

TRADEMARK LAW IN INDIA




Overview of timeline about what you will get to know

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Historical Evolution of Trademark Laws in India

Prior to 1940, when the first law of trademark in India was enacted, protection to trademarks in India was left to be governed by the English common law tort of “passing off” i.e. unauthorized use of goods, services, and the goodwill attached to another person’s business, which would amount to misrepresentation. It was well settled by the courts of equity and common law that no person shall treat his goods as the goods of someone else. In the trend setting case of early times in *Millington v. Fox*, Fraud was not considered essential to a passing off action, and right of property in trademark was recognized.

The traders themselves in their own way adopted different methods of creating evidence to support their claims to ownership of trademarks, viz:

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- Registration under the Registration Act, 1908, through the law was essentially meant only for registration of documents.
 - By announcements in newspapers, sometimes by way of caution notices against infringements
 - Registration of trademarks with chambers of Commerce in different areas such as Madras Chamber of Commerce, the Bombay Mill owners Association, etc.

Common law: “If you use it, you have right”

The term “Trademark”

A trade mark is commonly defined as a sign, for example a word or a logo, that functions as an indicator of commercial origin and recognized as intellectual property. So, if I am in the business of making cakes and biscuits, attaching my trade mark to boxes containing such products serves to inform consumers that they come from me.



As per the section 2 (zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

- (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating 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 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;

Types of trademark

The different types of trademarks as provided by the Trademark Act in India are as follows:

- ❖ **Product mark:** It is a mark linked to the products or goods, but it does not include services. The use of product marks is to recognize the source of a product and differentiate the products manufactured and sold by one person from the others.
- ❖ **Service mark:** Service mark is a mark linked to the services and not the products or goods. A service mark differentiates the services of one person from that of another. It signifies the services offered by a company.

- ❖ **Shape mark:** A mark used to indicate the shape of goods, their packing, etc., are termed Shape Mark as provided by the Trademark Act. It is used only when it is likely to present the product's shape. These shape marks make it different from the other products.

- ❖ **Pattern Mark:** A mark that comprises a pattern capable of identifying the product or services that originate from a particular undertaking and can be distinguished from the other project can be termed the Pattern Trademark as provided by the Trademark Act.

- ❖ **Sound mark:** A sound mark is a mark used when a specific sound performs the purpose of uniquely classifying the source of a product or a service; it is termed as sound mark. In such cases, such sound is connected with a company or its products or services.

- ❖ **Collective mark:** The mark used by the group of companies and protected by the group collectively is termed collective marks. The effect is used to represent or inform the public at large about the unique idea of the product. It is used to promote certain products with specific characteristics in that field.
- ❖ **Certification mark:** A certification mark is used to describe the standards of the goods or services. It safeguards the consumers of the goods or services that such product encounters the safety and other set standards. The certification mark on the product signifies that the product has gone through the quantified standard tests.

Benefit of registering the trademark

- Trademark registration allows a person the right to sole use of the mark in regards to the services or goods. In addition, the most important purpose in registration of a Trademark comprises powerful answers against any unauthorized use. Trademark registration allows the proprietor to begin litigation against infringement.
- Trademark registration also prevents others from using similar marks by making a mark easy to find when searching for Trademark availability searches. This also prevents problems before they arise.
- Trademark registration safeguards against Trademarks that may sound too confusing.

- Trademark registration designates the mark on the use of the application date, which is important in a system where the first use wins. Your rights are restricted to a geographic area, if any restriction made by T.M.R. department as the case may be.
- Trademark registration affords national notice of ownership, stopping others from claiming a subsequent adoption of the mark.
- A registered Trademark may be designated as a security, which means that the Trademark may be pledged as collateral to obtain loans in the same way other properties may be bonded.
- Your Trademark is considered a valuable, intangible asset. Trademark registration entails the attachment of goodwill and reputation to a product.

Eligibility to file Trademark Application

Anyone who desire to be the owner of the trademark whether an individual, joint owners, proprietor, partnership firm, Limited liability partnership, company, trust or society can apply for registration of trademark. It does not required to be Indian citizen or Business and hence any foreign national or foreign entity can also apply for trademark registration.

(1) Any person claiming to be the proprietor of a trade mark used or purposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

(2) A single application may be made for registration of a trademark for different classes of goods and services and fee payable therefor shall be in respect of each such class of goods or services.

(3) Every application under sub-section (1) shall be filed in the office of the Trade Marks Registry within whose territorial limits the principal place of business in India of the applicant or in the case of joint applicants the principal place of business in India of the applicant whose name is first mentioned in the application as having a place of business in India, is situate:

PROVIDED that where the applicant or any of the joint applicants does not carry on business in India, the application shall be filed in the office of the Trade Marks Registry within whose territorial limits the place mentioned in the address for service in India as disclosed in the application, is situate.

(4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(5) In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

Fees details of Trademark Application

**FOR PHYSICAL APPLICATION (Note:
Fee is for each class and for each
mark)**

Where the applicant is an
Individual / Startup
/Small Enterprise will be
subject to pay **INR 5000.**

In all other cases will
subject to pay **INR
10000.**

**FOR ONLINE APPLICATION (Note:
Fee is for each class and for each
mark)**

Where the applicant is an
Individual / Startup
/Small Enterprise will be
subject to pay **INR 4500.**

In all other cases will
subject to pay **INR 9000.**

Thank You

We will guide you in getting all necessary Documents and Registration required to get Trademark Registration in India, Please click on the following link to connect with our consultants.

<https://bkacs.com/>