



LegalOnus

Aequitas Sequitur Legem

“A QUALITY
INITIATIVE FOR
LEGAL
DEVELOPMENT,
UNDERTAKEN
BY
LEGALONUS”



Legalonus

LEGALONUS LAW JOURNAL
ISSN: 3048-8338



www.legalonus.com Email: journal@legalonus.com

About Us - LegalOnus Law Journal (LLJ)
ISSN: 3048-8338

LegalOnus Law Journal (LLJ) is a monthly, peer-reviewed, online academic journal dedicated to advancing legal scholarship. We provide an interactive platform for the publication of short articles, long articles, book reviews, case comments, research papers, and essays in the field of law and multidisciplinary issues.

Our mission is to enhance the level of interaction and discourse surrounding contemporary legal issues. By fostering a dynamic environment for discussion, we aim to elevate the quality of legal scholarship and become a highly cited academic publication.

We invite quality contributions from students, academics, and professionals across the industry, the bar, and the bench. Join us in our commitment to advancing legal knowledge and practice.

Disclaimer for LegalOnus Law Journal (LLJ).
ISSN: 3048-8338

All content published in the LegalOnus Law Journal (LLJ) is the intellectual property of their respective authors and contributors. The authors' copyright of articles, reviews, and other contributions remains.

Reproduction, redistribution, or commercial use of any materials from LLJ is strictly prohibited without prior written permission from the copyright holder and LLJ. The opinions expressed in the articles are those of the authors and do not necessarily reflect the views of LLJ or its editorial board.

LLJ and its editorial team are not responsible for any copyright infringements or legal issues arising from unauthorized use of the journal's content. For permissions, queries, or copyright concerns, please contact the LLJ editorial team at journal@legalonus.com By accessing and using LLJ content, you agree to comply with this disclaimer and all applicable copyright laws.

Ayush Chandra

Publisher, Managing Director, & Founder



Mr. Ayush Chandra is the Publisher, Managing Director, and Founder.

He pursued an extensive legal education and practical experiences, significantly enriching his expertise. He graduated with first-division marks in a 5-year integrated BA-LLB course from Amity University. His education provided a solid foundation in legal studies. His internships included the District Legal Services Authority at a lower court, the Allahabad High Court under a seasoned advocate, and the Supreme Court of India.

These experiences deepened his understanding of the legal system, honing his analytical skills and expertise in drafting and pleading.

ayush.chandra@legalonus.com

+91 9140433246

Editorial board

Prof. (Dr.) Jay Prakash Yadav

Senior Chief Editor

Prof., and Director, Amity

Law School

Amity University,

Gurugram, Haryana



Dr. Radha Ranjan

Editor-in-Chief

Assistant

Professor,

Amity University,

Patna, Bihar.



Mr. Rachit Sharma
Editor-in-Chief
Assistant Professor
IILM University,
Greater Noida

Dr. Anandh Kumar V
Editor-in-Chief
Assistant Professor
SRM School of Law,
SRMIST, Tamil Nadu





Megha Middha
Editor-in-Chief
Research Scholar,
Mohanlal Sukhadia University,
Udaipur.

Dr. Santhosh Prabhu
Editor-in-Chief
Assistant Professor (Law),
SDM Law College, Centre for PG
Studies & Research in Law,
Mangalore
D.K. Karnataka, India





Dr Pallavi Singh
Editor-in-Chief
Assistant Professor (CUSB),
School of law and Governance,
Central University of South
Bihar, Gaya.



Advo. Tarun Agarwal
Editor-in-Chief
Lawyer in London and Mumbai
Registered Foreign Lawyer in
England and Wales



Aakansha Verma
Senior Editor
Assistant Professor,
Presidency school of Law,
Presidency University,
Bengaluru, Karnataka.

Shivani Gupta
Senior Editor
Assistant Professor,
KGP PG College,
Moradabad.



Students Editors

- 1. Advo. Anushree Tiwari**
- 2. Ashutosh Debata**
- 3. Akriti Sonwani**
- 4. Jatin Rana**
- 5. Sumit kumar**
- 6. Lalith Swetha**

Legalonus

Publisher
LegalOnus Publishing Team

LegalOnus Law Journal (LLJ)

***Role of trademark: market distinctiveness and antitrust
implications of branding***

By

Mitali Gupta

Meghali swarnkar

Legalonus

LegalOnus Law Journal (LLJ)

Abstract:

In today's world, intellectual property rights (ipr) play a crucial role in facilitating the trade and the economy of the nations which also ensures that intangible property like trademarks, inventions, and creative works should not be exploited by unauthorized users. Intellectual property provides that the ideas and the innovation, marks are not duplicated and must not be stolen by the unauthorized user; it leads to the uniqueness and the distinctiveness of the brand from the markets.

The trademark plays an important role and is part of the ip laws that protect intangible assets. However, earlier it was not so concerned but now demands of branding of your assets have received a lot of attention as intangible assets need to be protected so that innovations and inventions can be done without the fear of competitive interference. Here the trademarks rights provide the legal basis to protect the assets under the trademark laws.

Trademarks help brands distinguish their products and services in competitive markets, allowing customers to identify the source and quality of the original product. However, competition law regulates anti-competition practices, and trademarks can intersect with anti-trust concerns when monopolizing market segments.

This paper examines trademarks and how a simple branding change can balance market distinctiveness and competitive fairness. It also examines the nature of trademarks and their relationship to competition law and intellectual property rights. Finally, it analyzes how bonding strategies can result in antitrust implications and specifically create barriers to market access. It is said to be that ip laws cumulatively ensure competition among brands in the business world.

Keywords: trademark, brand loyalty, branding, antitrust concern in trademark, trademark rights.

1. Introduction: -

LegalOnus Law Journal (LLJ)

The term property had been derived from the Latin word proprietary which means the things the things which are owned. In ancient times, the word property only includes corporeal property nothing more than that. But now, the meaning of property gets wider. The properties can be of two types which are tangible and intangible i.e. Touchable and non-touchable. Examples of physical property that can be seen and felt include real estate, homes, jewelry, money, and further ahead. However, certain types of property are intangible. Among these is the right to intellectual property. In this case, r.c. Cooper v. Uoi¹⁷. The supreme court has correctly provided a comprehensive definition of property as it is the highest right, a man can have over anything, including the right to land, tenements, goods, or chattels that are not dependent on the courtesy of others. It includes ownership, estates, and interests in physical property, as well as rights like patents, trademarks, and copyrights, as well as rights in persona that can be transferred or transmitted, like debts. It also denotes a beneficial right to something thought to have monetary value, particularly about succession transfers and the potential for harm. Now, this form of property called intellectual property come into existence and it is growing.

The rights granted to people over their creative works, including inventions, literary and artistic productions, and names, symbols, and pictures used in trade, are known as intellectual property rights, or ipr. The "intellectual property" refers to how the human mind and intellect develop. Despite being hidden property, intellectual property is a way to build material wealth. Intellectual property and intangible assets work together to create economic value.

For the same reason, foreign enterprises and various companies made significant investments to enhance their property of intellect. The definition of "intellectual property" according to random house webster's unabridged dictionary is "property that results from original creative thought, as patents, copyright material, and trademark.

'Intellectual property' is the term that refers to the number of distinct types of formation of mind for which the stated property is recognized and the field of law is identified. Here, under this

¹⁷R.C. Cooper v. Union of India, AIR 1970 SC 564: (1970) 3 SCR 530

LegalOnus Law Journal (LLJ)

concept, the owners of that property are provided with certain exclusive rights to various types of intangible property such as artistic work, music, literature, inventions innovations, etc.

According to wipo¹⁸ works of literature, art, inventions, designs, names, symbols, and images used in trade are all considered forms of intellectual property (ip). Ip legally protects aspects like patents, copyrights, and trademarks, which allow people to profit financially or get notoriety for their inventions. The ip system seeks to create an atmosphere that encourages creativity and innovation by finding the ideal balance between inventors' interests and the public interest. Article 27 of the universal declaration of human rights, which guarantees the right to conservation of the material and moral interests deriving from the creation of works of literature, art, or science, outlines these rights. The importance of intellectual property was originally recognized by the Paris convention for the protection of industrial property (1883) and the berne convention for the protection of literary and artistic works (1886).

Since "intellectual property" refers to content that is a product of the mind or intelligence, its ownership rights are protected by the law in a manner comparable to that of other types of property. The main objective is to provide more funding for ongoing innovation to encourage when innovations are granted legal protection; it facilitates commercial transactions and fosters innovation and creativity. Because intellectual property rules vary from one place to another, obtaining, registering, or protecting ip rights requires individual efforts in each relevant location.

¹⁸ As per Article 2(viii) of the Convention Establishing the World Intellectual Property Organization (WIPO) Intellectual Property' shall include the rights relating to:

- literary, artistic, and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavor;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition

And all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.
WORLD INTELLECTUAL PROPERTY ORGANISATION, <https://www.wipo.int/wipolex/en/text/283854> (last visited on 20 No 2024)

LegalOnus Law Journal (LLJ)

The phrase "intellectual property right" (ipr) refers to a range of legal rights about specific types of knowledge, ideas, or other intangible assets commonly expressed in their expressive form. To modernize and enhance ipr management that prioritizes client satisfaction. Patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations or origin, and the suppression of unfair competition, are protected under the Paris convention, 1967 (article 1(2)). When copyrights, geographical indicators, layout designs, and confidential information are included in industrial property, they all become intellectual property.

1.1 Different types of intellectual property

There are various forms of intellectual property i.e. The designs act defines a 'design' as the features of shape, configuration, pattern, ornaments, or composition of lines or colors applied to an article through any industrial process or means. The design must be novel and original, not previously produced, or reproduced, not disclosed to the public in India or outside the jurisdiction, and easily distinguished from other known designs. Once registered, the registered proprietor receives protection for an initial ten-year period, which can be extended for more years upon application.

The legal protection known as copyright gives someone the only authority to perform, translate, or modify a piece of copyrighted content. It may be acquired for computer programs, sound recordings, cinematograph films, and unique works of literature, theater, music, and art under section 13 of the copyright act. The original owner of the work is the copyright holder, who may grant other parties a license using a formal contract. In addition to, a lifetime of creator, published works are protected by copyright for 60 years.

The protection of plant varieties and farmer's rights act, 2007, aims to recognize the rights of Indian farmers and protect plant varieties to encourage their growth and development. India became a member of the trade-related aspect of intellectual property rights agreement (trips) in 1994, which requires all members to protect plant varieties. The act allows breeders, farmers, and authorized individuals to apply for registration of new plant varieties, which must satisfy conditions of novelty, distinctiveness, uniformity, and stability. Novelty requires the plant variety not to be sold

LegalOnus Law Journal (LLJ)

at the time of filing, distinctiveness requires a distinguishing factor from other protected varieties, uniformity requires all essential characteristics to be uniform, and stability means the essential characteristics must remain unchanged after repeated propagation.

A patent is an intellectual property right that protects a new invention and is granted for 20 years from the date of application. It is only registered if the invention is "novel" and "original," capable of industrial application, and requires "inventive steps" that involve technical advances or economic significance. The patents act grants each registered inventor certain rights, including the right to prevent third parties from using, selling, making, importing, or using a product without prior consent for a product patent and the right to prevent third parties from using a product obtained from a process patent without the original inventor's consent. The geographical indication of goods act, 1999: India's products, such as Darjeeling tea and Banaras saree, are popular due to their place of origin. Geographic indication (gi) is an indication that identifies goods as originating or manufactured in a specific territory or locality, with a given quality, reputation, or other characteristic attributable to its geographical origin. The gi act covers agricultural goods, foodstuffs, handicraft goods, manufactured goods, and natural goods. The trademark said "the shape of the goods, their packaging, and color combinations are examples of marks that can be visually represented and utilized to distinguish one person's goods or services from another. According to section 2(zb) of the trademarks act, this is what constitutes a "trade mark." to put it another way, a trademark safeguards terms, colors, shapes, and other components that are associated with or represent a product or service. Interestingly, trademark applications can be filed for marks that are planned for future use as well as for marks that are currently in use. The two main prerequisites for trademark registration are that the mark must be able to represent graphically and be able to differentiate the goods or services from those of others. A mark may be refused registration for the following reasons, according to the trademarks act: it lacks a distinguishing character, it is misleading and confusing to the public, it offends religious emotions; it is offensive, scandalous, or obscure, etc. Trademark registration is valid for 10 years, after which it may be extended for an additional 10 years if renewal applications are filed on time.

LegalOnus Law Journal (LLJ)

2. Trademark

Trademarks in India are governed by the trademark act, of 1999 which talks about the legal protection for symbols, brands, words, logos, or any combination used to distinguish one from other goods/ services. The word trademark includes any word, name, device, shape of goods, colors, or combination of colors used to distinguish it from the other products in the markets. The word trademark as defined under the section 2(1) (zb)¹⁹ where it stated that the mark was capable of being represented graphically and easily to distinguish it from other goods and services from other goods and services. Here, it means that there are three essentials required for the trademark that are:

- a. It requires to be a mark
- b. Capable of being represented graphically
- c. Should be capable of distinguishing its goods or services from the other goods or services.
- d. It may include goods, the shape of goods or packaging, and colors or a combination of colors.²⁰

A combination of elements that distinguishes one company's goods or services from those of another is called a trademark. It falls under the ambit of one type of intellectual property and it is also recognized by both international treaties and national laws. The line as Nike and McDonald are some examples of the trademark.

¹⁹a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of another and may include the shape of goods, their packaging, and combination of colors and: -

(i) About Chapter XII (other than section 107), a registered trademark or a mark used about goods or services to indicate or 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 as proprietor to use the mark; and

(ii) about other provisions of this Act, a mark used or proposed to be used about goods or services to indicate or so 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 the permitted user, to use the mark whether with or without any indication of the identity of that person and includes a certification trade mark or collective mark.

²⁰ Section 2(1)(i)(ii)(zb) Trademark Act, 1999(Act No.47 of 1999)

LegalOnus Law Journal (LLJ)

2.1 Marks

According to the trademark act of 1999, section 2(1) (i) (v) (m), a mark is "a device, heading, brand, label, name, letter, numeral, signature, word. Here, the term mark also includes the "shape of goods, packaging or combination of colors or any other form of combinations".

- Certificate trademark: the owner usually uses these marks to attest to the origin, composition, quality, manufacturing process, or service delivery, among other attributes of the goods or services to which they are applied. Two examples of authorized marks are the ISI mark, issued by the bureau of Indian standards (BIS), and the Agmark, issued by the government of India's director of marketing and inspection.
- Collective trademarks: the trademarks we have previously examined are not the same as this one. An organization or association of members usually uses this kind of mark to set its members' goods and services apart from those of non-members. The CA mark, restricted to registered members of the institute of chartered accountants, is a well-known example of this kind of trademark.
- Product mark: this mark is used for goods and products, but not for services. It is used to denote the product's origin, reputation, and supplier. Trademark applications submitted under class 1-34 the term "product marks" is commonly used to refer to the fourth trademark rules of 2002.
- Smell mark: a small number of trademarks registered under this category have received international registration. However, in India, a mark needs to be able to be visually depicted to be considered a trademark. The public should be able to recognize and identify such a representation. Furthermore, a functional odor is not eligible for registration. In addition, odors that are descriptive or functional are ineligible for registration. A perfume that has a nail polish remover added to cover up the chemical odor, for instance, can be considered useful. Additionally, a scent that arises naturally from a mixture of components cannot be protected as a trademark. If a trademark application of this kind can pass these requirements and prove distinctness they can be registered.

LegalOnus Law Journal (LLJ)

- Service mark: despite looking like a product mark, this mark is only used to distinguish services, not products. Applications for trademarks in classes 35–45 are filed. Pultes 1002, which is included in the fourth schedule to trade marks, may be considered a service mark.
- Device mark: a device mark usually consists of an artistic element, like symbols or a pictorial or artistic depiction, in addition to the word mark element. It typically includes a word mark together with a number of artistic elements. These elements of a device mark could include both non-trademark able and trademark able traits. This kind of mark protects the registered composite mark but not for the individual components. It's interesting to note that a device mark's protection is restricted to the color combination in which it is registered. However, a black-and-white registered device mark offers more protection, allowing the owner to claim color protection for the device registration.
- Word mark: usually, a word mark or device mark is used while registering a trademark. Without any additional artistic components or stylization, a word mark simply uses a word or text to indicate a trademark. Because it permits the owner to use the mark in any style, form, or depiction, this sort of registration offers a trademark the broadest legal protection. Examples of registered trademarks include Coca-Cola and little hearts.
- Sound mark: when registering a trademark, graphic representation is crucial, and this also holds for sound markings. A sound must be unique and recognizable to the consumer to be registered under the trademark. According to the tm manual, several types of sounds are expressly not allowed to be registered as sound marks. They are as follows: tunes that serve as chimes, simple musical compositions with just one or two notes, children's nursery rhymes, music that is closely linked to a specific area, and popular music.
- Color trademark: they are protected as a trademark as the trademark act of 1999 defines a trademark as "a combination of colors." to be registered as a color mark, nevertheless, such a combination of colors needs to be original, distinctive, and able to identify the product and its source. Orange will not be distinguished by a straightforward red-and-yellow combo. Customers must be able to recognize the color for it to be registered under this kind of trademark e.g. Cadbury.

LegalOnus Law Journal (LLJ)

- Shape trademark: "shapes of goods" are utilized by the trademark act of 1999's definition of a trademark. Thus, the trademark act of 1999 also protects form marks. Section 9(3) of the act does, however, contain a restriction that specifically prohibits the registration of a trademark that solely consists of shapes derived from the actual nature of the goods. Forms that are required to achieve a technical outcome. Shapes that significantly increase the goods' worth. Furthermore, when such an application is made, it should be related to the items rather than the goods' container.

2.2 historical background of trademark

A trademark can protect a word, phrase, logo, design, symbol, or combination of these. It gives a product that symbolizes a supplier of products or services a unique identity. In India, a trademark is protected by both common law and the trademark act of 1999.

The traces of trademarks found back to the onset of the industrial revolution which led to the large production of goods and distribution of goods at the same time. In the emerging times of competition in a market economy, the manufacturers started to address their goods by some specific marks, and symbols, so to distinguish their goods from the other market goods. Also, the manufacturers of the goods started advertising their products by their own created marks in the market. Here, the necessity of marks is raised. The necessity for the protection of goods and the reputation in the market is felt in all nations. So, for the first time at the international level Paris convention was adopted in 1883 for the protection of intellectual property.

Before the law of trademarks was recognized by the statutory, the equity court started to give some reasonable protection. Here, the owners of trademarks have the right to file a complaint suit against such infringement. The owner of the trademarks was tried by the court of equity which granted appropriate reliefs. The first trademark law to be added to the Indian statutory book was the merchandise marks act of 1889. The trademark act was enacted in 1940 as a result of the issues with the said act, which was followed by the trademark act. Before the enactment of said trademark act, 1940, the issues relating to the infringement of trademark or the passing off were considering

LegalOnus Law Journal (LLJ)

section 54 of the specific relief act were get decided and whereas the issues relating to registration of the trademark were decided by the Indian registration act, 1908.

Before the independence of India, the first protection to trademark was given through the trademark act, of 1940; the act was specifically based on the England act of trademark 1938. The trademark act of 1940 established the registration process of trademarks and it also gives statutory protection to the trademark which was registered by law. The trade and merchandise marks act of 1958 repealed the Indian merchandise marks act of 1889 and the trademarks act of 1940. In 1958, the trade and merchandise marks act were passed. The 1940 act was superseded by the trade and merchandise marks act of 1958 in India. This new law had more detailed rules for trademark protection, including handling infringement and imposing penalties. India's decision to join international agreements, such as the Paris convention for the protection of industrial property in 1998 and the agreement on trade-related aspects of intellectual property rights (trips) in 1995 required the country to update its trademark laws to meet global standards. This resulted in significant changes to domestic laws, ensuring better protection for trademarks and a commitment to international intellectual property rights principles. Section 129 of the act stated that a mark that purported to or declared the ownership of a person's title to a trademark other than a registered trademark was not to be registered under the Indian registration act, of 1908. In other words, section 129 talks about the capability of registration of trademark which to be registered or not.

The act of 1958 did well for 4 decades. However, considering the development of business and trade practices, as well as the increasing globalization of trade and industry, the need to encourage investment flow, and technological advancements and transfers, it is necessary to standardize and streamline the trademark management system and give judges' decisions weight. Here, the necessity of changes and harmonization of trademarks increased due to various changes in the world even in technology and globalization of trade and industry. Digitization and online databases have further enhanced the transparency and user-friendliness of the process. India's trademark journey has been significantly impacted by the establishment of the intellectual property appellate board (ipab) and its accession to the madrid protocol in 2013. The ipab has been instrumental in

LegalOnus Law Journal (LLJ)

resolving trademark disputes and ensuring fair decisions. The Madrid Protocol has allowed Indian businesses to register and manage their trademarks internationally, simplifying global brand protection efforts. Further, India becomes a party to the most important agreement i.e., TRIPS (agreement on trade-related aspect of intellectual property right). This act created a strong legal foundation for trademark protection in India by introducing measures for trademark registration, enforcement, and infringement protection. Over time, efforts have been made to improve and refine trademark procedures, making them more efficient and accessible. So, after that, the Trademark Act, of 1999 was established which later came into force on 15 September 2003. In 1883, India ratified the Paris Convention on Intellectual Property Protection. The 1958 Trademark Act was later repealed by the 1999 Trademark Act. Now the new Trademark Act, of 1999 has also been confirmed at the international level and has been accepted by both treaties at the international level. The Trademark Act of 1999 was a milestone in India's trademark law history, bringing together and modifying laws related to trademarks, aligning them with the obligations of TRIPS. Key features included the introduction of service marks, recognition of "well-known" marks, provisions for protecting registered users, tougher penalties for trademark infringement and counterfeiting, and a simplified trademark registration process. These modifications strengthened and improved the effectiveness of India's trademark laws, guaranteeing improved trademark protection and promoting economic development and innovation. The trademark remedies are also not available only for trademark law but also for the remedies for unregistered trademarks under common law.

The Trademark Act of 2003 is a significant revision of existing trademark laws in a country to improve protection for trademarks, which are essential assets for businesses. This may involve modifications to registration procedures, expanding eligible trademark scope, or stronger measures to combat trademark infringement and counterfeit goods. The act aims to strengthen the legal framework governing trademarks, safeguarding the interests of businesses and consumers. The Trademark Act of 2017 continues this tradition by modernizing and adapting trademark laws to meet emerging challenges, including digital-era regulations.

LegalOnus Law Journal (LLJ)

2.3 objective and functions of trademark:

Trademark law serves two fundamental principles. Which is by distinguishing the source or origin of specific products as distinct from other comparable products, and other is to protect the public from confusion and deception; also, it defends the trade and commerce of the trademark owner and the goodwill associated with his brand.

According to the Delhi high court's ruling in Cadbury India limited v. Neeraj food products²¹, the goal of trademark law is to safeguard consumers and traders from dishonest trademark adoption by third parties seeking to profit from goodwill and reputation.

The primary functions of the trademark are that it allows one trader's wares to be identified and set apart from those of other traders, it indicates that a certain trademark is the source of all items carrying that mark, it indicates that goods displaying that mark are of the same caliber and serves as a key tool for product sales and promotion. As a result, its key features are advertising, quality, source, and identification.

2.4 significance and benefits of trademark

Trademarks are essential for a company's identity, connecting it to consumers through its name, design, and colors. They convey a product's standard and quality, preventing confusion and potential loss of reputation. Trademark registration protects a company's reputation by preventing manufacturers from using the same name and logo on cheaper products. Consumer protection is another benefit, as trademarks prevent confusion about the brand. Long-standing trademarks, like the Belgian beer brand stella Artois, strengthen market footing. Financial benefits include adding value and recognition, making it easier to raise money, and facilitating partner and collaborator finding.

²¹Cadbury India Limited v. Neeraj Food Products, 142(2007)DLT724, MIPR2007(2)269, 2007(35)PTC95(DEL)

LegalOnus Law Journal (LLJ)

Trademark registration offers several benefits, including exclusivity, legal protection against infringement, differentiation from competitors, goodwill and brand value, creation of an intangible asset of value, global recognition and eligibility, cost-efficient protection, and attraction of new customers.

- Exclusivity allows the owner to use the same trademark for every item that falls under the specified classes, preventing third parties from advertising similar services or products using confusingly identical trademarks. Legal protection against infringement is provided by assigning intellectual property to the product, which can be used without permission by any third party. The owner can use the ® symbol to indicate exclusive rights and can seek redress in court from infringement.
- Differentiation from other products is another benefit of trademark registration. A unique trademark sets a product apart from its rivals, forming a customer base and impacting buyer decision-making. A registered trademark enhances the company's image in the market by maximizing consumer confidence.
- A registered trademark creates an intangible asset of value, acting as a source of income in aspects like income tax or accounting. It can be sold, bought, licensed, assigned, used commercially, or franchised, and its economic value increases with business growth and popularity.
- India, as a signatory to the Paris convention for protection of industrial property, has the right to secure registration and protection of their trademarks in countries that are signatories to the convention. This registration and goodwill can act as a strong foundation for international recognition.
- Cost-efficient protection is another advantage of trademark registration. In India, a registration can be renewed on time and is valid for ten years after the day the application was submitted. Online registration is a convenient and cost-efficient process, generally issued within a few days after filing.

LegalOnus Law Journal (LLJ)

2.5 need for protection of trademark

A trademark is a unique symbol or design that differentiates a company's products or services from others, serving as a brand's signature. It enhances visibility, customer loyalty, and overall value. Customers can connect with products through trademarks, overcoming language limitations. A consistent, recognizable trademark builds trust among consumers. Trademark registration typically lasts ten years, with renewals available for an additional fee. In India, trademark protection is enforced through court orders, extending to registered and unregistered trademarks.

The trademarks act of 1999 safeguards trademark rights in India. After India signed the TRIPS (trade-related aspects of intellectual property rights) agreement, the act was primarily implemented to fulfill India's international commitments. In India, who has been using a trademark for the longest time determines who owns it, in contrast to patents and other forms of intellectual property rights. Consequently, the "first-to-use" notion replaces the "first-to-file" concept in terms of trademarks.

- Trademark infringement happens when another party uses a mark that is confusingly like a registered trademark for related products or services, potentially generating confusion or eroding the brand's distinctiveness. It could be either a direct or indirect infringement. Trademark owners must safeguard their marks and take legal action against infringers. The only defense can be that they had prior registered, fair use, and the owner had not renewed the trademark over a long period after expiry. Key aspects of trademark infringement and enforcement include cease-and-desist letters, litigation, and defenses such as fair use, parody, or generalness. If a cease-and-desist letter does not resolve the issue, trademark owners can file a lawsuit in federal court, which may include injunctive relief, damages, and attorney's fees. Trademark registration: you can establish your ownership rights and obtain legal protection by registering your trademark with the relevant intellectual property office. By acting as a public notification, registration discourages unauthorized use and facilitates the enforcement of your rights in the event of a violation.

LegalOnus Law Journal (LLJ)

- **Vigilance and monitoring:** keep an eye out for possible trademark infringements in the marketplace. To find identical or similar marks that could threaten your brand, regularly search for trademarks. Taking quick action can improve your legal standing and stop additional harm.
- **Protect your rights:** act quickly to protect your rights if you find trademark infringement. Sending cease-and-desist letters, holding talks, or pursuing legal remedies like injunctions and damages could all be part of this.
- **Inform clients:** inform clients on the importance of your trademark. By increasing knowledge, you can reduce the possibility of confusion by assisting customers in differentiating your goods or services from those of infringers.
- **Consider alternative dispute resolution:** in certain situations, trademark disputes can be settled without the need for expensive litigation by using alternative dispute resolution techniques like mediation or arbitration.

Business owners may preserve their brands, keep their competitive edge, and guarantee the ongoing strength and integrity of their trademarks by comprehending the nuances of trademark infringement and putting these preventative steps into place.

2.6 trademark registration process and regulations

- i. **Trademark search:** make sure your suggested trademark is original and has not been registered by someone else before deciding on one.
- ii. **File an application:** send a trademark application, together with the necessary paperwork and payments, to the Indian trademark office either online or offline. It must be submitted online using the official websites of the controller general of patent design and trademarks, the department of industrial policy and promotion, and the ministry of commerce and industry (agents, attorneys, or the proprietor/applicant may all register).
- iii. **Examination:** to make sure your application satisfies legal requirements, such as distinctiveness and trademark rule compliance, the trademark office will review it.

LegalOnus Law Journal (LLJ)

- iv. Publication: if the trademark is approved, it will be published in the trademark journal for four months to accommodate any objections from third parties.
- v. Opposition (if applicable): parties have the allotted time to object to the registration if they have any.
- vi. Registration: a registration certificate will be provided and the trademark will be registered if no opposition is lodged or if opposition is unsuccessful.
- vii. Renewal: by paying the renewal costs, trademarks that have a ten-year validity period can be extended forever every ten years.

The trademark act of 1999 and the trademark rules of 2017, which were created by the act, are the main laws governing trademarks in India. Procedures for trademark filing, examination, publication, objection, registration, renewal, rectification, and removal are listed in the act and rules. Like patents, the chief administrator of the Indian trademark system is the controller. The general of patents, designs, and trademarks (cgpdmt) office is managed by the department of industrial policy and promotion (dipp), ministry of commerce and industry. From trademark search to trademark registration and subsequent renewal, there are numerous procedures involved in the effective registration of a trademark. Every step entail completing the necessary paperwork and procedural procedures.

2.7 trademark licensing:

The trademarks act, of 1999 does not define "licensing of tm." a trademark license is permission granted by the owner of a trademark to a third person in consideration of a royalty. The holder or proprietor of the registered trademark can grant a trademark license. Both registered and unregistered trademarks can be transferred under Indian law through licenses or assignments. Licenses to a registered trademark in India can be simple license agreements or registered users, with certain rights granted to the licensee.

According to section 49 of the trademarks act 1999, it is a person who is currently registered as such. Section 49 of the act requires the owner of a mark and a proposed user to jointly apply for a

LegalOnus Law Journal (LLJ)

registered user to use the mark. The application is made in form tm-u, containing an agreement and an affidavit from the proprietor detailing the license details. The application must be submitted within six months of the agreement. The official online application cost for each mark is rs 4500. If the application is approved, the trademark office (tmo) would register the user as a registered user and publish it in the journal.

Himalaya drug co.pvt.ltd, Bangalore v. Arya aushadhi pharmaceutical work Indore²², the court decided that a company might have its lawsuit dismissed if it couldn't demonstrate that it was a registered user. Therefore, registering the tm license with the trade mark office is always a good idea. According to the trademarks act of 1999, only a registered trademark owner or proprietor is authorized to commence legal action for trademark infringement; a non-registered user is not permitted to seek legal action under the act.

2.8 trademark strategies:

An effective company's brief trademark strategy should align with target customer demand and interest, ensuring it is marketable and associated with quality and satisfaction from products and services. A trademark strategy is crucial for a company's uniqueness and should be distinct, definable, and recognizable. Key points for developing a trademark strategy include the registration process, marketing of the trademark, and protection from competition.

Registration grants exclusive rights to use the trademark across the jurisdiction for 10 years, and renewal is essential to maintain rights. Keep the trademark description broad and avoid using a logo without a color claim. Marketing of the trademark involves connecting the brand, product, and services with potential customers. Registering a domain similar to the trademark can prevent others from obtaining it. Conducting market research and conducting surveys can provide valuable

²² HIMALAYA DRUG CO.PVT.LTD, BANGALORE V. ARYA AUSHADHI PHARMACEUTICAL WORK INDORE, AIR1999MP110, AIR 1999 MADHYA PRADESH 110, (1999) 2 ARBILR 528

LegalOnus Law Journal (LLJ)

insights for creating a compelling trademark. A strong trademark strategy can help protect the brand, products, and services from competition and provide a competitive advantage. For example, MacDonald had created their logo registered and restricted other persons in the market from using their logo and had created their brand. In jurisdictions with exclusive rights, write the registered trademark with a circled "®" and in those without exclusive rights, write tm.

Trademark portfolio management

Trademark portfolio management is the strategic administration of a company's trademarks to maximize their value and protection. It involves choosing the right mark, conducting thorough clearance searches, registering trademarks, conducting portfolio audits, enforcing and protecting trademarks, and managing renewals. Key components of trademark portfolio management include choosing the right mark, conducting thorough clearance searches, registering trademarks, reviewing and assessing the portfolio, enforcing and protecting trademarks, and managing renewals.

To ensure effective trademark portfolio management, align trademark decisions with the overall brand strategy, centralize portfolio management, stay proactive, invest in education and training, and engage the right partner. A centralized system or software solution can streamline the process, while regular monitoring of trademark databases, industry publications, and online channels can help identify potential infringements or misuse. Investing in education and training can also help employees understand the importance of trademark protection and uphold brand integrity. Partnering with experienced trademark attorneys, ip professionals, or service providers can provide valuable guidance on portfolio strategy, enforcement actions, and compliance with relevant laws and regulations. To protect important brand assets, trademark portfolio management is a complex process that calls for proactive oversight, smart decision-making, and meticulous preparation. Businesses can strengthen their market position, improve brand reputation, and open up new growth prospects in a more competitive business climate by implementing best practices and maintaining vigilance in trademark protection.

LegalOnus Law Journal (LLJ)

3.1 trademark: contribution to market distinctiveness

Here it was stated that the trademark's primary role is to distinguish the business goods and services from the other goods and services of competitors. In the trademark, by providing a unique identity to the goods or services through name, logos, slogan, etc. It ensures that it is distinguished from the other competitors and makes it easy for the consumers to recognize the origin of that product/goods or services. The source identification is the main basic point for the trademark to help in market distinctiveness and it builds consumer trust and loyalty with the specific product trademark. The expression "distinctiveness" means to state that the adapt it to "differentiate with which the proprietor was connected". It would be suggested that if the trademark was not distinct the product that not liable for the registration of a trademark. Here, it also says that the trademark allows the business to create distinct identities for their goods or services, which helps the consuming consumer to differentiate it from competitor things and to prefer their advantages. The imperial tobacco co. Of India ltd. V the registrar of trade marks²³, here the court of Calcutta said that distinctiveness means to be "some quality in trademarks marked to the goods so marked as distinct from the others producers of such goods". A strong "well-known" trademark can evoke an immediate need for brand recognition through the trademark, to make it easier for the consumer to make their decision regarding the products or services. Just like Nike and coca-cola is easily recognizable by the consumers of their logo and designs and it creates loyalty among the consumers. The word well-known trademark means to be a mark that becomes a substantial point to the public here which it used goods and services that such use of such mark about such products would be taken as indicating a type of connection between trade or rendering of services between those products and the person using such mark about that services or goods.²⁴ in the case of yahoo inc. V. Firoz Nadiadwala²⁵, the court stated that yahoo has become the common name in all

²³ The Imperial Tobacco Co. of India Ltd. v the Registrar of Trade Marks AIR 1977 Cal. 413

²⁴ Section 2(1)(zg)

²⁵ Yahoo Inc. v. Firoz Nadiadwala CS (OS) No. 906/2009

LegalOnus Law Journal (LLJ)

households in India and now it achieved the status of well- a well-known trademark for a very long time it has continued nowadays, and here the defendant using yahoo making a film and believing the public the defendant production was same endorsed and associated with the plaintiff.

In the competitive world, there are more challenges faced by the new companies which newly launch their new product. So, in a competitive market with almost the same products, here the trademark gives a new identity to the goods or services of that business to differentiate it from the other business products in the crowded workplace. The differentiation and distinctiveness play a very crucial role in the differentiation of the product and in attracting customers. For example, Samsung and apple phones are the best examples of distinctiveness in the market; they have their own different characteristics identity despite being similar types of products. Later, the time after ages the trademark was associated with the quality assurances and the trust of consumers. A strong trademark symbol, logos, symbol, word, etc. Assures consumers that they purchase have certain standards. When the customers purchase something by having their trademark it assures the consumers about the quality and have good experience with them.

Trademark leads to market efficiency by reducing the time and effort of consumers spending so much time over the purchasing of goods or services. Here, the feature of a trademark gives a product a label and mark which gives its unique identity to that product, it makes it easy for the consumer to easily find that product in the market instead of spending much time and effort for searching the products. Here, it helps to evaluate all the products separately, here the consumers rely on the trademark of the products and value the products. It also helps in reducing confusion or other malpractices in the marketplace, since the trademark specifically leads to the branding of the product. The trademark helps the business carve out market inefficiency by giving and reinforcing the unique identity of the product by giving or representing by brand name. A distinctive trademark and the branding are coupled together and work accordingly. It allows the business to establish a specific market by minimizing the direct competition in the market. For example, here the most important ones louis Vinton and monte Carlo are the most famous brands and high-end exclusive brands, preventing them from the mass- market products. The trademark

LegalOnus Law Journal (LLJ)

contributes to the creation of brand equity. A successful trademark leads to more benefitted market profits for the company, consumer attraction, and consumer loyalty and the increasing value of that brand in the world. Here, to testing the parameters of the testing for the distinctiveness of a trademark are – the extent and how much period it was used, goodwill and association are set in the mindset of the consumer, investment is done on advertising, channels of distributing it, and the class of consumers approached.²⁶ so the trademark enhances the market distinctiveness by giving a unique identity to its products through brands and consumer loyalty, consumer recognition enhancing the business of the company and differentiates it from the other competitor products. Here, the trademark becomes the most valuable asset for the business to establish a brand presence in the world.

3.2 concept of branding in the trademark

In today's era, the trademark serves as an important tool for businesses to protect and establish their brand identities. It helps in distinguishing it from the other competitor products enabling consumers to easily purchase the things. It helps in fostering consumer confidence, brand recognition, and brand loyalty. So, in today's time, it is easy and more trustworthy to purchase branded things instead of others. A trademark is granted by laws and is legally protected, whereas a brand is the name or logo that was provided by the product's owner. A brand²⁷ is specifically a name given to the product by the owner who manufactured that product. It is the name of the product that symbolizes the company's products and leads the consumer to purchase such branded products. A "brand name contains the elements such as culture, picture, identification, and spirit of the company. It is generally used to distinguish it from the other products". However, the brand name should be given before it to introduce in the market. The word brand can be defined as "it is

²⁶ Kunj Aluminium Private Ltd. v. Koninklijke Philips Electricity NV, 2011 (47) PTC 472 (Del)(DB0)

²⁷ Chapter 9 of the Central Excise Tariff Act, 1985, is as follows-

"A brand name or trade name, whether registered or unregistered, is a name or a mark, such as a symbol, logo, tag, signature, or created word or writing, which is used about any specific commodities for denoting, or indicating, a correlation in the course of a business between such specified goods as well as some individual using such name or sign with or without any indication of that particular personality."

- Central Excise Tariff Act, 1985, No. 5, Acts of Parliament, 1985 (India)

LegalOnus Law Journal (LLJ)

the name assigned to a specific product by the firm that manufactures it"²⁸. Also, according to the dictionary, it is defined as an "it is term, sign, name, etc., specifically one officially registered as a trademark, which is used by a producer or the trader to distinguish its items from one another for the same sort and is prominently displayed on its products, in marketing, etc."

The term 'brand' or 'brand' was established from the early Norwegian word which means "to burn or to set alight". It dates back to the time when sheep were marked by shepherds to help them too distinct it from one another. This was done by burning a distinguishing mark into the sheep using the iron. The term was later adopted by English and the later the term was originally used to describe the owner, creator, or source of the thing. Here, the brand name serves two main purposes i.e., identification which means that it helps to distinguish it from another similar type of good or service, and the other purpose is the verification of the products, which means it helps to confirm the real identity of the item. Here, the brand name reveals the brand purpose of the product. It helps in establishing the business in the market by the strong brand identity name and to target the audience and to attract the attention of consumers. Before establishing or introducing the product in the market, it is essential to establish it by brand name to distinguish it from the other products.

4. Anticompetitive effects of trademark

Trademarks on the one hand are intended to promote competition by fostering market distinctiveness; there are instances where they can have anticompetitive effects. This occurs when trademark rights are used to restrict competition unfairly, hindering the entry of new business into the market or limiting consumer choices.

There is one concern is the use of trademarks to create market barriers. This can happen when a dominant brand uses its trademark to prevent competitors from using such similar marks, even if those marks are not confusingly similar to the original. For instance, a well-established brand

LegalOnus Law Journal (LLJ)

might try to prevent new entrants from using similar types of marks, even if their products are different.

So, in this case the trademark under some forms leads to competitive effects, particularly when the other uses that limit competition. On the other trademark, means to protect the brand and identity leads to antitrust concerns like:

Market barriers are when the dominant brand uses its trademark to prevent competitors from using similar marks, even if those marks are not similar. A strong recognizable trademark creates a strong identity in the market that leads to stopping new entrants. Established and brand recognition by marks made it difficult for the new or smaller business to compete in the market and enter the market.

Brand loyalty works as a barrier for new businesses. When the trademark becomes the first priority for the person, in short, the consumer wants to prefer the trademark-branded sites or products. For example, google was the priority for the search engines. Trademarks can grant exclusive rights to a particular brand, potentially restricting the use of similar marks by competitors, even if the products or services are different.

Tying arrangement and bundling, here the dominant firms with the strongest trademark tie up and bundle with the other for the same offering. Here, the customers are required to purchase the things along with the additional products. Here, it works to force consumers to remain specified or with the same brand and prevent them from other alternative products or brands. Here, in the process of branding the dominant brands are bundled with the well-known trademark products with the less competitive items, trying to reach the other market segments. Here, in short, it tries to limit the consumer's availability and create barriers for other new companies/ businesses.

Brand extension, it is expanding a trademark to cover unrelated products or services, potentially limiting the competition in the new market. Here, the dominant brand names extend the trademarks with the multiple types of product categories, by limiting or stopping the opportunities or creating barriers for the smaller business in the markets. Thus, it limits the competitor's ability to

LegalOnus Law Journal (LLJ)

differentiate and forces the new business to enter the market without the same trade dress or brands that could market position.

Monopolization of power in the market of trademark. If the strong protection of trademarks was enforced very broadly, lead to monopolistic practices. It refers to the point where the business used the trademark of the rights of their products to exercise their excessive control over the market, beyond the limit of the simple protection of their trademark, in that scenario it limits the competition and reduces consumer freedom of choice of products and leads to monopolistic effect. Some companies bring suit against the similar sounding marks even in the unrelated markets where they work in the other sector. This type of act prevents other businesses or companies from using common words or names for their businesses. In some cases, where the trademarks are used to prevent the competitive products from gaining the same reputation or recognition, here it limits the consumer choice of products. A monopolistic trademark power is used to excessive use of power to limit the diversity of business into the market. It leads to something reduced in quality or higher in price due to the lack of competition in the market.

In the case of Starbucks corporations v. Sardarbuksh coffee & co.²⁹, here the most famous Starbucks registered their mark with the name of "Starbucks" which is famous for the coffee and in India as a trademark in the year 2001. On the other side, the defendant started the business in 2015 under the given name, it was associated with the turban commander's face with the wavy lines surrounded by the circular black band. Here, the plaintiff requested the change of the logo of the defendant's mark. Here, the defendant also changed the logo and started the business. Here, the plaintiff filed a suit against the defendant for the infringement of a trademark on the grounds of the deceptive similar marks. Here, the Delhi HC relied on the facts and cases.³⁰ stated that to find the deceptive nature of the defendant the court has to put in the shoes of the customers to

²⁹ Starbucks Corporations v. Sardarbuksh Coffee & Co., CS (COMM) 1007/2018

³⁰ National Sewing Thread Co. Decision Ltd. v. James Chadwick & Bros. Ltd., 1953 AIR 357, 1953 SCR 1028, AIR 1953 SUPREME COURT 357, 1956 BOM LR 21

LegalOnus Law Journal (LLJ)

differentiate it or not. The court held that the ordinary man was confused with the same marks and so it comes under the deceptive similar marks.

In the *mondelez India foods private limited v. Neeraj food products*³¹, in this case, the plaintiff (Cadbury India limited) filed a suit against the defendant on the ground that the defendant has the same deceptive identical mark and products. The plaintiff filed a suit on the basis that the defendant sold chocolates with the mark name 'James bond' which is the same mark as the Cadbury gems. Here, it also tries to confuse the market and consumer's mind. Here, the court held that the plaintiff was correct with the point and awarded the damages of rs. 10 lakh from the defendant.

4.1 antitrust implications of branding strategies

Branding strategies can have significant antitrust implications, particularly when they involve practices that restrict competition or create unfair advantages. Antitrust authorities closely examine branding strategies to ensure they do not violate antitrust principles.

For example, anti-competitive branding strategies can include:

1. Exclusive dealing agreements: restricting distributors or retailers from selling competing products or services.
2. Tying arrangements: requiring customers to purchase a product or service only in conjunction with another product or service.
3. Predatory pricing: it is the practice of lowering prices to drive out rivals.
4. Monopolization: using dominant market power to restrict competition unfairly.

4.2 consumer protection and trademark law

³¹ Mondelez India Foods Private Limited v. Neeraj Food Products CS (COMM) 393/2018

LegalOnus Law Journal (LLJ)

Trademark law serves a vital role in protecting consumers from deception and confusion in the marketplace. By ensuring that trademarks accurately indicate the source of goods or services, consumers can make informed decisions, confident that they are purchasing products from the intended source. This protection is essential for maintaining consumer trust and confidence in the market.

A key aspect of consumer protection is preventing trademark infringement. This occurs when someone uses a mark that is identical or confusingly similar to a registered trademark without authorization. Trademark infringement can lead to legal action, as it undermines the value of the trademark and can confuse consumers. By prohibiting infringement, trademark law safeguards the integrity of the marketplace and ensures that consumers are not misled by counterfeit or unauthorized products.

Here, both the words consumer protection and trademark law are intertwined because they both aim for consumer protection and access to the most appropriate information and to protect them from misleading or deceptive practices. Section 3 carries the exception that deals with the protection of intellectual property rights. Section 3 of the competition law deals with the situation in which the section does not deal. This sub deals with the parts that do not restrict the right of any infringement of any ip rights. The rights of the protection of these rights can't be waved off. The section lists some of the acts in which rights are enshrined. These are copyright law, patent law, trademark law, geographical indication, and the design act.

It is said that ip rights are not used in that manner which brings a competitive outcome. These ip rights are granted for the exclusive use of the product without any third-person interference. This was used as a method of enabling the process of invention and creativity to be awarded to be used. So, the state is concerned with safeguarding the consumers and the markets from the exclusive use of marks. So, the intellectual property law and competition law are not reconciled together. The competition was established to prevent abusive use of ip rights.³²

³² Flughafen Frankfurt/ Main AG, 98/190: (1998) OJ L72/31, para 89

LegalOnus Law Journal (LLJ)

Brand names are intended to assist buyers in recognizing the source of the products by safeguarding the distinctive name, logos, images, and other identities of the brand. This security allows the purchaser to settle on informed decisions, realizing the item with the specific brand name comes from a particular source with a certain quality and notoriety. By preventing the unapproved utilization of the trademark, trademark law regulations limit the consumer's disarray about the item's origins. This could help the customers with the trademark and product trust. Nike is truly the best example for limiting the confusion of customers.

Here, it also talks about the assurance from the fakes and extortion. It means that the fake products which are frequently of substandard quality, can hurt the buyers from both perspectives i.e. Financially and physically. The trademark law protects the consumer by forbidding the offer of fake items. This shields buyers from unconsciously buying inferior quality or perilous items that abuse a reputed brand trademark. Through trademark law enforcement, companies can take legal action against the people who utilize their brand trademark without their consent, lessening the availability of phony merchandise and guaranteeing that customers are buying real brand products.

Trademark law assists with preventing deceptive show casting, where a brand could utilize a logo, or name, that looks the same as those of notable brands to mislead the consumer into buying that product. Such practices are known as compromising the trade dress or passing off of trade. By confining that type of activity trademark law assists the consumer with the avoid such buying impersonation items that don't satisfy the quality standards of them which they expect from the brand. The trademark law supports consumer trust by permitting the brand to assemble the notorieties because of the consistent quality of the product. At the point when the customer sees a perceived trademark brand, they partner it with a specific level of quality of product and build steadfastness. This consistency benefits the consumer who purchases the products based on confidence in the product. Without the trademark protection law, it would be difficult for the companies it would be difficult to maintain their reputation and its value and its consumers. The trademark allows for fair competition in the market by using the distinctiveness of the product and by preventing others from using the same brand name to prevent consumers from getting confused.

LegalOnus Law Journal (LLJ)

In the competitive world, consumers must benefit from the various goods, prices, and quality levels of the products.

4.3 trade dilution about the brand equity

Trade dilution deals when a well-known trademark owner has the right to forbid others from using their mark because it diminishes their exclusivity or damages their reputation. This is known as trademark dilution, which is a type of trademark infringement. In actuality, nobody has the authority to misuse a well-known trademark's reputation or copy it. Dilution protection, on the other hand, is meant to keep a sufficiently powerful and well-known trademark from losing its exclusive identification with a specific product in the minds of the general public.

The Indian trademark dilution doctrine: although dilution is not defined in the trade marks act, 1999, section 29(4) declares that if a trademark is well-known in India, using a mark that is close to or identical to the registered trademark for goods or services that are not the same is deemed to be an infringement. This is because such use without due cause would unfairly exploit the reputed trademark or harm its distinctive character. The act postulates that a registered trademark is infringed when a person takes undue advantage of an eminent mark or mark with a distinctive character. The term trademark dilution refers to the erosion of a trademark's distinctiveness and value, even in the absence of direct confusion with another product or service. This can occur when a trademark is used in connection with unrelated goods or services, potentially it harms or tarnishes the brand's reputation or erode the value in the consumer's eyes. The trademark dilution significantly impacts the brand's equity which is used to represent the intangible value lingered with the trademark. Brand equity encompasses factors such as brand awareness brand quality brand loyalty and the association with some emotions or the value of the brand. When the trademark is diluted, it leads to a decline in the brand equity by harming a business's reputation. Here it was also stated that when another business uses an identical mark that leads to diminishing the uniqueness of the brand's trademark eventually it harms the reputation of the brand in the mind

LegalOnus Law Journal (LLJ)

of the consumer here the option to start the legal proceeding for safeguarding the trademark from the dilution. It also becomes challenging when the trademark is diluted, making it difficult for the brand owner to prove its unauthorized use of the mark. So, the major step for safeguarding the trademark from dilution is to enforce and protect the brand. To watch out for the unauthorized use of that trademark, informing the customers about the dilution and uniqueness of the brand name, the next step is to licensing and merchandise agreements to be done for the correct usage of the trademark and the last one is to register the trademark and enforce the legal proceeding against the unauthorized user.

5. Balancing trademark rights and competition

Finding the right balance between protecting trademark rights and promoting fair competition is a complex issue. While a trademark is crucial for market distinctiveness and consumer protection excessive protection stifles innovation and limits consumer choices. Antitrust law here plays a very vital role in ensuring that the trademark law does not become the basis for the monopolization of power or the means of unfair practices. Antitrust regulators scrutinize the use of trademarks to prevent practices that hinder market entry or restrict the competition for new businesses. They evaluate situations where a dominant brand might use its trademark to suppress competitors or maintain unfair advantages. The new amendment bill which was called as competition (amendment) bill, 2020 was passed there are 2 major points are- the ambit of section 3(4) of the competition act, 2002 was expanded and it also includes the instances where the dominant positions in the ipr safe harbor. Here, this bill was passed to expand the limit of anti-competitive agreements. The clause is made in section 3(4) by the word 'any other agreement'. The second provision which deals with the ipr safe harbor was to work as security to intermediaries against any of the liability done by the third-party activities. The section 4a also came into existence to protect the intellectual property right holders and to strengthen their rights of ip.

Here, with the new development in the commercial environment, there was a connection created between the trademark and the competition law. Here, the trademark deals with the exclusive rights given to the owner over their innovation regarding their trademark mark, and trade secrets. The

LegalOnus Law Journal (LLJ)

competition law deals with protecting the market from the anti- competition to ensure the consumer gets a choice to differentiate the goods and services for the availing of the perfect products. The feature of distinctiveness in the trademark is provided to prevent the same use of the mark. So, together these laws work to ensure fair competition would be done without any unfair practices.

The trademark rights are issued for the protection of brand identity, by allowing the business to maintain and build consumer trust over such brand name. They prevent other businesses from the using same mark so that confusion could be created in the mind of consumers. Competition law aims to maintain a fair open market by eliminating monopolistic practices and anti-competitive exercises by encouraging innovation and more consumer choices. Also, the strong trademark creates a problem for the market, it creates market power for the popular brands. This can lead to limit the competition in the market if the brands use their trademark to stifle the rivals from the market, it limits the choices for the consumer.

The court often tried to use some doctrines like "fair use and the exhaustion" the limit the extent of the trademark protection, they tried to balance the rights of the trademark protection for the public interest. Fair use permits the other business to utilize the brand name to portray the products regardless of identical marks. Exhaustion restricts a brand name owner's control after the item is sold out, permitting the resale in the secondary markets, and advancing competition.

Also, in some specific cases, trademark licensing and organizations can raise antitrust concerns. Antitrust authorities might intervene if the company trademark strategy leads to the disregard of market competition or limits innovations. For, these things the trademark and competition law must have to work together. For, this the authorities of the trademark and competition law to work with each other in coordination to maintain the market economy and should work to safeguard the rights of the brand holders by supporting innovation consumer trust, and a fair market. A review was done to maintain the market and to prevent it from unfair practices. And by ensuring fair competition and preventing monopolization.

LegalOnus Law Journal (LLJ)

Conclusion and suggestions:

According to Daniel j. Boorstein: an image is more than just a design, phrase, logo, or picture that people can quickly recall. It is a carefully constructed personality profile of a person, organization, business, commodity, or service.

Each mark signifies and embodies an independent identity that must be kept and safeguarded. By combining the brand's ideals, reputation, and customer trust, trademarks help to shape the brand identity. Trademarks ensure market exclusivity and customer trust while offering legal protection against infringement and unauthorized use through registration and enforcement. While a trademark grants a right, competition law establishes a regulatory body that sets standards for the manufacture, distribution, storage, and supply of goods as well as the obligations placed on businesses operating in the market. It gives the author of a script or the developer of an inventive product the right to use it exclusively for a predetermined amount of time. To promote consumer welfare, goodwill, innovation, and economic growth, trademarks must be managed and protected effectively.

Trademark-enabled branding tactics, however, may also have antitrust ramifications. Trademarks can occasionally be exploited to establish or preserve market power, which may result in anti-competitive behavior, even if its primary purpose is to safeguard brand identity and encourage fair competition. For example, excessively strong or wide trademark enforcement can hinder innovation and competition, making it harder for new firms to enter the market and limiting the options available to consumers.

Policymakers should maintain a balance between protecting legitimate trademark rights and preventing abuse to restrict competition. Clear and not excessively broad trademark laws can help achieve this. Regulatory bodies should actively monitor the market for anti-competitive practices related to trademarks, including mergers and acquisitions that may consolidate market power. Promoting innovation can encourage a competitive environment where small businesses and startups can develop and protect their trademarks without facing legal challenges. Increase public awareness about the importance of trademarks and the potential for anti-competitive behavior.

LegalOnus Law Journal (LLJ)

Educating consumers about their rights and recognizing anti-competitive practices can mitigate negative impacts on the market. Regularly reviewing and updating trademark laws to keep pace with market changes and technological advancements ensures fair competition and protection of intellectual property rights. Implementing these suggestions can maximize the positive impact of trademarks on market distinctiveness while minimizing antitrust risks, and fostering a competitive and dynamic market environment.

References: -

- Trademark act, 1999 (act no. 47 of 1999)
- Avtar Singh and dr. Harpreet Kaur, competition law (eastern book company)
- S.r. Myneni, intellectual property rights in information technology (new era law publication)
- V.k. Ahuja, law relating to intellectual property rights (lexis nexis third edition)
- <https://www.drishtiiias.com/to-the-points/paper3/intellectual-property-rights>
- <https://blog.iplayers.in/concept-of-property/>
- <https://www.wipo.int/about-ip/en/>
- <https://www.indiafilings.com/learn/types-of-trademark/>
- <https://www.legalserviceindia.com/legal/article-16344-how-trademark-law-evolved-in-india-.html>
- <https://www.altacit.com/trademark/evolution-of-trademark-laws-in-india/>
- <https://ijrpr.com/uploads/v4issue9/ijrpr17505.pdf>

Maiden Issue

S. No.:	Particulars	Details
1.	Place of publication	Lucknow, Uttar Pradesh
2.	Language	English only
3.	Under the guidance	Mr. Anandh Kumar V
4.	Owner, & Publisher	LEGALONUS LAW JOURNAL, Ayush Chandra, Lucknow, UP, India

Guidelines for Contributors

- Original accounts of research in the form of articles, short articles, reports, notes, comments, review articles, book reviews and case comments shall be most appreciated. • Mode of citation: Footnotes, References
- Font; Times New Roman
- Font size: 12 points for text and 10 points for footnotes.
- Spacing: 1.5
- Mode of Submission: Email
- Email: journal@legalonus.com