

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

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 & Utkrish 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

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, 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.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS 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.

ASSESSING “SOUND” AS A TRADEMARK: A COMPARATIVE STUDY OF REGISTRATION REGIMES IN INDIA, US, THE EU, AND OTHER NATIONS

AUTHORED BY - HARISHRI S¹ & STUTHI SOLANKI V²

Abstract

As we all know, humans have five senses. While vision often dominates, it is sound that instantly captures attention. It lingers in our minds more than what we see. Companies have begun relying on audio cues to build relationships with customers, making sound marks an important yet under-studied aspect of trademark law. The US and the EU have established registration and enforcement mechanisms for protecting sound marks. The US has recognised sound marks with a literal approach. The EU followed the Sieckman criteria, and subsequent reforms were brought in through EU Trade Mark Regulation. Saudi Arabia introduced its own portal for sound mark registration. Following the Shield Mark criterion, India also took a further step in adopting this concept in 2017 through Rule 26(5) of the Trade Mark Rules. This makes one question whether only a Rule and an outdated precedent is enough for an emerging area in the commercial world. It still stays in the nascent stage when the need for regulation of sound marks is increasing gradually. This paper delves into the study of sound mark regulation & registration across countries including the US, EU, Saudi Arabia and India. It studies differences in the registration procedures, scope for distinctiveness, and enforcement standards in infringement litigation. This paper also examines the intersection of trademark protection for sounds and the challenges posed by the emerging audio technology. By pointing out India's nascent practice against more flexible and technologically adaptive international models, this paper argues for a simplified, harmonised and business-friendly approach. It also aims to provide a roadmap for reforming consumer protection, commercial innovation, and global consistency, by protecting sound marks as an essential component of intellectual property law.

Keywords

Soundmark & brand identity, sound distinctiveness, Graphical representation of sound marks, Trade Marks Rules 2017, Registrability of sound marks & difficulties.

¹ 126118009@sastra.ac.in, 9500775323, 5th year BBA LLB student

² 126118034@sastra.ac.in, 9487402017, 5th year BBA LLB student

Objectives

The following are the objectives of this paper:

- To analyse the evolution of sound trademarks in India and other jurisdictions
- To identify loopholes in Indian law and how international law deals with the same
- To look into the contemporary challenges posed by the outdated provisions and its implications in registration of soundmarks
- To suggest reforms to harmonise Indian law with global guidelines

Hypothesis:

“The current Indian legal framework does not sufficiently accommodate the registration and protection of sound marks under the Trade Marks Act, 1999.”

Research Questions

This entire paper focuses on the following questions:

- How are sound trade marks recognised, enforced and protected in various countries, and what is the position of India and how effective are its sound mark laws in comparison?
- What issues do applicants face during and after registration due to lack of codified Rules and Regulations?
- What changes can be brought in to make it effective and less problematic?

A. Introduction

Non-traditional Intellectual Property is a form of IP that does not fall under the conventional categories of IP like patent, trademark, and copyright. These terms are mostly associated with trademarks in India³. For example, soundmarks, color marks, shape marks, texture marks etc. But it is also applied in broader contexts like trade dress, breeders’ rights, database rights and rights for traditional knowledge.

Non-traditional IP differs from traditional IPs in many ways.

Feature	Traditional IP	Non-Traditional IP
Focus	Aims to protect inventions, artistic	Focuses more on details like

³ Priyanka Saraswat, ‘Non-conventional trademarks and the procedural requirements for registration’ (*iPleaders*, 27 April 2021) <<https://blog.ipleaders.in/non-conventional-trademarks-procedural-requirements-registration/>> accessed 20 September 2025

	works, logos and secret information of a brand.	sound, scent, shape or cultural knowledge.
Legal Requirements	The main requirement to register is novelty, originality and distinctiveness.	Subject to specialised requirements. Requires demonstrations to prove the association with the traditional IP.
Framework	They have codified laws, precedents, international treaties and they are uniformly protected.	They lack harmonized law. Even domestic laws do not have well-codified laws for them.
Example	Patents, Copyright	Soundmark, colormarks and Geographical indication

This paper deals with the concept of soundmark, how it emerged as an IP, requirements to register a soundmark in India, how it is governed and regulated in different countries, what issues the IP applicants face and finally it concludes with suggestions on how to overcome those kinds of problems.

B. Emergence of Sound as IP

The most basic source of entertainment relying solely on one’s hearing capacity is music. And as businesses set up and expanded, they dived into the marketing area which would primarily mean making captivating advertisements, catchy dialogues, jingles and sound. And slowly, as Patents and Trademarks came to be used for protecting innovations and technologies, men wanted to now extend such legal protection offered to the signature sounds they use in such advertisements as well so as to not let competitors use similar sounds to bag their potential consumers.

With increased digital contents- Spotify, Youtube, OTT streaming platforms like Netflix, Hotstar, etc, when we think about it carefully, the intro music in podcasts we hear, the signature ‘ta-dum’ of Netflix, the IPL music when we open Hotstar are all sound marks. This is the simplest yet powerful way to establish brand recognition.

C. What are sound marks?

Sound marks are also referred to as Sound trademarks. They serve as brand identifiers. It is used mainly for Sonic Branding which means a strategy to use audio as an identity for a brand. Soundmark gives the brand exclusive right to use a particular musical tone/jingle or sound effect. This uniqueness of the sound helps identify that brand whenever it is heard as consumers will associate it with the brand any and every time they hear it.

D. Conceptual Foundations of Sound Marks:

D.I. Definition & Nature

The Indian Trademarks Act, 1999 does not define soundmarks. It is understood as being included in the wide definition of Trademark in Section 2(zb), which includes any mark that is graphically representable and is capable enough/ distinct enough to distinguish goods and services of a particular brand with that of others.

But a number of International Organisations have given definitions for sound trademarks. For instance, the World Intellectual Property Organization (WIPO) simply defined soundmark as a melody that is presented by notes⁴.

It makes it clear that most countries that have recognised soundmarks have adopted the WIPO definition of soundmarks as the general requirement to register it i.e., distinct sound and its musical note.

There are several non-traditional marks like smell, shape and colour. Out of these, shape and colour marks are easier to register under Indian law as they have physical presence and they can just be seen with naked eyes and identified easily. Graphical representation is much easier when it is a physical object like a Coca-Cola bottle or a triangle bar of Toblerone. But for sound, it is different. Their representation is through hearing and Indian law demands for a graphical representation for the same which is usually done using music notation. And due to perceptive reasons, proving distinctiveness is a challenge.

Thus, this paper delves into unexplored challenges faced by the trade mark applicants and how developing countries are dealing with the registration of sound marks and how India can adopt

⁴ World Intellectual Property Organization, *New types of marks*, <https://www.wipo.int/documents/d/sct/docs-en-comments-pdf-sct17-bg_1.pdf> accessed 21 September 2025

those laws and rules for the betterment of the trade mark protection.

D.II. Historical Development:

The development of sound marks across the world spans from the early 20th century. It started with the recognition of sound as a distinctive brand identity across different jurisdictions⁵. The legal recognition of soundmark began in the United States where a unique sound associated with a service or product was allowed to be registered as a trademark.

Later, countries like Australia, India, Europe also began to incorporate the concept of soundmark registration in their intellectual property law after Globalisation. The European Union Intellectual Office released clear guidelines in 2017 for the registration and protection of sound marks. In the same year, India stipulated the requirement of MP3 submissions and musical notation through its Trade Mark Rules.

D.III. Examples of registered sound marks

The oldest soundmarks of classic sounds registered in the US were: NBC chimes in 1950, the Twentieth Century Fox movies' opening sound in 1974, Metro-Goldwyn-Mayer (MGM) lion's roar in 1986, and the guitar sound while switching on the cell device of Nokia in 2000.

The oldest sound marks of classic sounds registered in India were: the Yahoo yodel in 2008, the four bell sound of Britannia in 2010, the Airtel ringtone composed by A.R Rahman in 2010, the corporate jingle music of the ICICI bank in 2011.

Registration of the Yahoo yodel was the first sound mark case in India to recognize and give protection to a non-traditional trademark. That too, to an American company. This paved the way to the idea of unconventional marks and expanded the scope of soundmark registration in India for not only Indian brands, but for foreign brands too. Allianz of Germany, Hisamitsu song of Japan, musical sequence of 'Raymond: The Complete Man' created by a German composer (used in India to advertise its clothing brand called 'Raymond')

E. Distinctiveness in Sound Marks

It is a necessity in every jurisdiction that a sound should be distinct from any other audio that is used by other brands for it to be protected under the Trade Mark Rules. Specifically, for sound marks, the test focuses mainly on the question "Whether the sound can be identified by

⁵ Wikipedia, 'Sound trademark' <https://en.m.wikipedia.org/wiki/Sound_trademark> accessed 21 September 2025

the consumer and trace its commercial origin.” It mandates that the brand can prove one of the following:

E.I. Inherent Distinctiveness:

It means that the sound should not be generic and functional like the sounds we hear in our everyday life. For instance, the fizzing of soda is not unique⁶. During the time of registration, it should be inherently unique to serve as a brand identity.

The sound registered to be protected should make it easier to identify the product for the purpose of trade and commerce without the necessity of proof of secondary meaning. It should not be a mere technical or background music that has nothing to do with the commercial or advertising purposes.

E.II. Acquired Distinctiveness:

It means that the sound was not distinct enough when it was being used initially but it has gained distinctiveness in a later part of time. In this situation, the applicant must prove that the consumers, over a period of time, can associate the sound of the product due to the commercial use and recognition⁷.

Acquired distinctiveness can be proven through market surveys, sales figures, customer recognition, and the publicity of the audio. The registry checks if the audio is capable of creating an association in the minds of consumers and brand. If the brands can prove this, their sounds can be registered under the Trade Mark Rules⁸.

F. Indian Legal Framework for Sound Marks

F.I. Statutory Basis

Rule 26(5) of Trade Marks Rules, 2017⁹ reads as follows:

“Where an application for the registration of a trademark consists of a sound as a trademark, the reproduction of the same shall be submitted in the MP3 format not exceeding thirty seconds’ length recorded on a medium which allows for easy and clearly audible replaying accompanied

⁶ Sujata Chaudhri, Shradha Prakash & Neha Mallik, ‘Sounding Off: Decoding Sound Marks in India’ (*Bar & Bench*, 20 March 2024) <<https://www.barandbench.com/view-point/sounding-off-decoding-sound-marks-in-india>> accessed 12 September 2025

⁷ Obhan & Associates, ‘Safe and Sound: Protecting Sonic Identities as Trademarks in India’ (*Obhan & Associates*, 19 February 2024) <<https://www.obhanandassociates.com/blog/safe-and-sound-protecting-sonic-identities-as-trademarks-in-india/>> accessed 17 September 2025

⁸ Julie Christol, ‘Non-Conventional Trademark – Part 3 – Sound Marks’ (*Gevers*, 21 March 2024) <<https://gevers.eu/blog/non-conventional-trademark-part-3-sound-marks/>> accessed 17 September 2025

⁹ Trade Marks Rules 2017, Rule 26(5)

with a graphical representation of its notations."¹⁰

This provision brings out the essential elements necessary for registering a sound mark. The elements are:

- 1. Format:** The sound is submitted as an MP3 file. This format has been specified as the exclusively acceptable format because of its wide compatibility and ease in storage, accessibility and usage.
- 2. Length:** The maximum duration of the sound is 30 seconds. If it is more than 30 seconds and is mostly music-based, then it would fall under copyright. But it also shouldn't be too short— containing only 1-2 musical notes either.
- 3. Medium:** It should be such that it records the sound in an easy, clear, and audible manner with good quality replaying.
- 4. Graphical representation:** Trademarks, in general, like logos, are graphically representable. And this feature is extended even to soundmarks and it needs to be observed. An application for a sound mark requires the sound clip to be supported by a visual. Typically, a series of musical notes, with or without words, are used.

Although not added in this provision, it is an international and precedent-based practice to require a description or onomatopoeia of the sound applied for registration. The description could also be the musical notes with various music symbols like treble clef, quaver, beam note. One mustn't forget that since a soundmark is a kind of trademark, it must satisfy the essentials of being a trademark as well. The sound must be distinctive and unique enough to qualify requiring a soundmark. It must not be similar to an existing soundmark. If the soundmark is for a music clip, it must contain musical notes, relative value, the pitch of the music, flats, sharps, etc.

F.II. What sounds do not qualify to be registered?

Sounds that are too generic and common generally will not get sound mark protection. That is, the sounds that we hear around us in our everyday lives like notification, bell ringing tone, rhymes when the target audience are children and soda pop sounds¹¹.

Generally, any sound that does not pass the requirement listed under Rule 26(5) will not qualify as a soundmark for protection. Some requirements like the format and the length are easy to follow but some rules like visual representation pose difficulty sometimes.

¹⁰ ibid

¹¹ Mayashree Acharya, 'Sound Trademark in India' (*cleartax*, 21 April 2025) <<https://cleartax.in/s/sound-trademark>> accessed 24 September 2025

F.III. Registration Process

It is not mandatory to get a sound registered but if it becomes popular and associated with the brand, it is better to get it registered to fight against infringement legally.

Due to its complex and critical process and nature, the company can choose to engage an IP lawyer to look after the entire registration process, which takes around 6 months to 2 years.

But before beginning with the registration process, the company seeking registration must check the existing database for similarities with existing soundmarks. Only after this research, it would be wise to go ahead and apply for registration online. This facility is a part of the National E-governance Plan.

An application can be made on the government portal (IP India¹²) by filing Form TM-A with prescribed application fee of INR 4,500 in case of an individual, start-up or MSME, enjoying government fee rebate (or) INR 9,000 in case of Companies and other entities like societies, NGOs, and trusts. The offline charges are slightly higher– INR 5,000 & 10,000 respectively. And the offline process will be more time and resources consuming. The Indian Trademark Registry/ Office, located only in few, big cities, is to be approached for physical filing.

The application must explicitly state that the registration of a ‘sound’ mark is being sought since there are a lot of other trademark specifications–like word, device, service, collective, certification, colour, shape, etc. Must have all the essential elements as given in Rule 26(5) of Trade Marks Rules, 2017. Rule 2(1)(k) of the Trade Marks Rules, 2017 says that graphical representation can be in paper form or digitalized form.

The applicant must submit essential details like name, address, email ID, Mobile number, ID proof- AADHAR card (if individual), legal status, classification of goods/services, date of first use, some document as a proof of use of the Mark, logo, power of attorney (if a professional is hired), Incorporation/MSME/Start-up Certificate, signed user affidavit and any other supporting documentation to prove the sound mark’s prior use¹³ i.e, to say that the sound mark has been exclusively already in use for a period of time before the application. The MP3 file is to be submitted in a pendrive, DVD, CD, etc. The filing of all these and successfully applying would take around 24 hours.¹⁴

The applicant must sit through an examination to satisfy the Registrar of Trademark of another

¹² Department for Promotion of Industry and Internal Trade, ‘Intellectual Property India’ (Government of India) <<https://ipindia.gov.in/>> accessed 24 September 2025

¹³ Ketan Joshi, ‘Understanding the process of Sound Mark Registration in India’ (*Maheshwari & Co.*, 22 November 2024) <<https://www.maheshwariandco.com/blog/sound-mark-registration-in-india/>> accessed 29 August 2025

¹⁴ Litem, ‘Trademark Registration in India - Process, Fees & Documents’ (*Litem*, 30 July 2025) <<https://litem.in/trademark-registration/>> accessed 30 August 2025

important element— distinctiveness. But even if the sound is not too distinct, it could still get a sound mark if the applicant can prove that the sound has been used in marketing and advertising its goods and services so much so as to justify getting it sound marked for its brand. If common public perception aligns with this claim, application is likely to be allowed.

An advertisement inviting objections (if any) is published in Trademark Journal. This notice of opposition and in case of objections, there will be an additional fee of INR 2,700 (online)/ 3,000 (physical filing). The matter will be heard wherein both sides will present their arguments and a decision will be arrived at regarding the application.

If there are no objections (or) if the matter is decided in favour of the applicant, a trademark registration certificate is issued. It acts as the proof of exclusive ownership and rights.

F.IV. Protection & Benefits

With sound marks, other brands will not be able to use similar sounds, let alone register them. This helps avoid competitors using similar sounds to confuse consumers. This way, profits stay with the brand the consumer originally intended and the reputation of the brand remains intact as well.

If, without permission, any other brand used the sound that has been registered, the first brand (owner) can sue the other brand for infringement of its right to exclusively use it for marketing purposes and commercial exploitation (right to sell those goods or provide those services).

A catchy jingle, musical notes or the unique sound stays in the minds of customers and creates positive sentiments, interest and builds public trust in the brand. This enhances the brand value and establishes goodwill. The brand image also improves as such when people remember the brand just by hearing the sound. The catchier and impressive the sound, the more popular it will get— and so will the brand along with it.

A sound mark could provide a global reach— giving the brand an international platform as the business increases for the company for having an unconventional mark that is exclusively theirs. It is their product identity. With international recognition, the brand will be able to bag international investments too.

F.V. Condition attached

The protection and exclusive rights given by soundmark registration are subject to 2 conditions: (i) active use and (ii) renewal every ten years. ‘Active use’ means that once any trademark is granted, the applicant must actually exercise his right to commercially exploit and use that particular intellectual property. If he leaves it idle for too long, the protection may cease earlier

than the period granted. Renewal fee is INR 9,000 (online)/10,000 (physical). Late renewal will attract an additional fee of INR 4,500 (online)/ 5,000 (physical).¹⁵

If ever a sound mark is violated by another party, the aggrieved party, mostly the one who registered it, should file an infringement suit in the District Court within whose jurisdiction the place where the plaintiff resides, has a business or the place where the infringement (cause of action) took place. The above process of reaching the court is allowed by Section 134 of the Trade Marks Act, 1999. But it does not allow the aggrieved party to reach any other subordinate courts that do not have jurisdiction to take up the case.

The same was held in the case of **Indian Performing Rights Society v. Sanjay Dalia**¹⁶. It was a Supreme Court case that upheld that a plaintiff should use Section 134(2) of the Act to file a suit where the principal office is located and not where the subordinate office is located as the jurisdiction serves as an additional remedy and not a key to forum shopping.

G. Case Studies

G.I. Yahoo:

Yahoo yodel is the first soundmark registered in India. It served as a legal and branding milestone for Intellectual Property Law. Yahoo's yodel is of three-notes, saying the word 'Yahoo' so it goes hand-in-hand with the brand identity and was protected by the Indian Trade Mark Registry. It is a landmark precedent for the admissibility of soundmark registration in India.

Yahoo, a famous search engine as we know, filed for trademark protection in India for its yodel (yahooo-ooo!) that they often use in their advertisement and branding.

Yahoo Inc. submitted its application with a musical notation and demonstrated that consumers associated the yodel particularly with Yahoo and not any other brand.

The Indian Trade Mark Registry, Delhi branch allowed the registration of Yahoo yodel on August 18, 2008, recognizing it as the first ever registered sound mark in India.

Yahoo's registration paved the way to other brands to seek protection for their advertising audios¹⁷. Many popular brands that we know today registered their soundmarks after Yahoo. The best examples of brands that we associate with their audio are Britannia, Nokia and ICICI

¹⁵ HDFC Bank, 'Understanding Trademark Registration Fees in India: A Quick Guide' (HDFC Bank, 4 November 2024) <<https://www.hdfcbank.com/personal/resources/learning-centre/sme/guide-to-trademark-registration-fees-in-india>> accessed 14 September 2025

¹⁶ *Indian Performing Rights Society v. Sanjay Dalia*, AIR 2015 SUPREME COURT 3479

¹⁷ Sohini Goswami, 'From Yahoo's yodel to playdoh's smell – All you need to know about unconventional trademarks' (*iPleaders*, 7 April 2021) <<https://blog.ipleaders.in/yahoos-yodel-playdohs-smell-need-know-unconventional-trademarks/>> accessed 12 September 2025

bank.

G.II. Netflix:

For many of us, the “Tudum” sound is easily recognised as the opening sound of Netflix. It was a unique tool for Netflix to have a fair competition with its competitors like Prime, Hotstar, etc. This sound has an emotional connection with its users too.

But when Netflix submitted its audio file of 3-second “tudum” to the European Union Intellectual Property Office (EUIPO) in May 2017, it was rejected on the basis that it was too short and simple to represent the streaming platform. It was only considered as a start and end of a programme, not as an advertising audio.

Now, it is uniquely recognized by people across the world that “tudum” belongs to Netflix. And it was considered to be controversial as it was internationally recognised by its users but still was not protected under the Intellectual Property Law.

Then again, on October 21, 2019, Netflix submitted its audio file with a visual representation (its logo) and they were able to prove that people could recognise their brand with the given audio¹⁸. And Netflix's sound was only recognised after 2019 and it gave life to the concept of “acquired distinctiveness.”

This soundmark was, at last, officially registered in 2021 in not only the US, but also in India and Turkey.

G.III. Suzuki Motor Corporation:

The application for the soundmark of the ‘distinct car running’ sound (resembling a jet aircraft) faced objections, challenges and scrutiny by the Examiner and despite several hearings, it has not succeeded in proving distinctiveness and that the sound is a source identifier.

G.IV. Twentieth Century Fox

Twentieth Century Fox applied for soundmark protection of its iconic orchestral opening theme— a tune of drums, trumpets and strings— to introduce movies produced by the company. It’s soundmarked in various countries including India and US.

¹⁸ Ioannis Psarakis, ‘When Netflix tried to register the distinctive (now?) opening sound as a trademark of the European Union’ (*Psarakis Legal*, April 2022)< <https://www.psarakislegal.com/en/en-694-registration-of-sound-trademark>> accessed 12 September 2025

H. Legal Recognition of Sound-based IP:

The Committee on WIPO Standards (CWS) adopted ST. 68 - Recommendations for the electronic management of sound marks¹⁹. Application for soundmark can be made on paper or electronically. The term “soundmark” is to be mentioned in the application. It should contain:

01. A graphical representation of the sound constituting the mark like, for example, the musical notation on a stave or image of the corresponding sound wave is recommended.
02. A detailed textual description of that sound for clarification; containing other information like the instruments used, length, any other features, etc that the applicant wants to specify
03. A recording of that sound in an electronic format (preferably MP3 or could also be WAV). The audio must be of high quality, clear, with no background sound. The file size generally must not exceed 5 MB but, upon the request of the applicant, the IPO may accept a larger file too.
04. Or any combination thereof according to the requirements of the Industrial Property Office (IPO) receiving the application.

Each country has its regional IPO regulator with its own set of guidelines. In India, it is the Department for Promotion of Industry and Internal Trade (DPIIT), under the Ministry of Commerce and Industry, which oversees 5 IPOs located in India in Mumbai, Delhi, Chennai, Kolkata, and Ahmedabad that deal with trademarks and patents.

I. Cross-border Comparative Analysis

The US has a liberal approach in registering unconventional trademarks, which is evident from the NBC chimes and MGM’s lion roar. The EU has a more cautious approach. Having been closely modelled after EU’s Shield Mark’s case, India had a conservative approach without any legislation until its 2017 Trademark Rules which explicitly includes soundmark.

I.I. United States

In the United States, the trademark is governed by the Lanham Act which is regulated by the United States Patent and Trademark Office, a federal agency of the US Department of Commerce²⁰. The Lanham Act was enacted by the Congress in 1946. For a soundmark to be

¹⁹ World Intellectual Property Organization, Handbook on Industrial Property Information and Documentation, Standards ST.68, at 3.68.1 (latest edition)

²⁰ Wikipedia, ‘Lanham Act’ (*Wikipedia*, 19 June 2025) <https://en.wikipedia.org/wiki/Lanham_Act> accessed 21 September 2025

registered, it should be distinctive and should be used for commercial purposes and not in any malafide intention to practice any unfair trade practices.

For the purpose of trademark protection and enforcement, the United States Patent and Trademark Office was established in the year 1836. This organisation is responsible for registering trademarks and thus, has laid down requirements for the registration of soundmarks:

- The sound should be distinctive and it cannot be common sounds like alarms, siren unless the brand is able to prove the acquired distinctiveness of the same.
- Words describing the sound should be submitted as a part of application. Unlike many other jurisdictions, graphical representation of the sound is not necessary for registration.
- The submission format should either be MP3 or WAV.
- The brand should prove that it is a brand identifier for the consumer and not just background audio. It must be shown that the consumers can actually recognize the brand from that sound.

Soundmarks will be reviewed by USPTO, a special unit appointed to check if the audio has passed all the requirements.

I.II. European Union

Registration of Soundmarks are allowed under the European Union Trade Mark Regulation, which is regulated and administered by the European Union Intellectual Property Office.

The **Shield Mark BV v. Joost Kist**²¹ case influenced global recognition of sound marks, establishing that they must be graphically depicted and capable of distinguishing goods.

This case stood as a landmark judgement, laying down standards for registration in the EU when it comes to distinctiveness. It has influenced the examination practices and gave guidelines to register a soundmark.

However, the post-2017 reform is free from the requirement of submitting a graphical representation of the sound. Though this registration is highly advanced, the requirement of proving distinctiveness is a barrier for a lot of brands.

Article 4 of the European Union Trademark Regulations (EUTMR), 2015 defines what constitutes a trademark and it is inclusive of sounds²². Article 3(3) of EUTMR defines soundmarks. A soundmark is any sign consisting exclusively of a sound or a combination of

²¹ *Shield Mark BV v. Joost Kist h.o.d.n. Memex* [2003] E.C.R. I-13791, Case C-283/01

²² Regulation 1001/2017 of the European Parliament and of the Council on the European Union Trade Mark [2017], art 4, 2017 O.J. (L 154) 1, 9

sounds²³.

Since 2017, the applicants seeking for soundmark registration can file them as an audio file in MP3 format, its maximum size being 2MB. Applicants can also submit a musical notation for the same. Sonograms, descriptions, and onomatopoeias are not accepted as valid formats for registration.

The European Union Trademark Directive, 2015 and EUTMR removed the requirement to provide a graphical representation to improve accessibility while removing any ambiguity and difficulty. But the audio file they submit must be clear and precise. And the focus was also on providing clear and accurate descriptions.

The EUIPO regularly updates its guidelines often to keep up with the technological changes. The sound submitted must indicate a commercial origin. Simple sounds like a single beep, generic sounds like soda pops, previously existing sounds like lion's roar do not qualify as a distinct sound for a unique brand.

For example, in the year 2014, Porsche's application to register the acceleration sound was rejected as it was not an indicator of a commercial origin.

Out of 1,30,000 annual filings, only 300 sound marks were allowed by the EUIPO. Most of these audio files fail at proving distinctiveness.

I.III. WIPO and Madrid System

Madrid System or the Madrid protocol is the primary international system of registering trademarks in various jurisdictions across the world²⁴. The main aim of this agreement is to provide a cost-effective and single registration process to the trademark owner. The applicants can register a single trademark application and pay one set of fees to apply for protection in the member states of this protocol.

The Madrid system is administered by the International Bureau of the United Nations World Intellectual Property Organization. As of May 2025, this system consists of 115 members who are collectively called the 'Madrid union'. India became a member of this protocol in the year of 2013.

²³ Navograaf team, 'How to register a sound mark in the EU' (*Novagraaf*, 5 April 2023) <<https://www.novagraaf.com/en/insights/how-register-sound-mark-eu>> accessed 11 September 2025

²⁴ Vrinda Nigam, 'Registering trademarks internationally through Madrid Protocol' (*iPleaders*, 7 June 2014) <<https://blog.ipleaders.in/registering-trademarks-internationally/>> accessed 25 September 2025

Features:

- The Madrid system aims to have a single application in one language for one fee and manage that international registration for multiple jurisdictions. But it provides protection only to its member nations.
- This system is not unified, but WIPO facilitates national examinations. Protection of intellectual property is independent and different in each country.
- WIPO registers trademarks, publishes them in the official gazette and sends necessary documents to the appropriate national officials. Any renewals by the member state can be made centrally through WIPO.
- When it comes to soundmarks, it does accept it to an extent. It is generally registerable but it is based on the National law of the designated country as some of the member states do not recognise soundmark as an independent trademark.

I.III.1. Application Process:

Like any Intellectual Property in India, the same has to be registered in the WIPO through an application and examination process.

General Application: The company should have registered in their country (home office). An application cannot be submitted directly to the WIPO. Instead, it should be filed through the home office after choosing the states where the protection is required.

Examination: WIPO checks the application, conducts various tests to examine the uniqueness of the trademark. After undergoing various formalities, if the mark has qualified, WIPO will issue a Certificate of Registration and announce it in the International Gazette. The designated members will conduct its review individually according to the national law to decide whether or not protection to be given within 12 or 18 months.

Protection: If the designated country accepts the application, the trademark can be protected and treated in that country like a nationally registered trademark.

I.IV. Other Jurisdictions

I.IV.1. Australia:

Soundmark was recognised and was allowed to be protected in the year 1995 under the Trade Mark Act.

Like most countries, registration of soundmarks requires Graphical representation. But unlike the regular representation, simple words also qualify to be enough representation. Musical notation can be taken as a graphical representation, but if it is a lengthy piece of orchestral

music or piano, it does not qualify to be registered. The name of a specific piece of music is not admissible unless it is provided with additional information to identify the rendition claimed to be a soundmark.

W & Du Cross Appn (1913)²⁵ is a case where it was decided that the extent of trademark adoption depends on whether a brand will use the mark or some mark resembling it without any malafide motive²⁶.

I.IV.2. Japan:

Sound officially became registrable on April 1, 2015 due to the amendments made to the Japanese Trademark Act. Japan was one of the first Asian countries that has expressly allowed the protection of soundmarks.

Since then, 367 soundmarks have been registered under the Act. To seek protection for the soundmark, there are some basic requirements that must be met.

I.IV.2.(a) Requirement:

Sound described by words or musical notation using 5-line staves (primary requirement, it cannot be added or amended later)

Audio file of the prescribed form which can be played on Windows Media Player (if the audio does have sound elements and no verbal elements, it will be rejected on the grounds that they are not distinctive enough. If a company wants to register their soundmark without a verbal element they have to prove its distinctiveness. So far only 9 soundmarks are registered in Japan without verbal elements²⁷.

The same will be examined by the Japan Patent Office. It checks for distinctiveness, similarity and likelihood of confusion. These rules align with the Madrid Protocol and the citizens can also claim protection for their soundmarks as a part of international registration.

I.IV.3. Saudi Arabia

Article 2 of the Gulf Cooperation Council Trademark Law, 2016 includes soundmarks along

²⁵ *W & Du Cross Appn* (1913) 30 RPC 660 at 670

²⁶ Australian Government, IP Australia, 21.6. Sound (auditory) trade marks <<https://manuals.ipaustralia.gov.au/trademark/6.-sound-auditory-trade-marks.>> accessed 3 September 2025

²⁷ Abe, Ikubo & Katayama, 'What's New IP' (*AIK Law*, 2024) <[https://www.aiklaw.co.jp/en/whatsnewip/2024/.](https://www.aiklaw.co.jp/en/whatsnewip/2024/)> accessed 3 September 2025

with colour and smell.²⁸ The first soundmark issued by Saudi was to Saudi Telecom Company²⁹ in August 2020 for protecting its distinctive and innovative sound while also encouraging other businesses to do the same. The registration process took 8 months. Soundmark is registered with the Saudi Authority for Intellectual Property with an application containing the sound in MP3 format, musical notation representation and a written description. It introduced its own portal for soundmark registration in December 2023. The examination for registration also checks for violation of public policy and chances of confusion among consumers while deciding on an application. Sound mark is registerable under WIPO's International Classification of Goods and Services Class 35, which is for advertising, business management, or office functions.³⁰

J. Contemporary Issues

J.I. Difficulties in registration

Common issues cause trouble across the world where registration of soundmark is involved; The sound is considered generic, distinctiveness or commercial origin not sufficiently proved, sounds similar to existing (as in registered) sounds, etc.

J.I.1. US

In re General Electric Broadcasting Co. (1978)³¹ case, the company tried to soundmark a series of bells as in a clock. As the sound was very generic, the trade mark examiner sought for a proof that the sound is identified by the consumers and it was associated with it (commercial origin). But the applicant failed to submit the required evidence and thus the application was rejected. It was also stated that functional sounds cannot be taken as soundmark under Trademark Act Section 2(e)(5) unless acquired distinctiveness is proved.

In the **Qualitex Co v Jacobson Products Co** case, the Supreme Court holds that distinctiveness is a must for registration, irrespective of graphical representation capability³².

The registration process is not quick enough as it took **Twentieth Century Fox** 1.75 years to

²⁸ SABA Intellectual Property, 'Say It Loud: First Sound Mark Registered in Saudi Arabia' (*SABA Intellectual Property*, 1 September 2020) <<https://www.sabaip.com/say-it-loud-first-sound-mark-registered-in-saudi-arabia/>> accessed 21 September 2025

²⁹ SPA, 'Saudi intellectual property issues first certificate for sound trademark' (*Arab News*, 24 August 2020) <https://www.arabnews.com/node/1723691/spa/page_view_event/aggregate> accessed 21 September 2025

³⁰ SABA Intellectual Property, 'Making Noise: Recent Sound Trademark Publication in Saudi Arabia' (*SABA Intellectual Property*, 2 December 2024) <<https://sabaip.com/saudi-arabia-first-sound-trademark-published/>> accessed 21 September 2025

³¹ *In re General Electric Broadcasting Co. Inc.*, 199 U.S.P.Q.560 (TTAB, 1978)

³² *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159 (1995)

get a soundmark. It applied for a soundmark on October 25, 1972, and it was registered on August 6, 1974.

Metro-Goldwyn-Mayer (MGM)'s "Roaring Lion" sound was registered decades after its first use.

Application for **Harley-Davidson**'s engine sound is the best example to show how complex and lengthy soundmark registration is. Harley-Davidson applied for the soundmark of the "potato-potato-potato" sound of its V-twin engine in 1994. It faced opposition from its various motorcycle competitors for being very generic and completely not qualified for a soundmark as the sound could easily be reproduced by any V-twin engine and it was nothing unique, belonging or denoting only Harley-Davidson. After 6 years of legal battle, in 2001, Harley-Davidson withdrew its application. A quick, definite decision could have saved Harley-Davidson a lot of money in trying to contest a lost cause for so long. A competent, apex authority must allow or dismiss soundmark registration applications promptly to save time and cost of companies.

J.I.2. India

Yahoo's yodel was registered solely based on the Trade Marks Act with no precedents, no rules or guidelines on registration of a non-traditional intellectual property. This has forced the registry and courts to give out procedures for sound mark examination and enforcement. They later established that musical notation and distinct audio files are valid representations to register a trademark.

The Trade Marks, 1999 mandated the submission of graphical representation and that the submitted audio must be distinct³³. Yahoo Inc. submitted its application with a musical notation and demonstrated that consumers associated the yodel particularly with Yahoo and not any other brand.

Suzuki Motor Corporation's application for the sound mark of the 'distinct car running' sound (resembling a jet aircraft) faced objections, challenges and scrutiny by the Examiner under Section 9(1)(b) due to similarities with the existing soundmarks. Because of lack of proper rules and guidelines, convincing the Examiner of the distinctiveness/ acquired distinctiveness was a challenge and they had to prove how their sound is different from existing soundmarks and deserving of recognition and protection. The burden of proof is on the applicant. They followed the requirements of graphical representation, written description/

³³ Anand & Anand, 'Flashback: Yahoo gets its Yodel' (*Anand & Anand*, 15 August 2013) <<https://www.anandanand.com/news-insights/flashback-yahoo-gets-its-yodel/>> accessed 12 September 2025

onomotopia, etc. They faced objections due to functionality concerns. This requirement meant that the sound should be essential to the function of the product, and not merely a sound to distinguish the brand from others.

J.I.3. EU

Netflix faced difficulties in getting its brand identifier ‘tu dum’ sound registered with the EUIPO because it was considered too short & simple and not distinct enough to be recognized as an indicator of origin. Netflix had to adopt an alternative strategy. Finally, in 2021, it registered ‘tu dum’ along with its emblem as a multi-media mark.

Shield Mark³⁴ applied to register their hum (a single-tone sound) as a sound trade mark. Joost argued against the registration, stating that it was not unique and it was only a natural sound which lacks a commercial origin. Initially the application was turned down for the same reason. The case was later taken to the ECJ for further interpretation of the provisions relating to sound marks. The court held that sounds can be registered as trademarks under EU law but the brands should be able to prove that the sound is sufficiently distinctive, either inherently or by consumer’s association. But Shield Mark’s audio was turned down for a reason that it was too generic and that it cannot function as a commercial identifier.

J.II. Overlap with Copyright Law

Many sound marks these days are derived from copyrighted music, songs and vocals, creating various disputes. Registration of a Trade Mark is prohibited under Section 11(3)(b) of the Indian Trade Marks Act if the audio conflicts with a copyrighted work. For it to be registered, it requires the consent of the copyright owner.

The crucial issue arises when short segments of music are used as soundmarks. In this case, soundmarks may co-exist with copyright protection, but enforcing this requires considering both laws properly. This problem arises with the ambiguity on moral rights of the music composers when their copyrighted music is used as a soundmark without proper consent. This raises both ethical and legal issues.

In the case of **Oliveira v. Frito Lay**³⁵, the recording named “The Girl from Ipanema” recorded by Astrud Olivia was used in a TV Commercial for potato chips without her consent. She claimed that it had infringed her trademark rights under Section 43(a) of the Lanham Act as it was her signature song. The court held that musical recordings can be registered for trademark

³⁴ *Shield Mark BV v. Joost Kist h.o.d.n. Memex* [2003] E.C.R. I-13791, Case C-283/01

³⁵ *Oliveira v. Frito-Lay, Inc.* (251 F.3d 56, 2d Cir. 2001)

protection, but the performance must be distinct and should fall under all the qualifying requirements of registering a trademark. A copyrighted recording can be protected by the Trade Mark law also, but in this case, Oliveira was not the copyright owner. The case was dismissed as it didn't violate the rights of the singer and the use licenced by the Lay Company from the copyright holder stays valid.

J.II.1. Double Protection:

When a work or its element can be protected by both the copyright law and the trademark law, it is called 'Double Protection.' The above case is one example of the same.

Copyright protection applies to original and creative manifestation of a work like novels, musical recordings, etc. It protects the content of the protected work from unauthorized performance, distribution, and copying.

Trademark protection comes into play when the creative work is used as a commercial identity for a brand, product or service like a logo and sound.

Any overlaps in the artistic work can get double protection under both copyright and trademark laws. Eg: A song's lyrics can be copyrighted by the lyricist and a part of it, if used for advertising or representative purposes, it can be registered as a trademark also. It provides comprehensive protection against infringement of any sort. Dual protection is crucial for non-traditional intellectual property as they must be distinctive and original. Any minor discrepancies might lead to the rejection of their application and registration. So double protection plays a vital role when it comes to soundmarks.

J.II.2. Challenges:

J.II.2.(a) Risk of Public Domain: The term for Copyright is the lifetime of the author and sixty additional years after his death. But the trademark has an expiry period and a renewal term. Once the copyright expires, it will be taken into the public domain, but trademark protection should be renewed from time to time to claim for any damages.

J.II.2.(b) Legal Requirements: The process and the registration requirements vastly differs between both of them. In Copyright, the originality plays an important role, even if the quality of the work is not crucial. But for a trademark, quality is one of the most important factors for a successful registration. Eg: A song can be copyrighted even if the words or music is inaudible due to noise, but soundmark has been actually rejected for the reasons that the audio is not clear. When the work has difficulties in registering in both the laws, it will be protected only

under one law.

J.III. Infringement

J.III.1. How to prove infringement of a sound mark?

When a soundmark is alleged to be infringed by a party, the burden of proof lies upon the claimant. The party who claimed that his soundmark is being infringed by the other party, he has to prove the following elements:

J.III.1. (a) Ownership:

The claimant has to prove that he was the owner of the audio, that it has been successfully registered under the provisions of the act and that it was being continuously used for commercial purposes.

J.III.1. (b) Unauthorized Use:

It must be proved that the defendant has used an identical or similar sound and that he has used it for the advertising of a similar product without authority.

J.III.1. (c) Similarity:

Section 29(9) of the Trade Marks Act and Indian Courts have laid down rules on how to identify the infringement of a trademark. For any trade mark, it can be infringed by spoken or visual representation. But in the case of soundmark, any aural similarity can be taken as a ground for infringement. The courts look for any similarity in the rhythm, tune or the combination of music notes.

J.III.1.(d) Consumer Confusion:

The claimant should prove the deceptive similarity in the defendant's work. That is, it should confuse, mislead or deceive the customers as to the source of the product or service. That, an average consumer would be confused between the two brands.

J.III.1.(e) Dictinctiveness:

The plaintiff's sound mark should be distinctive enough that it can never be similar to anybody else's audio. If they use generic audio, then their claim becomes weak as anybody can come up with such a sound.

J.III.1.(f) Supporting Evidences:

The claimant should be able to produce the following evidence in the court:

- MP3 audio comparisons
- Sonograms, spectrograms or musical notations
- Consumer survey
- Any expert analysis that is applicable

- Records of commercial use

J.III.2. Challenges in Proving Infringement:

J.III.2. (a) Subjectivity:

The way people look at the world differ. They are extremely subjective. If the claimant feels the similarity in two works, it is not necessary for the judges and the defendant will have the same perception of the audios. This makes the concept of “deceptive similarity” inconsistent and unreliable. It requires clear expert testimony on the musical notation and its graphical representation.

J.III.2. (b) Lack of Testing Tools:

This is not a major issue but still, this is not objective enough to be relied upon. There is no particular provision that talks about what tools should be used to check the similarity. There are spectrograms, sonograms or waveform analysis, but these are not universally fixed. Different tests may result in different levels of similarity and mislead the judges.

Same goes with the device in which the audio is being played. The audio’s quality and sense of similarity may be influenced by the device and the environment it is being played in. This might confuse the claimant, the consumers and in some cases, the judges also. This makes it harder to prove similarity of the sounds.

J.III.2. (c) Confusion of the Consumers:

The consumers of a brand are spread across the globe. It’s humanly impossible to know if the consumers are being deceived by the defendant’s soundmark. It’s harder than gathering evidence of confusion due to sounds rather than logos and names as sounds do not have a visual representation. This process might need time-consuming surveys and market studies which are not always conclusive and acceptable by the opposite party.

J.III.2. (d) Cross-jurisdictional Issues:

It cannot be presumed that infringement of a sound mark happens only within the borders of India. An Indian brand’s soundmarks may also be violated in the foreign countries and it just goes unnoticed. Even if it is taken into consideration, collecting proof is an exhaustive job. The application of national and international laws also come into play.

J.III.2.(e) Undeveloped Law:

Even if there is evidence and ways to prove, there are not many precedents or a strong provision to rely on during the proceedings. We don’t have well-established standards and rules to regulate these infringements as much as we do for copyright and patents. There is a risk of the entire proceeding being arbitrary and ambiguous.

J.IV. Technological Issues

J.IV.1. AI-generated jingles and distinctiveness:

With this fast growing economy, AI stands as a problem in various fields of law. Though it is not openly opposed, it is causing discomfort to a lot of professionals in its own way. One such field is Intellectual Property. Let's see how.

J.IV.2. Originality:

Artificial Intelligence is usually incapable of making its own sound and music notes. AI uses a dataset of already existing audio. When it generates an audio, people think it is something new and different but, in reality, it is just a combination and mix of the already-available music. This leads to extreme similarity and takes the audio entirely out of the distinctiveness criteria to register it in the registry. It also can increase the cases of infringement.

J.IV.3. Lack of Human Touch:

This field of law is called “Intellectual Property Law” for a reason. Any intellectual property, let it be copyright, patent, trademark, needs a hint of human touch at least. If the audio is completely generated by Artificial Intelligence without any creativity, it does not deserve to be registered as a soundmark. It can face rejections from the Registry. Even if it can be registered as one, it will not be fair to those who have genuinely worked for the same and thus violates morality and ethics.

One of the best examples for AI generated music is Red Lobster³⁶. In 2024, it faced extreme backlash for using 30+ AI-generated songs as a part of “Cheddar Bay” to promote Cheddar Bay Biscuits. Many consumers and musicians criticised Red Lobster’s music for lack of authenticity, showing extreme disappointment for neglecting the opportunity to support local musicians³⁷. Various discussions arose regarding the problem AI can potentially cause when it comes to copyright when it is trained on existing copyrighted music and audio and that it could cause legal issues of using protected works without authority.

AI-generated soundmarks will also face the same backlash in the future as both of them work on a similar concept.

K. Policy and Reform Recommendations:

Though the concept of soundmark is still evolving, it needs some changes that make the

³⁶ Jordana Sherrod, ‘The Dilemma of AI-Generated Music’ (*Allied Global Marketing*, 30 October 2024) <<https://alliedglobalmarketing.com/knowledge/pages/the-dilemma-of-aigenerated-music>> accessed 14 September 2025

³⁷ Roberto Orosa, ‘Red Lobster Drops 30 Music Tracks Made by Generative AI’, (*designrush news*, 1 May 2025) <<https://news.designrush.com/red-lobster-drops-30-music-tracks-made-by-ai>> accessed 14 September 2025

registration, recognition and protection more effective and easier. The following are some suggestions of this paper for the betterment of the trademark system:

K.I. Removal of Graphical Representation:

The need for a graphical representation is outdated. It narrows down the scope and restricts non-notated sounds like jingles, abstract noises or other non-musical sounds from getting registered. To solve this problem, the Trade Marks Act and Rules should be amended in a way it aligns with the EU Regulation and USPTO practices. It allows the submission of audio files in MP3 and WAV, spectrograms or any other digital formats as sufficient representation. This paves way for a new market as it widens the accessibility for brands using electronic sounds, voice clips and other complex audio.

K.II. Improving Registry Capacity:

The Trade Mark Registry lacks technical expertise and infrastructure for storing, handling and maintaining audio files. The examination is being done manually and it is time consuming and inconsistent. The Government should invest in proper training for staff who are involved in the examination process, making it more reliable and accurate. The Government should also invest in the development of digital infrastructure like audio analysis tools and a secured database of sound marks like that of the EUIPO and USPTO's registry interface³⁸.

K.III. Better Tests and Evidentiary Rules:

As this paper has discussed earlier, there are certain things the claimant has to establish if he feels like there has been an infringement of sound marks. Proving aural similarity is subjective and thus becomes difficult to prove the infringement. There is a lack of guidelines and rules on what to do when a situation like that occurs. And the existing standards for trademark deals with visual representation and it cannot be referred for sound marks. We need codified evidentiary guidelines for detecting audio similarities by using spectrograms and other playback methods to establish reliable legal tests for sound mark infringement. This can reduce cost, uncertainty by ensuring fairer proceedings. The Registry can also have an online listening portal for registered sounds where anyone can listen to it. It also paves way for easier conflict assessment, market awareness and transparency.

K.IV. Harmonising Domestic and Foreign Laws:

For better enforcement, India can adopt a hybrid model that incorporates USPTO and EUIPO frameworks, leaning more towards the post-2017 EUIPO rules while taking in the flexibility

³⁸ United States Patent and Trademark Office (USPTO), 'Trademark sound mark examples' (*USPTO*, n.d.) <<https://www.uspto.gov/trademarks/soundmarks/trademark-sound-mark-examples>> accessed 12 September 2025

of the Lanham Act.

K.IV.1. Why?

K.IV.1.(a) No Graphical Representation: The EU rules on sound marks does not mandate the graphical representation to register the sound trademark. It only needs the applicants to submit an audio file, making the registration simpler and more practical for all kind of sounds.

K.IV.1.(b) Certainty: The EUIPO guidelines clearly state that sound marks must be unique and not functional or generic. The criteria for registration are very clear: clarity, precision, accessibility. The same has been laid out in the Shield Mark decision. The guidelines has eliminated ambiguity in examination and registration.

K.IV.1.(c) No time limitation: Unlike the 30-second Indian rule for soundmark registration, EU or US do not impose any time limit for the submitted audio file. The focus is mainly on recognizability and creative audio branding.

K.IV.1.(d) Modern Examination System: Developed jurisdictions like US and EU have advanced techniques and infrastructure to conduct comparisons during infringement proceedings, audio playback systems for testing and online portals for searching audio to have more transparency.

K.IV.1.(e) Flexibility: Lanham act protects all forms of soundmark, be it music, audio or even recorded words. It prevents infringement of trademark and protects the owner without focusing on what format of the sound trademark has been violated.

The table makes it easier to understand the need for adoption of foreign systems.

Feature	EUIPO	USPTO	India
Graphical Representation	Removed	Never mandated	Mandatory till date
Time limit	No limit	Only file size	30 seconds
Online Registry	Yes	Yes	Yes
Focus	Distinctiveness	Distinctiveness	Distinctiveness and Representation

L. Conclusion:

The paper comes to a conclusion by stating that sound marks are crucial elements of trademark protection. It gives brands identity, a connection with the consumers and value. While India has evolved in the field of sound marks by recognising them in the 2017 Trademark Rules, there are still problems related to legality and procedure. The rigidity, graphical representation, arbitrary duration and lack of proper technology make it harder to register and protect soundmarks. As per the suggestions provided by the authors, harmonising International guidelines like EUIPO's rules and Lanham Act and learning from the case studies, can India increase its potential to protect sonic branding of a company. This encourages innovation in Indian law while it is aligned with global standards. Ultimately, this will protect consumer trust and brand value.

