVERGENCES AND DIVERGENCES

2.4.1 The Representation Requirement: Graphic to Digital

In the three jurisdictions, the most significant structural variable in sound mark treatment is the nature of the representation requirement, and the degree to which the law has evolved to allow digital audio files to be used as the main medium of representation. The most explicit legislative adaptation is the trajectory of the EU since the strict Sieckmann graphic representability test, which it applied since 2002, to the technologically neutral standard of clear and precise of Article 4 EUTMR 2017.⁵¹ This necessitated a doctrinal incompatibility: a sonic experience needed to be translated into a visual form, and the musical notation hack, although effective with melodic sounds, could not translate the entire range of sounds which modern brands employ to identify themselves.

The US tradition has never been so rigid at the level of formal representation, and has never required a strict graphic representability. Accepting audio files, sonograms, and written descriptions by the TMEP.

One important point to note is that the requirements of representation have two separate roles that are frequently confused: an administrative role (to make the register workable) and a substantive role (to define the scope of the protection with a certain degree of clarity in order to allow third parties to evaluate the limits of the rights of the proprietor). The Sieckmann criteria developed by the EU were mostly focused on the substantive role, and the introduction of the digital audio as the major form of representation in the 2017 EUTMR is based on the perception that a high quality digital recording is a medium that fulfills both roles.⁵² The US practice has not been so mindful of the role of substantive delineation, which has relied on

⁵¹ *Sieckmann* (n 15) 45-55

⁵² *Sieckmann* (n 15) 47

written descriptions to complement audio files, and which in certain instances can cause the scope of protection to be defined imprecisely.

2.4.2 Distinctiveness: Convergent Standards, Divergent Application

As a matter of principle, all three jurisdictions need a sound mark to have distinctive character either by inherent nature or by acquired use in order to be considered as able to be registered. On the plane of abstract doctrine, a similar convergence can be observed: all three laws, EU, US, and Indian, use a consumer-perception test, which analyzes whether the corresponding consuming population regards the sound as a sign of commercial genesis or as an element of a generic or descriptive or ornamental character.

In practice, however, the working of distinctiveness doctrine varies widely. The post-Shield Mark jurisprudence and examination guidelines of the EU have evolved a rather systematic methodology, distinguishing certain types of sounds that will ordinarily be considered to lack inherent distinctiveness (single notes, common melodies, ordinary sounds in the environment), and has offered some idea on the evidence that is necessary to prove acquired distinctiveness.⁵³

The US TTAB approach, although substantively identical, has been further developed with a greater number of decided cases, and therefore offers more concrete precedential guidance on, e.g. the amount of use evidence required to prove secondary meaning to a sound mark.⁵⁴

India has not yet developed the assessment of distinctiveness of sound marks. The general distinctiveness provisions of the TMA 1999 apply, but due to the lack of specific examination guidelines to sound marks and the lack of decisions by the IPAB or courts, each application is evaluated in a sort of jurisprudential vacuum. It is not just an academic issue: doubt as to the criteria of distinctiveness evaluation directly impacts on the investment choices of brand owners on whether to seek sound mark protection in India, and it opens the door to arbitrary or inconsistent rulings by individual examiners.

2.4.3 Functionality: The Key Structural Difference

The greatest structural difference in the three jurisdictions is on the role of the functionality doctrine. The US uses a strong freestanding functionality doctrine, based on *Qualitex* and *TraFFix Devices*, that is used as an independent absolute bar to registration of functional

⁵³ *Linde AG v Deutsches Patent- und Markenamt* (C-53/01) [2003] ECR I-3161 (ECJ)

⁵⁴ *McCarthy* (n 1) 1397–1399

features in addition to and on top of the distinctiveness requirement.⁵⁵ The doctrine has been implemented with specific stringency in the sound mark situation as the case of *In re Vertax Group and In re General Electric Broadcasting*⁵⁶ exemplify.

EU deals with functionality under Article 7(1)(e) EUTMR⁵⁷, which offers absolute grounds of refusal on signs that are solely composed of the shape (or, via it, of characteristics) required to achieve a technical outcome.⁵⁸ Although the ground of functionality of the EUTMR has so far developed in the context of shape marks, it has been used by analogy to other non-traditional marks, such as sounds. The EUIPO will not grant a sound mark in which the sound is part and parcel of the functionality of the product such as a sound which is an essential part of the functioning process of a machine or device.

The TMA 1999 of India lacks a clear freestanding functionality exclusion that is comparable to the US or EU law. The closest is section 9(1)(b)⁵⁹, that does not include marks that are made up solely of signs or indications that can be used in trade to identify characteristics of the goods or services, a clause more akin to the descriptiveness exclusion than to the functionality doctrine as construed in the US. This lack of a clear doctrine of functionality in Indian sound mark law might be a potential area of weakness: it leaves in theory an open possibility that a sound that has a necessary functional effect like a conventional alert tone or a signal which is operationally required could be registered, with a bad result in the competition of the market.

2.4.4 International Harmonisation and TRIPS Compliance

The general problem that has affected the comparative analysis is the connection between the treatment of sound marks in each jurisdiction and the structure that was put in place by the TRIPS Agreement. TRIPS (Article 15(1)) stipulates that the protectable marks include signs, or a combination of signs that can tell the difference between the goods or services of a single undertaking and those of other undertakings. Article 15 includes in the footnote 1 that members are entitled to insist, as a condition of registration, that the signatures be visible.⁶⁰

Each of the three jurisdictions has long mandated some sort of graphic or visual representation as a condition to registration, and this has been the major technical obstacle to sound mark

⁵⁵ *TrafFix Devices* (n 28) 29; *Qualitex* (n 23) 164; EUTMR (n 42) art 7(1)(e)

⁵⁶ *In re Vertax Group LLC* 89 USPQ2d 1694 (TTAB 2009); *In re General Electric Broadcasting Co Inc* 199 USPQ 560 (TTAB 1978)

⁵⁷ Regulation (EU) 2017/1001 (n 1) art 7(1)(b)

⁵⁸ *Ibid* art 59(1)(a)

⁵⁹ Trade Marks Act, 1999 (n 36) section 9 (1)(b)

⁶⁰ TRIPS Agreement 1994 (Agreement on Trade-Related Aspects of Intellectual Property Rights) art 15(1).

registration in each. The US early abandonment of the rigorous graphic representability, based on the technology-neutral definition of Lanham Act, predicted the worldwide trend to liberalization. The graphic representability requirement at EUTM level has now been expressly eliminated in the 2017 reform of the EU, with a new standard of clear and precise being provided, which is now digital audio friendly. Rule 26(5) of India is one such liberalization, which admits MP3 files, but which keeps the more liberal graphic representability language of the parent statute.⁶¹

Singapore Treaty on the Law of Trademarks (2006) is also applicable since Article 2(1)(b) also requires the contracting parties to authorize registration of non-visual marks when the law of the contracting party allows registration of non-visual marks. India is not a signatory to the Singapore Treaty and its joining would have given another momentum in the legislative revamping of TMA 1999 in the context of sound marks. Both the EU and US are party to the Singapore Treaty and their adherence to the provisions of the Singapore Treaty on non-traditional marks are echoed in, respectively, the 2017 EUTMR reform and the current Lanham Act system.

2.5 CONCLUSION

In summary, sound marks are a major development in the field of trademark law, signaling the progression from visual to multisensory branding. With the growing use of sonic branding by companies, it is vital for legal frameworks to evolve to provide protection and promote competition. This comparison between India, the European Union and the United States shows a unified approach to recognize sound marks as trademarks, but also some differences in their approach.

The European Union has adopted a technologically forward-looking stance by eliminating the requirement for graphic representation, while the United States offers a flexible but stringent regime based on distinctiveness and a robust functionality doctrine. While India is making significant strides with procedural reforms such as the Trade Marks Rules, 2017, it is still grappling with issues of statutory clarity and is yet to undergo vast judicial scrutiny.

These variations reveal that while global convergence is slowly taking place, there are still inconsistencies, especially with respect to distinctiveness and functionality. India, in particular, needs to enhance its legal framework and provide more clarity and guidance to ensure certainty and predictability.

⁶¹ Ibid

In conclusion, a nuanced legal framework that encourages innovation and protects competition is crucial for sound marks to be used as a reliable source indicator in the contemporary marketplace.

