



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## INTELLECTUAL PROPERTY RIGHTS

### INTRODUCTION

A trademark is a type of intellectual asset that can consist of a visual symbol, icon, image, or expression employed to recognize products or services originating from a particular provider. Since individuals link a trademark to a brand or enterprise, it functions as an intangible asset for your company. As your offerings garner recognition, there is a risk of misuse and loss.

Therefore, it is crucial to register your trademark. A Trademark Registration grants exclusive rights to ownership and usage. This registered mark enhances goodwill, protects brand value, and fosters trust. Additionally, it facilitates entry into new markets within your industry and establishes a foothold for your products or services in those markets.

Infringement of a trademark happens when someone other than the registered owner, or someone not using it for an authorized purpose, utilizes it. Simply put, unauthorized use of a trademark in business or trade is considered infringement. It's not required for infringement that the mark used without authorization is identical to the registered trademark. Using a mark deceptively similar to another may also amount to infringement.

Regarding trademarks, Article 15 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement specifies that any sign or amalgamation thereof capable of distinguishing the goods and services of one entity from others qualifies as a trademark. The provision further notes that signs, encompassing words, personal names, numerals, security features, colour combinations, or a blend of these, are eligible for trademark registration.

Section 29 of the Trademark Act, 1999 outlines a fairly comprehensive provision regarding what qualifies as infringement. According to S.29(1), infringement occurs when an individual, not the registered proprietor or not using it as permitted, uses a mark in the course of trade. This mark must either be identical to or deceptively similar to the registered trademark concerning goods or services for which the alleged infringement is registered. The usage should be in a manner that makes it likely to be perceived as a trade mark. If all conditions in

Section 29 are met, such an act would constitute infringement.

### KEY CHARACTERISTICS OF A TRADEMARK

Before opting for and officially registering your symbol as a trademark, it's essential to consider the features of an effective trademark, outlined as follows:

1. The chosen symbol should denote a brand, name, word, signature, label, color/combination of colours, or a fusion of these elements.
2. Opt for a symbol that is easily recognizable, spoken, and spelled, ensuring swift recall and acknowledgment by the general public.
3. Select a brief and straightforward mark, as intricate and lengthy trademarks tend to be forgettable.
4. An effective trademark is invariably distinctive in all aspects, avoiding similarity or identity with any registered or renowned trademark.

A transparent and concise symbol eliminates confusion or doubt about the nature of the offered product or service. In many cases, coined words or unique geometric designs are considered the most favourable trademarks.

5. The chosen mark for trademark registration should steer clear of directly describing the product, with an emphasis on suggestive qualities as a prime attribute.
6. For trademark registration in India, ensure the chosen mark is not listed in the prohibited class, as outlined in the Trademark Act of 1999

### TYPES OF TRADEMARK

### 1. Service Mark

Within the domain of trademarks, a service mark is a form of intellectual property right. It functions similarly to a trademark, serving the purpose of distinguishing and identifying services provided by one entity from those of others. The key distinction lies in the nature of the goods or services involved, as trademarks are linked to goods, whereas service marks specifically relate to services. Fundamentally, a service mark acts as a recognizable representation – be it a symbol, design, phrase, or name – that signifies the source of services. The processes for protection and registration of service marks mirror those for trademarks. The goal is to prevent consumer confusion regarding the origin or quality of the associated services.

### 2. Certification Mark

A certification mark is a unique symbol, logo, or label indicating that a product or service meets specified standards set by a certifying authority. In contrast to a trademark or service mark, which denotes the origin of goods or services, a certification mark signals adherence to specific attributes like quality, origin, material, or mode of manufacture. Typically overseen by an independent organization or authority responsible for setting and upholding standards, certification marks serve the purpose of assuring consumers that products or services carrying the mark meet well-defined criteria. This instils trust and empowers consumers to make informed choices based on the established standards associated with the certification mark.

### 3. Collective Mark

A collective mark is employed by employees, a collective group, or members of a collaborative association to identify the origin of goods or services. It signifies a mark utilized for both goods and services, representing a group of organizations sharing similar characteristics. The organization or group utilizes this mark for multiple individuals operating within the collective entity, effectively distinguishing various goods or services.

## INFRINGEMENT OF TRADEMARK

Infringement of a registered trademark occurs when an individual, who is not a registered proprietor or authorized user in the course of trade, uses a mark identical to or deceptively similar to the registered trademark concerning goods or services for which the trademark is registered. Following an infringement, the trademark owner has the option to initiate civil

legal proceedings against the infringing party. Essentially, trademark infringement involves the unauthorized use of a trademark in connection with products and services, leading to confusion or difficulty in distinguishing the origin or potential benefits of the trader.

#### Case law:

1. In the legal case Amritdhara Pharmacy V Satya Deo Gupta, the Supreme Court outlined criteria for establishing a connection in a trademark infringement action. It emphasized the need for two words to be deceptively similar, evaluating them based on both appearance and sound. Consideration was also given to the nature of goods, the type of customers likely to purchase them, and the surrounding circumstances. The court concluded that such considerations could lead to confusion. This means not merely causing harm to one party and benefiting another unlawfully, but creating a state of public confusion that might result in the rejection of trademark registration.
2. In the case of Kaviraj Pandit Durga Dutt Sharma V. Navaratna Pharmaceutical Laboratories, the Supreme Court emphasized distinctions between trials for passing off and trademark infringement. In the judgment of American Home Products Corpn. Vs. Lupin Laboratories Ltd., the court highlighted the well-established principle that, concerning the infringement of a registered trademark, it is crucial to differentiate between the criteria for infringement and those in a passing-off trial. While passing off actions focus on identifying deception, in infringement cases, the Trademark Act grants

the owner exclusive rights to the mark. This infringement can occur even with related marks, despite the presence of deception.

#### CONCLUSION

Crafting a mark like this poses challenges, and when infringement occurs, it significantly hampers the producer. Ensuring Capital Protection is crucial, urging a move towards a Global Intellectual Property Order. Without Intellectual Property Rights protection, inventive activities face termination. Intellectual Property protection serves to stimulate creativity, foster

discovery, and prevent the misuse of inventions. Public policy advocates maintaining an Intellectual Property system that encourages innovation through protective measures, without compromising societal interests. In this context, the World Intellectual Property Organisation faces the challenge of integrating public policy considerations into its dealings with developing countries, including raising awareness of flexibilities within existing international intellectual property treaties. Although all of this is achievable, there are associated issues that need addressing. Trademarks, being crucial facets of Intellectual Property, necessitate protection in today's context. This is because every producer of a product or service desires a distinctive, visually appealing mark that easily stands apart from others.