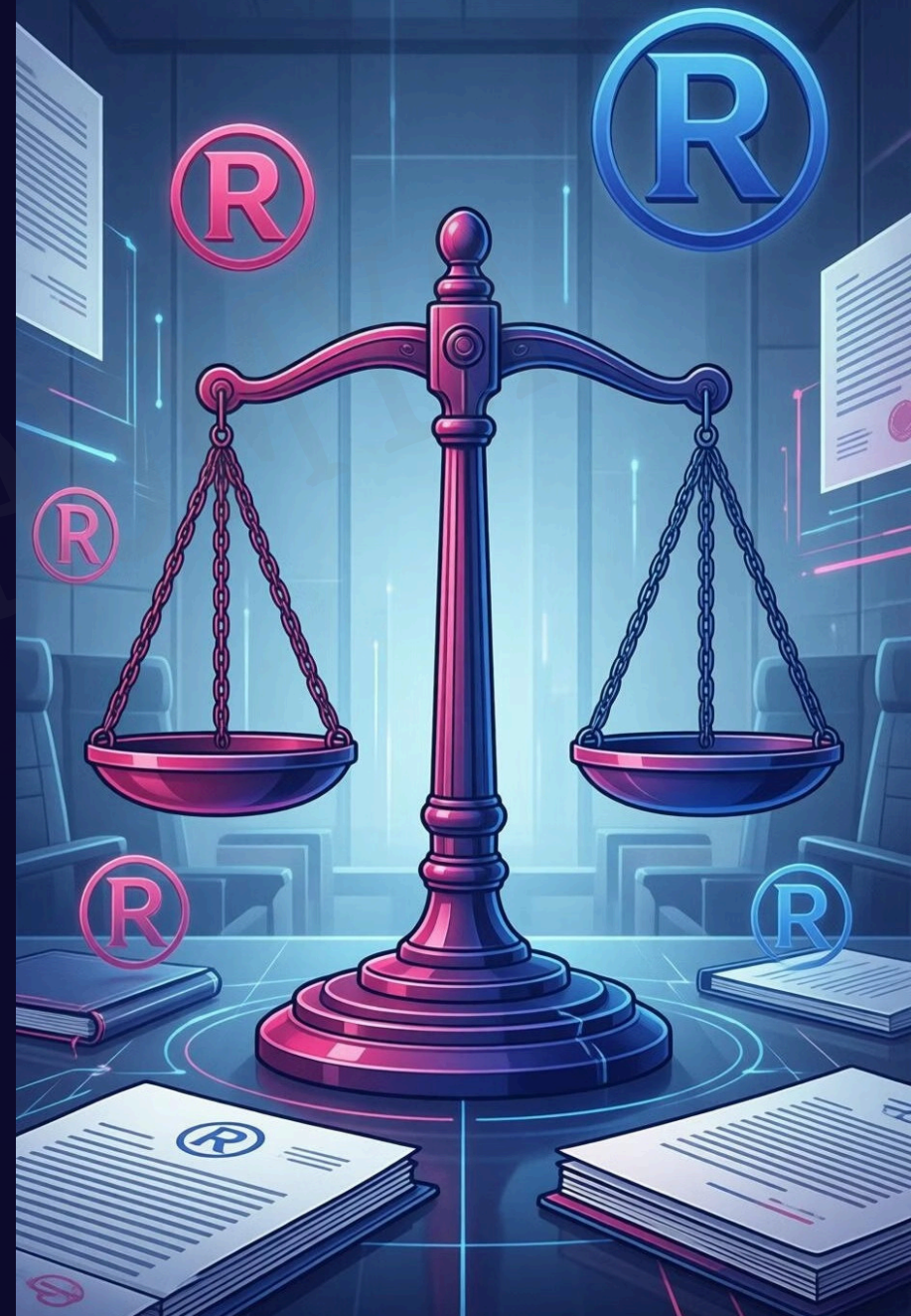


LAW RELATING TO TRADE MARKS



REGULATORY FRAMEWORK

- Trade Marks Act, 1999
- Trade Marks Rules, 2017

Trade Marks Act, 1999 is an Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. It extends to the whole of India.

What are the Sources of Trademark Laws?

- The national statutes i.e., the Trade Marks Act, 1999 and rules made thereunder.
- International Multilateral Convention. National Bilateral Treaty. Regional
- Treaty. Decision/Rulings of the Courts.
- Office Practice reduced in Manuals and Guidelines.
- Text Books written by Academician and Professional Experts

INTRODUCTION

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.

A trade mark is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

Trademark is a symbol that allows a purchaser to identify goods or services that have been proved satisfactory and not to buy goods or services that have not been satisfactory. Trademarks help promote economic efficiency.

If trademarks are not allowed to be registered with the manufacturers it may eventually take away the incentive of trademark owning manufacturers to make investments in quality control. There would thus be no healthy competition among the manufacturers leading to the loss of vitality of the economy. If we do not have a system of having trademark a manufacturer would get nothing by improving his product's quality.

And consumers would not be in a position to identify high or low-quality products. In such a situation a manufacturer who reduce the price by reducing quality may pocket the benefit of the market. The consequence would be attempts to produce inferior quality products rather than competition to produce better-quality products.

International Treaties and Agreements

The current law of Trade Marks contained in the Trade Marks Act, 1999 is in harmony with two major international treaties on the subject, namely The Paris Convention for Protection of Industrial Property and TRIPS Agreement both of which India is a signatory.

Functions of Trademark

1. It advertises the goods/services.
2. It identifies the goods or services and its origin.
3. It creates an image for goods/services.
4. It guarantees its unchanged quality.

Definitions and Interpretations

What is a Trademark?

A trademark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

The essential requirements to register a trademark under the Act are:



The selected mark should be capable of being represented graphically (that is in the paper form).



It should be capable of distinguishing the goods or services of one undertaking from those of others.



It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person

Types of Trade Marks

Certification Trade Mark

Section 2(1)(e) defines the term certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person


Collective Mark

As per Section 2(1)(g) of the Act, Collective mark means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others

Well Known Trade Mark

Interms of Section 2(1)(zg), a well-known trade mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or services such that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

With coming up of the Trade Mark Rules 2017, a new procedure has been created that allows the Registrar to proclaim a particular trademark as "well known". According to the new rule, a trademark owner can file an application in form TM-M with a request made to the Registrar for declaring the mark to be "well-known". A well-known trade mark has been vouchsafed with extraordinary protection and safeguards against passing off and infringement of such trademarks. Well-known trademarks are recognised in India on the basis of their reputation, nationally, internationally and the cross-borders. Unlike other trademarks whose goodwill and reputation is limited to a certain specified geographical area and to a certain range of products, well-known trademarks have its goodwill and reputation protected across the nation and across categories of goods and services. It is law that restricts the Trade Mark Registry to allow and register any mark as a trademark which is deceptively similar to any of the well-known trademark.

 **For Example:** Google has been registered as a well-known trademark of Alphabet Inc., which thereby means only Alphabet Inc. can register the term 'Google' for any category of goods and services. Even if the service is not related to the Internet industry, no other company but Alphabet Inc. can register 'Google' as its trademark



Who can Apply for a Trademark and How?

Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, may apply in writing in prescribed manner for registration.

The application should contain the trademark, the goods/ services, name and address of applicant and agent (if any) with power of attorney, the period of use of the mark.

The applications can be submitted personally at the Front Office Counter of the respective office or can be sent by post. These can also be filed on line through the e-filing gateway available at the official website.

What are different types of Trademarks that may be Registered in India?

Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark.

An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/service.

Letters or numerals or any combination thereof.

The right to proprietorship of a trademark may be acquired by either registration under the Act or by use in relation to particular goods or service.

Devices, including fancy devices or symbols.

Monograms.

Combination of colors or even a single color in combination with a word or device.

Shape of goods or their packaging.

Marks constituting a three dimensional sign.

Sound marks when represented in conventional notation or described in words by being graphically represented.

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