



Trademarks and patents as safeguards to the intellectual creation

R Dinesh

BBA. BL Hons Student, Saveetha School of Law, Poonamalle, Tamil Nadu India

Abstract

This paper describes the feasibility of the safety of well-known trademark and additionally lays emphasis upon the safeguards against registrability of identical or similar logos which makes it very crucial to pick out the original and the duplicate. To start with the term “trademark” has to be understood. Trademark has been genuinely defined beneath the trademark act, 1999 but in easy phrases. Trademark is a symbol, a brand, an emblem name or another aggregate, that's both used and meant for use for the articles of trade by means of the producer to differentiate his product from that of the others. Similarly this emblem trademark could also give information to the general public consumer at the time of buy of the goods. That is also one of the important objectives of trademark. Via the usage of the trademark the manufacturers can serve the clients better. first of all a commercial enterprise, a employer/ enterprise has to shape an indicator and get it registered which makes the trademark precise to that enterprise/commercial enterprise by myself. The features of the trademark consists of amongst others the identification of the starting place of the product, ensures its unchanged pleasant, advertises the product and creates an photograph for the product. in case of infringement of the trademark of a particular commercial enterprise / employer, or violation of trademark rights in India, important safety is available under the Indian trademark act, 1999, and any motion against infringement is a statutory proper under the act as the logos are governed under the said act in India. this paper therefore analyses the history, registration and its procedure, infringement, legal guidelines and associated case laws bearing on trademark, even as concurrently highlighting the safeguards towards the registrability of identical or comparable trademark by using some different business enterprise/commercial enterprise.

Keywords: trademark, safeguards, infringement, statutory right, case laws

Introduction

What is a trademark?

In simple terms, ^[1] trademark is a brand or logo which represents an individual's business. This trademark is used to distinguish between two or more businesses so that an owner's business can be identified from that of the other. It is nothing but an identity of the business. A trademark is a visual symbol like a word, signature, name, device, label, numerals or combination of colours used by the owner of the trademark for goods or services or other articles of commerce to distinguish it from other similar goods or services originating from different businesses. A trademark can be a word, symbol, logo, and brand name, wrapper, packaging labels, tagline or a combination of these and are used by manufacturers or service providers to identify their own products and/or services. It is used to distinguish the owners' products or services from those of its competitors.

Example of trademarks

Coca cola and Pepsi are two trademarks from the same industry i.e both come or they are classified under the category of beverages which distinctly identifies source or origin of the goods as well as an indication of quality.

^[2] In order to obtain a trademark, there are several procedures attached to it. In India, Trademarks India is registered by the Controller General of Patents Designs and Trademarks, Ministry of Commerce and Industry, Government of India. Trademarks are registered under the Trademark Act, 1999.

The main advantage of getting a trademark registered is that it provides the trademark owner the right to sue for damages when infringements of trademarks occur.

However, any trademark, which is identical or deceptively similar to an existing registered trademark or trademark for which application for registration has been made, cannot be registered. Also trademark that would likely cause deception or confusion or is offensive may not be registered.

However in so many cases, there seems to be similarity in the trademark which makes the customers purchase the local below standard quality, assuming that they have purchased a standard one. This is normally witnessed in the products sold by the local agencies.

For Example: ^[3] “GODREJ” is a standard trademark and the goods sold are of very high standard and value. Some local competitors use the trademark “GORDREJ” which sounds similar to the standard trademark and at one glance it appears to be the standard quality though it is a sub-standard one. The customers who are aware of this are not easily cheated, On the other hand illiterate people, common man etc., get cheated easily on seeing the name and they may be of the opinion that both “GODREJ” and “GORDREJ” are one and the same though there is an extra “R” which differentiates the products of standard and substandard quality.

History of trade mark

The Trade marks act, 1940 (five of 1940) changed into the primary statute regulation on alternate marks in India. Before

to that, safety of trademarks becomes left to be governed by of common law. cases regarding trademarks have been decided in the light of section 54 of specific relief act, 1877, even as registration became secured by way of acquiring a announcement as to possession beneath the Indian registration act, 1908 (whirlpool employer vs. registrar of change marks). The stated enactment become amended via the trade marks amendment act, 1941 (27 of 1941) and later by means of different amendments. by way of the change marks modification act, 1943, the trade marks registry, which became formerly a part of the patent office, Calcutta (now Kolkata) became separated from the patent office to represent a separate trademarks registry underneath a registrar of exchange marks at Bombay (now Mumbai). Thereafter, the act was amended through the trade marks amendment act, of 1946, to present effect to the reciprocal arrangements regarding change marks between the government of India and the then Indian states and similarly amendments brought by way of part 'b' states law act, 1951.

On the basis of the report of Mr. Justice Ayyangar the trademarks act, 1940 become replaced by the trade & merchandise marks act, 1958. The 1958 act consolidated the provisions of the alternate marks act, 1940, the Indian merchandise marks act, 889(which was in force considering since 1.4.1889) and the provisions referring to trade marks within the Indian penal code. The trade & merchandise marks act, 1958 (act forty three of 1958) turned into brought into force on 25th November 1959. Certain minor amendments had been performed by the repealing & amending act, 1960 (58 of 1960) and the patents act, 1970 (39 of 1970).

The trade & merchandise mark act, 1958 has been revised and changed by way of the trade mark act, 1999. the technique started out because it changed into felt that a comprehensive assessment of the 1958 act be made in view of latest developments in trading and industrial practices, growing globalisation of exchange and industry, the want to inspire investment flows and switch of era, want for simplification and harmonisation of change mark management device within the country.

The trade marks bill, 1993 was added in the Lok Sabha on 19.5.1993, which become exceeded through the low Sabha on the lines endorsed by the status committee. However, as the bill failed to get via the Rajya sabha, it lapsed on the dissolution of the lok sabha. a brand new invoice titled as trademarks invoice, 1999 (bill no.33 of 1999) changed into brought in rajya sabha and in the end exceeded by way of both the homes of parliament. the bill acquired the assent of the president on 30.12.1999 and became an act.

Procedures for reistration of trademark

Trademark can be carried out for by using any person who can be an man or woman, enterprise, proprietor or prison entity claiming to be owner of the trademark. The software for trademark can be filed inside few days and the person that implemented for trademark can start using "tm" symbol. And the time required for trademark registry to finish formalities is eight to 24 months. Similarly if the trademark is registered and the registration certificate is issued then the ® (registered symbol) next to the trademark may be used. As soon as registered an indicator is legitimate for 10 years from the date

of submitting, this can be renewed occasionally from time to time.

Functions of a trade mark are

The main functions of the trademark include the following:

- It identifies the service or product and its source
- It guarantees its quality
- Advertisement of service of product

Different types of trademark

There are different types of Trademark which can be classified as under:

- A name (including personal or surname of the applicant or predecessor in business or the signature of the person)
- A coined word or an invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods / service
- Alphanumeric or Letters or numerals or any combination thereof.
- Image, symbol, monograms, 3 dimensional shapes, letters etc.
- Sound marks in audio format

Documents required for filing a trade mark application in India

^[4] The following documents are most essential and also mandatory for filing a trademark application in India.

- Trademark or logo copy
- Applicant details like name, address and nationality and for company: the state of incorporation
- Goods or services to register
- Date of first use of the trademark in India, if used by you prior to applying.
- Power of attorney to be signed by the applicant in 100 Rs. stamp paper.

Necessity or requirment of registering trademark for a business

^[5] It is necessary to register a trademark for a business, as it safeguards, protects and also prevents other competitors to use the same trademark. Apart from the above, the requirement of registering a trademark for a business is enumerated below:

- Even biggest businesses like Coca-Cola, Siemens, and Apple protect their business by means of trademark.
- The trademark would be important asset for your business and contributes to the goodwill generated.
- With registered trademark you can stop others from using your trademarked business name / logo etc. with regards to goods or services it is registered
- Trademark can considered just like any other form of asset like real estate, as it can be sold, licensed or assigned
- It guarantees the identity of the origin of goods and services.
- It stimulates further purchase.
- It serves as a badge of loyalty and affiliation.
- It may enable consumer to make a life style or fashion statement.

Trademark Registration Process

^[6] Investing time and money to build a particular brand and seeing the same brand name being used by another, robbing a person or business of a hard-earned brand reputation is not an agreeable state of affairs. Many a time, trademark (TM) owners end up in protracted litigation because when the time was right, they did not do trademark registration in India of their brand name. Trademark registration process of the brand name is not a difficult task. A few simple steps, as explained below and you would have the much-needed legal protection of the respective brand name registration in India.

• Step 1: Trademark Search

Many marketers do now not recognize the significance of a trademark seek. Having a unique logo name in thoughts isn't excellent sufficient reason to avoid a hallmark seek. Consequently, trademark seek allows someone i.e. a commercial enterprise to know that if there are similar logos to be had and it offers a truthful picture of in which the trademark of the particular individual stands, every so often, it additionally gives them a forewarning of the possibility of trademark litigation.

• Step 2: Filing Trademark Application in India

After a person is positive that his or her chosen logo call or brand is not indexed in the trademark registry India, then the man or woman can opt for registering the chosen emblem for his or her enterprise. Step one is to document an indicator utility shape at the trademark workplace, India. The Indian trademark places of work are placed at Chennai, Delhi, Mumbai, and Kolkata. These days, filing is by and large finished on line. As soon as the utility is filed, an legit receipt is at once issued for future reference.

• Step 3: TM Examination

^[7] After a trademark application is filed, it is examined by the examiner for any discrepancies. The examination might take around 12-18 months. The examiner might accept the trademark absolutely, conditionally or object. If accepted unconditionally, the trademark gets published in the Trademark Journal. If not accepted unconditionally, the conditions to be fulfilled or the objections would be mentioned in the examination report and a month's time would be given to fulfill the conditions or response to the objections. Once such response is accepted, the trademark is published in the Trademark Journal. If the response is not accepted, one can request a hearing. If in the hearing, the examiner feels that the trademark should be allowed registration, it proceeds for publication in the Trademark Journal.

• Step 4: TM Publication

The step of guide is included inside the trademark registration procedure so that every person who items to the registering of the trademark has the possibility to oppose the identical. If, after three-four months from eBook there's no competition, the trademark proceeds for registration. In case there may be opposition; there is a honest listening to and choice are given by using the registrar.

• Step 5: Registration Certificate

Once the application proceeds for trademark registration, following publication in Trademark Journal, a registration certificate under the seal of the Trademark Office is issued.

• Step 6: Trademark Renewal

The trademark can be renewed perpetually after every 10 years. Hence, the logo or brand name registration can be protected perpetually. As seen from the above, trademark registration process does not require much effort. It is a simple process but one which is nonetheless very important for brand name registration.

What amounts to infringement of a trademark in India?

^[8] Infringement of a Trademark in India means violation of the exclusive rights granted to the registered proprietor under the Trade Marks Act, 1999 to use the same in relation to the goods or services in respect of which the trade mark is registered. Section 29 and Section 30 of the Trade Marks Act, 1999 lay down the provisions for protection of a registered trademark in case the same is infringed upon by a person not being a registered proprietor or licensee.

Section 29 of the Trade Marks Act, 1999 provides that a registered trademark is infringed when a person not being a registered proprietor or licensee, uses in course of trade;

• Identity with registered mark and similarity of goods / services

A mark which is identical to the registered trademark and there is similarity of the goods or services covered by the trade mark in a manner causing confusion to the general public; or

• Similarity with registered mark and identity of goods / services

A Mark which is similar to the registered trade mark and there is an identity or similarity of the goods or services covered by the trade mark in a manner causing confusion to the general public; or

• Identity with registered mark and identity of goods services – presumption of confusion

A Mark which is identical to the registered trademark and there is similarity of the goods or services covered by the trademark. It is pertinent to note that in such cases the Courts will presume that such use will cause confusion on part of public; or

• Identity with registered mark having reputation: ^[9]

A mark which is identical or similar to the registered trademark having reputation in India, even if such mark is used in relation to goods or services which are not similar to those for which the trademark is registered

• Similarity of trade name with registered trade mark

A trade name or part of trade name and such concern is dealing in the goods or services in respect of which the trademark is registered.

- **Application of registered mark on labeling or packaging etc. with knowledge that such application is without authorization**

Applies registered trademark to material intended to be used for labeling, packaging, business paper or advertisement provided such person when he applied the mark knew or had reasons to believe that the application of the mark was not duly authorized by the Registered User or Licensee there of.

- **Use of registered trademark in advertising, when such use takes unfair advantage, is detrimental or against the reputation of registered trademark**

An advertising using a registered trademark and such advertising;

1. Takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or
2. Is detrimental to its distinctive character; or
3. Is against the reputation of the trade mark.

What does not amounts to infringement of a trademark in India?

^[10] Section 30 of the Trade Marks Act, 1999 provides limits on effect of registered trademark and also enumerates certain acts which do not constitute infringement. These acts are also used as defense in suits for infringement of trademarks and an infringer may escape his liability if his use of the registered trademarks falls within the ambit of the section. Section 30 of the Trade Marks Act, 1999 provides that there is no infringement of registered trademark;

^[11] **1. Use of mark to indicate the kind, quality, quantity etc.**

The infringing mark is used in relation to goods or services covered by the registered trademark to indicate the kind, quality, and quantity etc. of the goods or rendering of services. For example in a case before the Delhi High Court proprietor of the mark "RICH'S WHIP TOPPING" registered in Class 30 for non-dairy topping, icing, filling and generally for other goods in that Class instituted a trademark infringement proceedings and passing off action against the user of the mark "BELLS WHIP TOPPING". The Delhi High Court in this case held that as the word "WHIP TOPPING" is indicative of quality of goods sold under and its use cannot be considered as infringement of registered trade mark "RICH'S WHIP TOPPING" unless it is established that the mark "WHIP TOPPING" has acquired secondary meaning.

2. Use of mark, which is outside the scope of registration

When the registered trademark is registered subject to conditions or limitations and the trademark is used in a manner, which outside the scope of registration.

For instance; a trademark such as "XYZ floral Garden Market" may be registered with the condition that the registered proprietor will not have the exclusive rights to use the words "Garden" and/or "Market". In such case use of the words "Garden" and/or "Market" by person will not amount to infringement of the registered trademark.

3. Implied consent for use

Where a person uses the mark in relation to goods or services

for which the registered owner had once applied the mark and had not subsequently removed it or impliedly consented to its use;

4. Use of Registered Trademark in relation to parts and accessories etc.

A trade mark registered for any goods may be used in relation to parts and accessories to other goods or services and such use is reasonably necessary and its effect is not likely to deceive as to the origin;

5. Use of two Registered Trademarks identical or similar to each other

The use of registered trade mark being one of two or more registered trademarks, which are identical or similar in exercise of the right to the use of that registered trade mark.

Certain other acts that do not constitute infringement

^[12] Following acts do not constitute infringement of the right to the use of a registered trademark:

- When a person uses a trademark in accordance with honest practices in industrial and commercial matters that do not take unfair advantage.
- When a person uses a trade mark in relation to goods or services indicating character, quality or geographical origin
- When a person uses a trade mark in relation to services to which the proprietor has already applied the mark or registered user the object of the use is to indicate that the proprietor or the registered user has performed the services.
- When a person uses a trademark, which is subject to any conditions or limitations, beyond the scope of such conditions or limitations will not constitute infringement.
- When a person uses a mark in relation to goods to which the mark has been lawfully applied, or where the registered proprietor has consented to the use of the mark. This applies to cases where goods are purchased in bulk and sold in retail applying the mark.
- When a person uses a mark in relation to parts of a product or accessories to the goods in respect of which the mark is registered if the use is reasonably necessary to indicate that the goods so adapted.
- When a person uses a mark or a similar mark in the exercise of a right conferred by independent registration.
- When a person assigns a trademark to another, this will not affect the right of that person to sell or deal in the goods bearing that mark.

Infringement of a trade mark with the help of cases

^[13] Infringement occurs when someone else uses a trademark that is same as or similar to your registered trademark for the same or similar goods/services. Trademark infringement claims generally involve the issues of likelihood of confusion, counterfeit marks and dilution of marks. Likelihood of confusion occurs in situations where consumers are likely to be confused or mislead about marks being used by two parties. The plaintiff must show that because of the similar marks, many consumers are likely to be confused or mislead about

the source of the products that bear these marks.

Dilution is a trade mark law concept forbidding the use of a famous trade mark in a way that would lessen its uniqueness.

^[14] In most cases, trade mark dilution involves an unauthorized use of another's trade mark on products that do not compete with, and have little connection with, those of the trade mark owner. For example, a famous trade mark used by one company to refer to hair care products might be diluted if another company began using a similar mark to refer to breakfast cereals or spark plugs.

^[15] The concept of infringement can be explained with the help of the following case laws:

▪ **In the case Castrol limited vs. P.K. Sharma**

Facts of the case: The Plaintiff is the registered owner of the trade marks Castrol, Castrol Gtx and Castrol Gtx 2 in respect of oils for heating, lighting and lubricating. During the month of December 1994, plaintiffs came to know that the defendant was carrying on business of selling multigrade engine oil and lubricants under the trade mark 'Castrol Gtx& Castrol Crb' IN IDENTICAL containers as used by the plaintiffs. Plaintiff filed a suit for perpetual injunction.

Held: The user of the said trade marks by the defendants, who had no right in any manner to use the same, is dishonest and it is clearly an attempt of infringement. The prayer of the plaintiff was accepted.

▪ **Ranbaxy laboratories Ltd. Vs. Dua pharmaceuticals Ltd.,**

The plaintiff company manufactured drugs under the trade name "Calmprose". This was a sedative and given to children / adults to calm their pose during sleep when they were suffering from severe bronchitis, cough and cold. This medicine was used to prevent the patients from getting fits; breathlessness etc. during sleep a similar product was floated under the trademark "Calmprose". By the defendant company, it is very evident that the insertion of the letter "R" is the only difference which may be noticed or may go unnoticed also. The said two trademarks having appeared phonetically and visually similar and the dimension of the two strips being practically the same including the type of packing, the colour scheme and manner of writing, it was found to be a clear case of infringement of trade mark and the ad interim injunction granted in favor of the plaintiff was accordingly made absolute.

▪ **Cadbury India Limited and Ors. vs. Neeraj food products on 25 May, 2007**

^[16] The plaintiff was a registered proprietor of a trademark by virtue of Section 21 of the Trademark Act of the certificate No.291026 dated 21st September, 1973 in the 'CADBURY GEMS' label without any disclaimer. The plaintiff therefore had a statutory remedy in the event of the use by the defendant of the said trademark or a colorable imitation or any other resemblance to the product thereof. The Court where the said case was filed had arrived at a conclusion that the defendant's trademark was phonetically close to an essential part of the plaintiff's trademark. The defendant had also adopted every essential Page 1629 feature of the label of the plaintiff and

adopted a trademark which was deceptively similar to the plaintiff's trademark. Consequently, any points of difference or additional material adopted by the defendant would have no bearing so far as the case of infringement of the plaintiff's trademark by the defendant is concerned. Further, a purchaser of the product would not ask for 'Cadbury Gems' or 'James Bond'. While affecting a purchase the product of the plaintiff would be popularly asked for as 'Gems'. The defendant had adopted James which is undoubtedly phonetically similar to the plaintiff's trademark 'Gems' which was an essential part of the plaintiff's registered trademark.

▪ **London Dairy VS London Derry**

^[17] The Plaintiff, International Foodstuff Co. LLC was a Dubai-based company which sold various flavors of ice-cream under the mark "LONDON DAIRY". This trademark was used only in respect of, and only of, ice-cream. The Plaintiff was the registrant of the trademark "LONDON DAIRY" since 2001 and in 2007 the Plaintiff obtained registration for the label trademark which was both registered in Class 30. The Defendant, Parle Products Private Limited, started selling boiled confectionery sweets under the trademark "LONDONDERRY" in 2011. The Defendants had used the mark continuously since then and they had also applied for registration of the trademark, with the application which was also pending at that point of time.

Held In view of the above, the Bombay High Court vide its order dated April 11, 2016 held that there was no law that says that a solitary test of pronunciation will suffice to defeat all else that weighs against or the visual, structural similarity, the attendant circumstances, lack of meaningful reputation or goodwill, the want of demonstration of deceit or misrepresentation or differences in color, trade dress, the goods and their pricing should be ignored only because of phonetic similarity. Since the Plaintiff had sought injunction only on the basis of this phonetic similarity and there is no other basis for this action at all, the Bombay High Court held that there was not sufficient warrant for grant of injunction and dismissed the Notice of Motion without costs.

▪ **The Coca-Cola Company Vs. Bisleri International Pvt. Ltd Manu/DE/2698/2009**

^[18] Export: Threats: Jurisdiction – The Delhi High Court held that if the threat of infringement exists, then this court would certainly have jurisdiction to entertain the suit.

It was also held that the exporting of goods from a country is to be considered as sale within the country from where the goods are exported and the same amounts to infringement of trade mark. In the instant case, the defendant, by a master agreement, had sold and assigned the trade mark "MAAZA" including formulation rights, know-how, intellectual property rights, goodwill etc. for India only with respect to a mango fruit drink known as MAAZA.

In 2008, the defendant filed an application for registration of the trade mark MAAZA in Turkey and started exporting the fruit drink under the trade mark MAAZA. The defendant sent a legal notice repudiating the agreement between the plaintiff and the defendant, leading to the present case. The plaintiff, the Coca Cola Company also claimed permanent injunction and damages for infringement of trade mark and passing off.

It was held by the court that the intention to use the trade mark besides direct or indirect use of the trade mark was sufficient to give jurisdiction to the court to decide on the issue. The court finally granted an interim injunction against the defendant (Bisleri) from using the trade mark MAAZA in India as well as for export market, which was held to be infringement of trade mark.

▪ **Pantaloons dragged to court by shoppers' stop and lifestyle; west side also contemplates similar action, (July 14th, 2008).**

^[19] The renowned Shoppers' Stop and Lifestyle company had dragged their rival Pantaloon to court as they were miffed with an advertisement issued by the flagship company of Kishore Biyani owned Future Group that offered 10% extra discount to their loyal customers vide an advertisement issued in The Times of India, New Delhi, dated 28th June, 2008. The complainant retailers have accused Pantaloon of trademark violations and unfair business practices, says a Live Mint report. All the three parties operate department store format store chains in lifestyle segment. Even Westside had taken objection to the ad saying, "We had sent a notice to them to which they have not responded," said Smeeta Neogi, Head (Marketing) Westside. Pantaloon's 'Central' mall at Gurgaon had offered 30% discounts to its customers over the weekend. Loyalty card holders of competing retailers like Shopper's Stop, Lifestyle and Westside, were lured by Pantaloon by offering an additional 10% discount on select brands of apparel. The advertisement asked such customers to: "Present your membership card to avail this offer. "Loyalty cardholders are mainstay of business for most retailers. Shoppers' Stop had a highly popular loyalty card programme branded "First Citizen." According to analysts, more than two-thirds of Shoppers' Stop's apparel business is accounted for by its loyal customers. "They (Pantaloon) had lured my customers by using my name in an unfair manner," said Sandeep Mittal, the lawyer representing for both the petitioners.

The Honorable Delhi high court had issued an injunction restraining Pantaloon from using names of its rivals in the ads until the next hearing in the matter which was fixed for 31st July. Taking potshots at these competitors is not new for Pantaloon. Last year, its Big Bazaar chain had put up hoardings, asking customers to "Keep West-aside," "Shoppers! Stop" and "Change Your Lifestyle. Make a Smart Choice."

▪ **Horlicks Limited and Ors. Vs. KartickSadhukan, Delhi High Court 2002 (25) PTC 126 Del**

^[20] This case revolves around the principle of infringement of trademark and copyright laws. HORLICKS Limited (hereinafter referred to as H) is a foreign company engaged in manufacturing of a wide range of food products, including foods for infants, children and invalids, malted milk, biscuits, toffees, etc. under the trademark HORLICKS, of which it claims to be the original registered owner. The trademark 'HORLICKS' was registered in India in relation to foods for infants, children as well as malted milk as early as 1943, for biscuits in 1961 and in respect of toffees in 1966. H is also the owner of copyright of HORLICKS label and is exclusively entitled to reproduce and alter the features of the HORLICKS

label in any material form as it deems fit.

Kartick Confectionery (hereinafter referred to as K) started manufacturing a similar look-alike product, namely, toffees under the trademark 'HORLIKS' infringing the trademark rights enjoyed by 'HORLICKS'. K also reproduced the label of H thereby amounting to the infringement of the copyright of the latter contended that since the consumers of the product under the trademark HORLICKS included infants, children and adults it was obligatory to ensure that the quality and standard of the product met the prescribed requirements under the law. They further stated that they ensured that the products under the trademark HORLICKS were made under strict hygienic conditions.

Accordingly, if K is permitted to use the challenged trademark HORLIKS, the right of which was never granted neither permitted by H, the latter was at all times at a risk of facing the consequences of K's conduct and unauthorized use. Hence they filed for a suit seeking to permanently restrain K from infringing the H's trademark HORLICKS and also its copyrights which it enjoyed over the product.

A Single Judge Bench of the Delhi High Court comprising of Justice B Chaturvedi found out that H was indeed the original registered owner of the trademark HORLICKS in respect of food for children, malted milk, biscuits and toffees and all other products as a result of prior marketing and registration. With regards to toffees registration was done in India in 1966 and the company carried out various advertisements of its products under the trademark HORLICKS and thereby enjoyed sufficient goodwill and reputation for its products in India. The court ruled that use of the label and trademark HORLIKS by K in respect of toffees is very likely to cause confusion among the people. It would thereby lead to deception, majorly as a result of K having copied the trademark HORLICKS and also its label as and how it appears on the products manufactured and marketed by H.

Accordingly the court restrained K from manufacturing and selling toffees or other related goods under the trademark HORLIKS or under any other name that is similar in expression to H's trademark HORLICKS. Further the court barred K from reproducing, printing or publishing any label which was a mere reproduction or imitation of K's HORLICKS label, thereby protecting the latter's copyright to the label.

▪ ^[21] **In Kamal trading Co. vs. Gillette UK Limited (1998 IPLR 135)**

Injunction was sought against the defendants who were using the mark 7'O Clock on their toothbrushes. The Bombay High Court, which held that the plaintiff had acquired an extensive reputation all over the world including India by using the mark 7'O Clock on razors, shaving creams, as such it was a well-known mark. The use of an identical mark by the defendant would lead to the customer being deceived. As such, the defendant was prohibited from using the mark.

▪ ^[22] **Colgate-Palmolive (India) Limited vs. Anchor Health & Beauty Care Private Ltd 2009 (40) PTC 653(Mad.)**

This case dealt in comparative advertisements. The issue involved whether a person can be injected from making any

false, misleading or disparaging representations or from making any slanderous statements in showing, screening, exhibiting or telecasting commercial/advertisements with respect to products of any other person. Colgate-Palmolive approached the court for the words "ONLY" and "FIRST" used in the advertisement of the Anchor Health. The objection regarding the advertisement was the claim by Anchor that theirs was the "ONLY" toothpaste containing all the 3 ingredients Viz., calcium, Fluoride, Triclosan. The Second objection was the use of the word "FIRST" all round protection toothpaste. The applicants contended that even their products all the 3 ingredients and were prevalent even before Colgate had established itself as a pioneer in the world of dental care. The claims made by Anchor were contended to be false. The court stopped the defendant from using red and white in its packaging and trading as the plaintiff had proprietary rights over the combination when used for toothpastes.

▪ **Wyeth Holdings Corp. & Anr. vs. Sun Pharmaceuticals Industries Ltd. 2004 (28) PTC 423 (BOM)**

^[23] In this case the plaintiff whose former name was American Cyanamid Company and who was the proprietor of the trademark 'PACITANE' registered the mark in Class 5 of Pharmacy goods. The respondent was using the mark 'PARKITANE' with respect to similar goods. The plaintiffs filed a suit for infringement for using the mark 'PARKITANE'. The Court held that in both the cases the goods are similar, being pharmaceutical preparations for treatment of Parkinson's disease, the customers buying these goods are the same and the trade channels are the same. Since the defendants did not show any search of the Register before adopting the impugned mark, prima facie adoption of the mark was not honest.

Further, the Court held that despite protests, if the defendants have chosen to continue to sell the products, it cannot be said to be acquiescence by the plaintiff. Therefore the Court held that injunction is to be granted in favour of the plaintiff.

The Court granted injunction in favour of the plaintiffs. Safeguards of Possessing a Registered Trademark

1. ^[24] Once a trademark is listed on the trademark Registry, everyone including competitors is notified. Thus, when required, legal relief and damages may be asked for if someone infringes/misuses.
2. A person cannot assign/transfer/license unregistered trademarks while it is possible with registered trademarks in exchange for "royalty" payments.
3. Above all, it helps a business earn goodwill and facilitate marketing and promotion of its products/services.
4. A registered trademark offers the most protection allowed by law. This gives the owner the exclusivity to use the trademark in relation to their goods and services. The owner is able to enforce the protection of their registered trade mark over infringing businesses and instruct them to comply with the demands raised by the owner.
5. There is nothing worse than putting time, money, blood, sweat & tears into a business or brand, only to have someone try to cash-in on your hard work and good will.

For example, if an owner had AAA [dot] com and if the owner had built up this site by investing time and money into the site and soon if an ex-employee decided to start aaa [dot].com net a few suburbs over, then the owner must be able to shut them down. A registered trademark will enable the owner to do this.

Implications for trademark infringement

^[25] The prevalent legal view with regard to trademark infringement is that consumers who exercise a low (high) degree of care when evaluating goods will be less (more) likely to notice differences among brands and thus conclude they are of (dis)similar origin. The authors argue on the basis of the involvement literature and demonstrate through two field experiments that the effect of degree of care on likelihood of brand source confusion varies by the type of similarity (similar sound versus similar meaning) among brand names. The authors discuss implications for trademark infringement litigation and company brand name evaluation in light of these findings.

The trademark registration process may cost more

If a person is attempting to register a descriptive trademark on the Principal Register, he / she is going to be fighting an uphill battle. The USPTO Examining Attorney will issue an Office Action refusing registration under Trademark Act Section 2(e) (2) finding that the mark is merely descriptive of the identified goods or services. The Applicant will have to submit substantive argument in the form of a brief to persuade the Examining Attorney that the mark is not merely descriptive. If the Examining Attorney issues a final refusal, the Applicant may have to appeal the decision to the Trademark Trial and Appeal Board. This process can be very costly and in the end, the person may not be able to register the mark on the Principal Register.

Conclusion

This paper gives a very clear picture of what is a trademark, the process of registering a trademark, how to choose a brand name or trademark, the procedures involved in obtaining the same, the conditions that are prescribed for obtaining a trademark, the functions and categories of trademark, the modalities involved in the infringement of a trademark and the relevant laws relating to it etc. Most of the above classifications and others have also been explained in detail with suitable examples and case laws. By reading this paper even a layman would become aware of how the business people are cheating the general public by using the brand name of standard companies making sub-standard products which is similar in appearance and phonetic names and selling it to the poor consumers. This is done, so as to enable them to get some business in this competitive world. Various case laws have been mentioned which illustrates the various types of infringement of a trademark, the purpose for which the case was filed and what the court has held etc. The main aspect of this paper revolves around the trademarks and patents as safeguards to the intellectual creation, the safeguards available for using a registered trademark, the laws attached to it, which shall be implemented upon infringement of a trademark. This paper also discusses at length, as to what the factors that

constitute infringement are and what do not. Hence, it is an eye-opener for those who read this and also those who wish to start a business by using a registered trademark. The advantages and disadvantages or the pros and cons of the subject matter have also been discussed. Though there are various problems involved at the time of infringement of a trademark, yet the study of this paper will enable the business owners to be wary of such infringement and also to approach the relevant court for reprisal of their grievances. The above laws, rules, functions and other statutory procedures etc., attached to the trademark will address all the challenges of the patents, trademark registration and its safeguards.

Reference

1. www.lrswami.com accessed on 10th September, 2017.
2. www.ipindia.nic.in accessed on 10th September, 2017.
3. www.legalraasta.com accessed on 10th September, 2017.
4. www.legalserviceindia.com accessed on 10th September, 2017.
5. www.ssrana.in accessed on 10th September, 2017.
6. www.ssrana.in accessed on 10th September, 2017.
7. www.ssrana.in accessed on 10th September, 2017.
8. www.law.cornell.edu accessed on 10th September, 2017.
9. www.law.cornell.edu accessed on 10th September, 2017
10. www.trademarkknow.com accessed on 10th September, 2017.
11. www.trademarkknow.com accessed on 10th September, 2017.
12. www.trademarkattorneyindia.com accessed on 10th September, 2017.
13. www.bitlaw.com accessed on 10th September, 2017.
14. www.lawteacher.net accessed on 10th September, 2017.
15. www.lawinfowire.com accessed on 10th September, 2017.
16. www.indiankanoon.com accessed on 10th September, 2017.
17. www.ebtc.eu accessed on 10th September, 2017.
18. www.mondaq.com accessed on 10th September, 2017.
19. www.livemint.com accessed on 10th September, 2017.
20. Dr. Reddy's GB. Intellectual property rights and the law, 2015-2016, 316.
21. Dr. Reddy's GB. Intellectual property rights and the law, 2015-2016, 320.
22. www.trademarklawyer magazine.com accessed on 10th September, 2017.
23. Dr. Reddy's GB. Intellectual property rights and the law, 2015-2016, 322
24. www.lawfarm.in accessed on 10th September, 2017.
25. Daniel Howard J, Rogger Kenin A. 2.