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# **THE STRATEGIC IMPERATIVE: TRADEMARK PROTECTION AND PRACTICE IN THE INDIAN LEGAL LANDSCAPE**

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## **Abstract**

In the modern era of globalized markets, the significance of trademarks cannot be understated when it comes to safeguarding the identity, goodwill, and reputation of a business entity. According to the Trade Marks Act, 1999, a trademark acts as a “badge of origin” that serves to identify the goods/services of one enterprise from those of any other business entity. The purpose of this paper is to discuss the significance of trademark protection in India through a discussion of the statutory regime for the same. To begin with, it would be prudent to mention that the benefits accruing to a trademark owner in terms of registration include the exclusive rights enjoyed by them in accordance with Sections 27, 28, 29, and 31 of the Act. In addition to this, trademarks are considered as invaluable intangible property that adds value in terms of establishing brand identity and enhancing consumer loyalty. Cases such as Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., and N.R. Dongre v. Whirlpool Corporation illustrate the significance of trademark protection through judicial means against deception and dilution of reputed marks.

## **Introduction**

In a globalized economy, a brand’s identity is often its most valuable asset, functioning as a "badge of origin" that connects a product or service to its source. Under the statutory framework of the Trade Marks Act, 1999, a trademark is defined under Section 2(1)(zb)<sup>1</sup> as “a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between goods or services, as the case may be, and some person having the right as proprietor to use the mark; and a mark used or proposed to be used in relation to goods or services for the

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<sup>1</sup> [Section 2\(1\)](#)

purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of that person, and includes a certification trade mark or collective mark". This encompasses a broad range of identifiers, from logos and names to the shape of goods or their packaging, as outlined in Section 2(1)(m) of the Trade Marks Act, 1999 which defined "mark". It includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination. For businesses, the protection of these marks is not merely a legal formality but a strategic necessity to maintain market integrity and consumer trust.

### **The Statutory Superiority of Registration**

The importance of trademark registration lies in the significant legal advantages as it provides over the common law remedy of passing off. Section 27<sup>2</sup> of the Trade Marks Act, 1999 talks about the consequence of not registering a trademark. It states that no person shall be able to institute any suit for infringement for an unregistered trademark, thus making statutory remedies available to only proprietors of registered trademarks. However, Section 27 does provide an exception for common law remedies by stating that it would not affect the owner of an unregistered trademark's right to file an action for passing off when another entity passes off their goods or services as that of the original user and damages the goodwill of such a user. While Section 27(2) preserves the right of action against any person for passing off, Section 27(1) explicitly prohibits any person from instituting any proceedings to prevent, or to recover damages for the infringement of an unregistered trademark. Formal registration grants the proprietor exclusive rights under Section 28<sup>3</sup> to the use of the trademark in relation to the goods or services for which it is registered. According to Section 28 of the Trade Marks Act, 1999, there is an exclusive right given to the registered owner to use the trade mark with respect to the goods/services in relation to which the trademark was registered, along with getting relief in case of any infringement. The right given above is subject to all the conditions or limitations recorded in the register and is applicable in entire India. In cases where more than one person has been registered proprietors with identical or deceptively similar trademarks, the right given under Section 28 is applicable against third parties but not among themselves. Under Section 28 of the Trade Marks Act, 1999, the registration of a trade mark shall be valid if it gives to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation

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<sup>2</sup> [Section 27](#)

<sup>3</sup> [Section 28](#)

to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark. The right for the use of such trade mark shall have some of the conditions and limitations in relation to the registration.

Section 29<sup>4</sup> of the Trade Marks Act, 1999 is the key provision governing infringement of registered trademarks in India. It protects registered proprietors against unauthorized use of identical or deceptively similar marks that are likely to cause confusion among consumers. The section not only covers direct copying but also extends to dilution, tarnishment, and unfair exploitation of reputed trademarks, even when used for unrelated goods or services. It includes various forms of unauthorized use such as on packaging, labels, advertisements, trade names, and spoken references. In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*,<sup>5</sup> the Supreme Court of India held that infringement under Section 29 of the Trade Marks Act, 1999 occurs when the unauthorized use of a mark is likely to cause confusion among consumers. The Court emphasized that even a possibility of deception is sufficient, particularly in the pharmaceutical industry where confusion between medicinal products can endanger public health. It laid down factors such as the nature of the marks, degree of resemblance, nature of goods, class of purchasers, and mode of purchase to determine deceptive similarity. The decision strengthened trademark protection by affirming that the law must be applied strictly to safeguard both consumers and the goodwill and reputation of registered trademark owners. And also discussed in the cases of *ITC Limited v. Philip Morris Products SA*<sup>6</sup>, and *Daimler Benz Aktiegesellschaft v. Hybo Hindustan*<sup>7</sup>, emphasizing consumer protection and the broad rights of trademark owners. Section 29 serves as the cornerstone of trademark enforcement in India by providing comprehensive statutory remedies against infringement and safeguarding the commercial value and reputation of registered marks.

The right to use the trade mark shall not be given to the persons Furthermore, under Section 31, registration is considered prima facie evidence of the validity of the trademark in all legal proceedings. This shifts the burden of proof to the challenger, making enforcement more streamlined and nationwide. In the landmark case of *N.R. Dongre v. Whirlpool Corporation* (1996)<sup>8</sup>, the Supreme Court emphasized that registration is not just a formality but a safeguard

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<sup>4</sup> [Section 29](#)

<sup>5</sup> [Cadila Healthcare Limited vs Cadila Pharmaceuticals Limited](#)

<sup>6</sup> [ITC Limited vs Philip Morris Products Sa And Ors.](#)

<sup>7</sup> [Daimler Benz Aktiegesellschaft And Ors. vs Hybo Hindustan,1993](#)

<sup>8</sup> [N.R. Dongre And Ors vs Whirlpool Corporation And Anr,1996](#)

for a brand's established reputation. The court ruled that even in the absence of physical sales, a mark with "trans-border reputation" (established through global advertising) is protected in India, reinforcing that statutory rights and common law reputation are intertwined but registration remains the superior protective shield.

### **Business Benefits and Economic Value**

A trademark is among the most precious intangible assets of a business. While the value of physical assets like machinery and structures diminishes over time due to depreciation, the value of trademarks keeps increasing with consumer awareness and goodwill built around them. The established Indian trademarks like Tata and Amul make good profits from the trust and loyalty that consumers have in them. Hence, it follows that the value of a trademark can be higher than the value of any tangible asset that a business owns.

The importance of a trademark as an intangible asset is reflected in Section 37<sup>9</sup> of the Trade Marks Act, 1999. According to this provision, the sole prerogative for assigning or licensing out the trademark rests with the registered proprietor of the trademark. As a consequence of this, businesses can effectively make profits by licensing out their trademarks in the form of franchising, merchandising and royalty-based licensing contracts. For instance, an established firm can allow other firms to operate using its trademark in return for fees.

Another crucial function performed by trademarks is that of consumer protection through the reduction of search costs, which is a concept in economics. Search cost refers to the effort and expense incurred by consumers in gathering information about the characteristics of various goods and services. The buyer is therefore assured about the authenticity of the good when encountering a trademarked product. Consequently, consumers are shielded against fake or low-quality items.

Trademark protection becomes very necessary in preventing brand dilution. Under Section 29(4) of the Trade Marks Act, 1999, trademarks with reputation in India are protected against the usage of identical or similar trademarks for different goods or services, provided the usage unfairly exploits the distinctiveness or reputation of the trademark. It is important to note that the reputation of famous trademarks lies not only in relation to the goods or services to which

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<sup>9</sup> [Section 37](#)

the mark applies.

The following case study highlights the importance of the principle in question in the case of *Tata Sons Ltd. v. Manoj Dhingra*. In this case, the Delhi High Court took the necessary steps to prevent infringement of the TATA mark in an unrelated industry. The Court ruled that the TATA mark possessed distinctive goodwill and any misuse of the same would cause a dilution of the distinctive character of the mark along with exploitation of its good will.

### **Practical Aspects of Trademark Practice**

Trademark protection in India involves not only substantive rights but also a structured administrative and judicial process. The registration process begins under Section 18<sup>10</sup> of the Trade Marks Act, 1999, which permits any person claiming to be the proprietor of a trademark to file an application with the Trade Marks Registry through IP India. Once filed, the application undergoes examination to determine whether the mark satisfies the statutory requirements for registration.

During examination, the Registrar evaluates the mark under two principal categories of objections. Section 9 deals with absolute grounds for refusal, which bar registration of marks that lack distinctiveness, are descriptive of the goods or services, have become customary in trade, or are otherwise incapable of distinguishing one trader's goods from those of another. Section 11 addresses relative grounds for refusal and prevents registration of marks that are identical or deceptively similar to earlier trademarks where such similarity is likely to cause confusion or association among consumers. If objections are raised, the applicant may submit written responses and attend a hearing to defend the registrability of the mark.

A central issue in trademark litigation and registration disputes is the concept of “deceptive similarity.” This doctrine determines whether two marks are so similar that consumers may mistakenly believe that the goods or services originate from the same source. Indian courts have consistently emphasized that the comparison must focus on the overall commercial impression created by the marks rather than on isolated components.

The leading authority on this issue is *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*

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<sup>10</sup> [Section 18](#)

In this landmark judgment, the Supreme Court of India held that trademarks must be assessed from the perspective of a person of average intelligence and imperfect recollection. Such a consumer does not examine marks side by side with meticulous attention but relies on a general memory of their appearance, sound, and overall impression. The Court laid down several factors to be considered, including the nature of the marks, degree of resemblance, nature of the goods, class of purchasers, and surrounding circumstances.

The Court imposed an especially strict standard in relation to pharmaceutical products. It observed that confusion between medicinal trademarks may have serious or even fatal consequences, particularly where patients, pharmacists, or medical practitioners may inadvertently substitute one medicine for another. Accordingly, even a relatively small degree of similarity may justify judicial intervention in the pharmaceutical sector.

The Cadila decision remains the foundational precedent governing deceptive similarity in India. It illustrates that trademark law is not merely a procedural mechanism for registration but a substantive tool designed to protect consumers, preserve business goodwill, and promote fair competition in the marketplace.

### **Enforcement and Remedies**

The Trade Marks Act 1999 sets forth a full scope of both criminal and civil recourse, specifically for infringing a trade mark; to ensure a trade mark owner's proprietary rights are upheld, as well as maintain consumer confidence. The primary civil remedies are detailed in section 135<sup>11</sup> of the Trade Marks Act, 1999 and they allow for the following: a court can give injunction(s); order either an award of damages or an award of profits; and order to deliver up any infringing product or material. The most common remedy is obtaining an injunction which can be given on an interim basis or permanency, depending on the circumstance, to prohibit the defendant from using the impugned trade mark. Additionally, a court may order an applicant to receive evidence (i.e., discovery of documents) and an order to preserve evidence from the defendant conducted during the commission of the infringement so that the applicant is able to show their claim for damages is accurate. Furthermore, in addition to obtaining injunctive relief, the proprietor may claim damages for any loss incurred by reason of the defendant's actions or claim an account of profits; if entitlement to an account of profits is

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<sup>11</sup> [Section 135](#)

proven, then the defendant is required to pay to the proprietor the profits gained by way of using the mark without authority. Lastly, depending on the evidence submitted, the court has power to order the delivery up and destruction of counterfeit labels, packaging and other items used to infringe the proprietor's trade marking rights.

The Act includes strict criminal penalties to discourage intentional counterfeiting by establishing Section 103<sup>12</sup> and Section 104<sup>13</sup> of the Trade Marks Act, 1999 that includes imprisonment from 6 months up to 3 years and a fine of ₹50,000 to ₹2,00,000 for falsifying a trademark, using false trade descriptions or selling goods or services with false marks. For repeat offenders, Section 105 of the Trade Marks Act, 1999 provides for harsher punishment than for first offences. Under the provisions of Section 115<sup>14</sup> of the Trade Marks Act, 1999 police officers may administer search and seizure operations according to established procedural safeguards to quickly remove counterfeit merchandise from the market. The provisions outlined above recognize that trademark infringement is not just a private commercial transaction between individuals but an illegal act that impacts public confidence in the market and market integrity.

In India, courts have developed a robust body of law by providing effective remedies for trademark infringement. In *Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia*<sup>15</sup>, the Supreme Court of India has ruled that if infringement of a trademark can be proven during the first stage of the hearing (ie prima facie) for an injunction against the infringer should be granted immediately. Similarly, in *Time Incorporated v. Lokesh Srivastava*<sup>16</sup>, the Delhi High Court awarded punitive damages for trademark infringement to provide a disincentive for dishonest traders to engage in the same conduct. In *Louis Vuitton Malletier v. Omi*<sup>17</sup>, the Court granted an injunction to stop further sales of counterfeit merchandise, awarded damages for lost sales and destruction of the counterfeited merchandise, which further exemplifies the necessity for a strong judicial response.

The digitization has also extended those protections to the use of branding on goods sold through the Internet and for e-commerce businesses. For example, in the case of Starbucks

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<sup>12</sup> [Section 103](#)

<sup>13</sup> [Section 104](#)

<sup>14</sup> [Section 115](#)

<sup>15</sup> [Midas Hygiene Industries P. Ltd. vs Sudhir Bhatia And Ors.](#)

<sup>16</sup> [Time Incorporated vs Lokesh Srivastava And Anr.](#)

<sup>17</sup> [Louis Vuitton Malletier vs Mr. Omi & Anr.](#)

Corporation v. Sardarbuksh Coffee & Co.,<sup>18</sup> the Delhi High Court found that the defendant's use of the mark "Sardarbuksh" was likely to cause confusion among consumers because of the phonetic and visual similarities to "Starbucks". The court ordered both parties to modify their branding to minimize the potential for consumer confusion.

Similarly, in *Christian Louboutin SAS v. Nakul Bajaj*<sup>19</sup>, the court ruled that online marketplaces can also be held liable for facilitating or enabling trademark infringement. Together, these statutory remedial measures and landmark legal decisions demonstrate that Indian trademark law provides strong and effective remedies, both judicially and by way of statute, to enforce those remedies. Trademarks in India are assured protection against counterfeiting and will help to secure the brand value of the goods/services offered through the use of trademarks; thus, enhancing the strategic value of trademarks in the current business environment.

### Conclusion

To summarize, registering your trademark in India is necessary from both a legal and commercial perspective because registering your trademark provides protection to your company's identity and reputation. A trademark is its "badge of origin," allowing consumers to identify where goods or services originated from, as well as associating those marks with certain levels of quality and reliability. A trademark continues to build goodwill over time, ultimately creating an intangible asset that can materially increase a company's economic value. The Trade Marks Act 1999 establishes a statutory framework for trademarks that offers better protection for trademarks than common law passing off. Even though unregistered trademarks may still be protected under section 27(2), the burden of proving goodwill, misrepresentation and damages will be much more substantial than for registered marks. These sections also grant an exclusive right to a registered trademark owner under section 28, give rise to statutory causes of action for infringement under section 29, and provide an assumption of validity under section 31 to the registered trademark owner. These provisions make it more efficient and effective for registered trademark owners to enforce their trademarks.

Trademark registration plays an integral part in providing protection for brand image and helps to develop a level of trust among consumers while ensuring that business operations will grow

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<sup>18</sup> [Starbucks Corporation vs Star Bucks Cafe & Anr, 2022](#)

<sup>19</sup> [Christian Louboutin Sas vs Nakul Bajaj & Ors](#)

over the long term in today's highly competitive and rapidly globalizing economy within the Indian context. In addition, Indian courts are continuously reinforcing the protection of trademarks through various decisions (e.g. N.R. Dongre v. Whirlpool Corporation), which recognised the concept of trans-border reputation and the enforcement of the Whirlpool trademark in India. The Indian Supreme Court has established strict tests for determining whether two marks are deceptively similar as demonstrated by its ruling in the case of Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., particularly with respect to pharmaceutical products. Other cases (i.e. Tata Sons Ltd v. Manoj Dhingra; Starbucks Corporation v. Sardarbuksh Coffee & Co.) serve as additional examples of the courts' willingness to protect well-known trademarks from dilution or imitation.

