

## FROM GLOBAL REACH TO BRAND BREACH: TRADEMARK DILUTION IN THE ERA OF DIGITAL MEDIA

**AUTHORS** – SHRUTHI B & LAKSHMI POOJA K, STUDENTS AT SASTRA DEEMED UNIVERSITY

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### ABSTRACT:

In the Digital Age, the landscape of trademark protection is undergoing profound transformations, marked by the proliferation of online platforms and the pervasive influence of user-generated content. This research delves into the intricacies of trademark dilution, specifically examining the challenges posed by the dynamic and expansive digital environment. As businesses navigate the global reach of digital marketing and grapple with the impact of user-generated content on social media and other online spaces, the risk of trademark dilution becomes increasingly salient. The study explores high-profile cases, analyzing the factors contributing to dilution, including the globalization of markets, the ease of content reproduction, and the evolving nature of online interactions. Investigating the legal frameworks that underpin trademark protection in the Digital Age, the research aims to assess the efficacy of existing laws and propose strategies for trademark owners to safeguard their brands. With an eye on future trends and challenges, the paper concludes with insights into the evolving dynamics of trademark dilution and the imperative for adaptive legal and business strategies in the ever-evolving digital landscape.

**KEYWORDS:** Trademark Infringement, Blurring, Tarnishment, Trademark Law, Proliferation, Globalization, Digital Era.

### INTRODUCTION:

#### **Brief Overview of Trademark Dilution:**

Trademark dilution is a form of trademark infringement, where the owner of a well-known trademark has the right to prevent others from using their mark because it tarnishes their exclusivity or undermines their reputation. In practice, no one has the right to copy any well-known trademark or abuse the reputation of a well-known trademark. Instead, dilution protection is intended to protect a sufficiently strong and well-known trademark from losing its sole association in the public's mind with a particular product.

With the globalization and commercialization of the Internet, Domain names have taken on a new connotation as business identifiers. When the internet was in its infancy, domain names were created to serve as useful mnemonic means of

locating specific computer systems on the Internet. Domain names are now highly visible in real space, showing up on television commercials, billboards, magazine ads, and even on the sides of buses, etc. The basic structure of the Internet is Internet Protocol which is used for computer server communication in the numeric form and known as IP address in common parlance. Since these numeric IP addresses are not mesmeric, it becomes tedious and difficult to remember such IP addresses. The introduction of domain names has played a great role in recollection and is now considered a corporate asset. Thus, a domain name is an easy alternative for all numeric IP addresses and is known as the 'Domain Name System'.

**BACKGROUND:****Definition of Trademark Dilution:**

Trademark dilution refers to the lessening of the distinctiveness or uniqueness of a famous trademark due to the unauthorized use of a similar or identical mark by another party, even if there is no likelihood of confusion among consumers regarding the source of goods or services. Unlike traditional trademark infringement, which focuses on the likelihood of consumer confusion, dilution laws are concerned with the potential harm to the reputation and distinctiveness of a well-known mark.

There are two main types of trademark dilution:

- **Blurring** occurs when the unauthorized use of a well-known mark diminishes its ability to uniquely identify and distinguish the goods or services associated with the mark's owner. Blurring often happens when the mark is used on unrelated products or in unrelated contexts. Courts must take into account various factors when determining whether there has been dilution by blurring. These include the degree of similarity and distinctiveness of the famous mark, the extent to which the owner of the famous mark uses the mark substantially exclusively, the famed mark's level of recognition, the defendant's intention to associate the allegedly diluting mark with the famous mark, and the actual association between the allegedly diluting mark and the famous mark.<sup>96</sup>

- **Tarnishment** arises when the unauthorized use of a famous mark harms its reputation by associating it with inferior or negative qualities. For example, if a well-known luxury brand's trademark is used in connection with low-quality or controversial products, it can tarnish the brand's image. The FTDA shields a well-known mark from potential dilution as well as actual dilution. The plaintiff in a trademark dilution case is entitled to injunctive remedy if their case is successful. This implies that the defendant will be required by the court to cease using the well-known brand. In trademark dilution cases, a court

rarely awards damages unless the dilution was deliberate. The consequences could be harsh if the defendant intentionally utilized the well-known mark to damage its reputation or increase market share for its own product.

Trademark dilution laws aim to protect the investment and goodwill associated with famous trademarks by granting their owners broader rights beyond preventing consumer confusion. These laws vary by jurisdiction, and the criteria for a mark to be considered "famous" and deserving of protection against dilution may differ. Dilution laws often require the mark to have acquired<sup>97</sup> a significant level of recognition and distinctiveness in the marketplace.

**PROLIFERATION OF ONLINE PLATFORMS AND SOCIAL MEDIA:**

The proliferation of online platforms and social media has fundamentally transformed the way individuals and businesses communicate and engage with one another. The sheer ubiquity and accessibility of a diverse array of online channels have democratized information dissemination on a global scale. This has empowered users to access a multitude of platforms, contributing to the democratization of information and fostering a rich tapestry of online interactions. The global reach facilitated by social media platforms transcends traditional geographic boundaries. Individuals, businesses, and communities can connect, collaborate, and share across borders, enabling a level of international communication and interaction that was previously unprecedented. The result is a virtual environment where ideas, trends, and cultural influences flow seamlessly, creating a globalized digital space. The rise of user-generated content on social media platforms has been a hallmark of this digital era. These platforms encourage individuals to not only consume content but also actively participate in its creation and dissemination. This participatory culture has given rise to the dynamic nature of online platforms, where trends, discussions, and information can quickly go viral, shaping the

<sup>96</sup> <https://www.justia.com/intellectual-property/patents/>

<sup>97</sup> <https://www.legalzoom.com/articles/understanding-trademark-tarnishment>

online landscape in real-time.

Real-time communication has become a defining feature of many online platforms. Features such as instant messaging, live streaming, and real-time updates facilitate immediate and interactive communication. This real-time aspect contributes to the sense of immediacy and connection among users, fostering a more engaging and interactive online experience. Social media platforms have also given rise to influencer culture, where individuals gain influence and followers by creating and sharing content. Influencers play a significant role in shaping opinions, trends, and consumer behavior, making them powerful drivers in the realms of marketing and brand promotion. Businesses leverage influencers to connect with their target audiences in more authentic and relatable ways.

The business world has embraced the opportunities presented by social media, establishing a robust presence for marketing, customer engagement, and brand building. Social media platforms have become integral components of a company's online identity, offering direct channels for interaction with customers and stakeholders. However, this increased business presence also poses challenges in terms of content moderation, as platforms navigate the vast volume of content for issues like misinformation, hate speech, and inappropriate material. While the proliferation of online platforms and social media has brought numerous opportunities, it has also given rise to concerns about data privacy. The collection and utilization of user data by online platforms have become focal points of discussion, leading to increased scrutiny from users and regulatory bodies. This has prompted a growing emphasis on responsible data practices and the protection of individuals' privacy rights in the digital landscape.

#### **IMPACT OF USER-GENERATED CONTENT ON TRADEMARK DILUTION:**

The surge in user-generated content within the realm of digital platforms has emerged as a significant factor influencing the landscape of

trademark dilution. With the proliferation of social media and other online spaces allowing users to create, share, and disseminate content, the risk of trademark dilution has intensified. User-generated content can include a spectrum of materials, from reviews and testimonials to memes and parodies, often incorporating trademarks in ways unintended by the original brand owners. The viral nature of user-generated content means that unauthorized use of trademarks can rapidly gain visibility, potentially diluting the distinctive qualities of the brand. Furthermore, the challenge lies not only in the sheer volume of content but also in the difficulty of monitoring and controlling how trademarks are employed by a diverse and widespread user base. The impact of user-generated content on trademark dilution underscores the need for trademark owners to adopt proactive monitoring strategies, engage with their audience, and develop clear guidelines to address the evolving dynamics of digital spaces. Balancing the rights of users to generate content with the protection of trademarks poses an advanced challenge in the digital age.

#### **LEGAL FRAMEWORK IN THE DIGITAL ERA FOR TRADEMARK PROTECTION:**

##### **Evolution of Trademark Law in India:**

India established the Trademark Act of 1940, the first Act on the subject, by appropriating the British Trademark Act of 1938. In 1958, the Trade & Merchandise Mark Act was shaped by independent India. The Trademark Act, 1999, which went into effect on December 30, 1999, is the current version of the Act before Indian trademark law was established, the rights that a trademark currently grants were safeguarded by equity and common law principles. The trademark owner had to use the common law passing off remedy to put an end to trademark infringement. Many Indian<sup>3 98</sup> laws were later passed as a result of the subcontinent of India adopting English laws before gaining independence. Following the enactment of The

<sup>98</sup> <https://legalpaathshala.com/introduction-to-trademark-law-in-india/>

English Act in England in 1875, equivalent laws were initially put into effect in India.

Mankind has been creating and generating things from the inception of time. In the prehistoric era, man developed stone, jewelry, hunting tools, vessels, and numerous other artifacts. When spirituality began to emerge, he created figurines of gods and goddesses. Originally, items had markings to indicate who owned them and discourage would-be robbers. In this method, the ancient people attempted to regulate low-quality items, and since the product's manufacturer could be automatically recognized, those who infringed were penalized. A trademark's ability to inspire potential customers' trust in the goods and services increased with its level of notoriety.

The Bombay Chamber of Commerce subsequently requested for a measure similar to the English Act, 1875 to be introduced in the Legislative<sup>99</sup> Council. After giving the issue a bit of consideration, the government presented the Trademark Bill in 1879. However, there was little success or support for the bill. There was therefore no more parade. But the necessity for trademark practice and legislation tailored especially to trademark practice in India emerged once more in the 19th century. The Trademark Act of 1940 imposed this obligation. The UK Trademark Act of 1938 was followed by this piece of law. Trademark disputes were resolved in accordance with Section 54 of the Specific Relief Act of 1877 prior to the enactment of this legislation.

#### **TRADEMARK RULES:**

**The Trade and Merchandise Marks Act of 1958** was created to fill the void left by the Trademark Act of 1940. The Trade and Merchandise Marks Act, 1958 also combined the trademark laws found in the IPC and Cr.P.C. The Indian government replaced the earlier Act with the Trademark Act of 1999 in order to meet with the World Trade Organization's TRIPS (Trade-related aspects of intellectual property rights) duty. The Trademark Act's objectives are to safeguard trademark users,

control property conditions, and offer legal recourse for the enforcement of trademark rights. The new trademark regulations were operative from March 6, 2017. The goal is to streamline, ease, and expedite the entire trademark registration procedure. The new rules include provisions pertaining to the well-known mark, e-filing being encouraged, sound and 3D marks becoming registrable, expedited application processing, hearings through video conference, and separate fees for individuals, startups, and small businesses, among other features. and from the roughly 75 forms that were formerly available, just 8 remain. Upon receipt of the application, whether by online means or in person, the Registrar will review the document to determine if the trademark conforms with the Act and its regulations. The applicant will be notified by the Registrar of any objections to the application. The application must be rectified or updated and submitted to the Registrar. The trademark<sup>100</sup> will be published in the trademarks journal if the Registrar is satisfied that the application complies with the Trademark Act and Rules. After the trademark registration is published in the trademark journal, any third party may object to it by submitting a statement of objection to the Registrar. The applicant must file a counterstatement to the opposition after being notified of it by the Registrar. Both the applicant and the opposing party must submit supporting documentation. After hearing from both sides, the Registrar will issue an order accepting or rejecting registration.

#### **LEGAL TURNING FOR PASS OFFS AND/OR INFRINGEMENTS:**

Passing off and trademark infringement are subject to concurrent civil and criminal remedies under the Trade Marks Act. A violation of the registered trademark owner's exclusive rights to use the mark is known as trademark infringement. It is considered trademark infringement when someone uses a mark that is identical, confusingly similar, or comparable to the registered trademark without the registered

<sup>99</sup> <https://www.altacit.com/trademark/evolution-of-trademark-laws-in-india/>

<sup>100</sup> <https://cleartax.in/s/trademark>

proprietor's consent. It is imperative to bear in mind that Indian trademark law, which is based on common law principles, safeguards the legitimate rights of an earlier user against a registered proprietor. In compliance with Section 111 of the Act, the court convicting or acquitting the plaintiff may order the forfeiture to the Government of all goods and things by means of, or in relation to, which the offence has been committed, provided there is no intent to defraud the plaintiff.

A police officer not below the rank of DSP or equivalent may, if he is convinced that any of the offences mentioned in sub-section (3) of Section 115 has been, is being, or is likely to be committed, search and seize without a warrant the goods or things involved in committing the offence, wherever found. All of the articles so seized must be produced before a Judicial Magistrate of the first class or equivalent. Section 115(3) makes an offence under Section 103 cognizable. With the caveat that the police officer must seek the Registrar's opinion on the details of the trademark offence before conducting any search or seizure, the officers have to adhere to the decision that was made.

Passing off is a common law tort that is used to defend unregistered trademark rights. In essence, passing off is when party B uses party A's reputation in its trademark without permission. Party B then uses this information to falsely represent themselves as party A's partners or affiliates in an effort to damage party A's reputation. A passing off action is unaffected by a trademark's registration.

### **REQUIREMENTS FOR INDIA TRADEMARK LAW** **TRADEMARK REGISTRATION**

1. The applicant's name, nationality, and address are required. If there is a partnership or a company with an LLP incorporation, each partner's information must be stated.
2. Details about the Goods and Services related to the registration must be included.
3. A soft copy of the trademark must also be submitted.

4. The trademark must be translated if it is not in English;
5. If an application has already been submitted, details should be included.
6. The first date of trademark usage and professional consultation for trademark search may also be necessary if you intend to reap the advantages from a less affordable and safer alternative.

### **ANALYSIS OF HOW CURRENT LAWS ADDRESS ISSUES CREATED BY THE DIGITAL AGE:**

Laws addressing concerns brought up by the digital age are always changing to keep up with the new problems and quickly developing technology. To secure people's personal data, numerous nations have passed data protection laws, such as the California Consumer Privacy Act (CCPA) and the General Data Protection Regulation (GDPR) of the European Union. These rules mandate that organizations acquire informed consent before collecting data, grant individuals the ability to access and remove their data, and put security measures in place to safeguard data. Organizations are required by laws and regulations in several countries to take precautions against cyberattacks<sup>101</sup> and data breaches. These regulations may require that breaches be reported to relevant authorities and individuals, and they may also impose penalties on organizations that fail to take appropriate security measures. Governments are paying closer attention to tech companies like Google, Facebook, and Amazon in case they have any antitrust issues. To control the authority and business practices of major internet giants, some nations have either passed new laws or are in the process of doing so.

Digital transactions and document management are made easier by the legal recognition of electronic signatures in many nations. This is a difficult and divisive topic regarding online speech and content regulation. The laws that govern hate speech, disinformation, and online content differ greatly between nations and

<sup>101</sup> <https://www.oecd.org/digital/rights-in-the-digital-age-deb707a8-en.htm>

platforms. In the response it submitted to the Bombay High Court, the Central Government stated that the grievance redressal process was instituted for the purpose of combating fake news, and that the Code of Ethics was adopted to provide fairness between offline and online publications. Additionally, they argued that, contrary to the petitioners' claims, Part III of the Rules did not go outside the purview of the IT Act<sup>102</sup> because the Act recognizes electronic records that are inherently media content. Publishers of online curated content are required by the Code of Ethics to do the following; categorize content according to its nature and type, provide and display an appropriate rating for such categories based on the relevant content, implement access control mechanisms, make a good faith effort to make online curated content more accessible to people with disabilities, and verify that the content is not illegal.

Data sovereignty and international data transfer difficulties have led to legislative frameworks, such as the EU-US Privacy Shield and Standard Contractual Clauses, which try to enable the flow of data across borders while respecting individual privacy. The legislative plan, stated that the federal government would have the authority to exclude state agencies from the bill's terms "in the interests of sovereignty and integrity of India" and to preserve public order. Advocates for Indian privacy have expressed concern that such stipulations would give the government an inordinate access. It's crucial to remain cognizant that national regulations pertaining to digital issues differ greatly from one another and are often changing. Laws will continue to change to meet the special opportunities<sup>103</sup> and difficulties brought about by the digital age as long as technology does.

#### **CASE STUDIES:**

Cybersquatting is the practice of registering domain names that are exact replicas of well-known trademarks in an attempt to capitalize on

the goodwill associated with the brand. For example, a malevolent party may register "Facebook.com" in order to trick users and possibly commit phishing or fraud. The original trademark's value is diminished as a result. Infringement of Trademarks on social media, a lot of people and organizations make pages or accounts that use trademarks without permission. They might submit content that misrepresents the owner of a trademark or pose as a popular brand. Customers may become confused as a result, and the genuine brand's value may decrease. Each resource on the Internet, including web pages and information files, has a unique Uniform Resource Locator (URL) address. This address, which is given to every machine or service on the Internet, includes a domain name. The domain name system associates names with an IP address or sequence of numbers. The domain name, which is an address that is simple to read and remember, is then connected to these numbers. The sequence of numbers will change if the machine or service does, but the domain name does not have to. The goal of the domain name is to have greater significance for people than just a string of digits. The domain name "rs.internic.net" is associated with the numbers indicated above<sup>104</sup>.

Independent companies supplying counterfeit or imitation products have caused problems for e-commerce platforms such as Amazon and eBay. This weakens the reputation of authentic brands and may result in a decline in sales and customer confidence. In India, counterfeiting has grown to be a serious problem in both physical and online marketplaces. An Indian website was included on the list of the most infamous online marketplaces for the selling of counterfeit goods in the Office of the United States Trade Representative's 2020 Review of Prominent Markets for Counterfeiting and Piracy. The list of actual marketplaces that were well-known for selling phoney products also includes a number of well-known markets in New Delhi, Mumbai, and Kolkata. Heera Panna Market in Mumbai, for

<sup>102</sup> <https://www.oecd.org/digital/rights-in-the-digital-age-deb707a8-en.htm>

<sup>103</sup> <https://www.reuters.com/world/india/india-releases-draft-new-data-protection-bill-2022-11-18/>

<sup>104</sup> <https://www.mondaq.com/india/trademark/208840/cyber-squatting-laws-in-india>

instance, is reputed to be a center for premium knockoff clothing, accessories, footwear, makeup, and watches<sup>105</sup>. The study also notes that both carrying out enforcement measures at certain sites and guaranteeing the success of raids are costly and difficult tasks.

### **REVIEWING LEGAL DECISIONS AND THEIR IMPACTS ON TRADEMARK LAW IN THE AGE OF DIGITAL TECHNOLOGY:**

#### **Marico Limited vs Abhijeet Bhansali<sup>106</sup>**

January 2020 saw a decision in this case. One of the top Indian FMCG (fast-moving consumer goods) companies, the plaintiff, filed a request for an interim injunction against Abhijeet Bhansali, who ran the "Bearded Chokra" YouTube channel. Marico claimed that Abhijeet Bhansali violated its "Parachute" trademark by making remarks in his movie that were insulting or demeaning of Marico's Parachute Coconut Oil. The defendant was subject to an interim injunction by the court, which declared that this was an unauthorized<sup>107</sup> use of the "Parachute" brand. Additionally, the defendant was mandated by the court to remove the specific video from YouTube. The court held that the defendant, as a "social media influencer," has an increased responsibility to guarantee that the comments he makes are at least partially accurate. It also ruled that an influencer on social media cannot make statements with the same level of impunity that an average person may because of this<sup>108</sup>.

#### **Imagine Marketing Pvt. Ltd. vs Exotic Mile:**

The plaintiff in this case was a corporation that sold audio gadgets and had a registered trademark under the term "boAt." Under the moniker "Boult," the defendant company operated a similar business venture. It is up to the Court to decide whether there has been deceit, especially during the interlocutory phase. The court's attempt to separate the terms in the competing

marks has led to criticism of the Learned Single Judge's ruling. That is not how we see things. In this case, the Learned Single Judge has compared the two competitor marks and highlighted how strikingly similar the marks are to one other when considering the shared characteristics of their terms. That is a legitimate exercise<sup>109</sup>, and the Learned Single Judge's ruling goes no farther than that. The problem started when the defendant company adopted the phrase "Unplug Yourself," which was strikingly similar to the plaintiff company's tagline, "Plug into Nirvana." The defendant was subject to an interim injunction issued by the court<sup>110</sup>.

#### **Lacoste S.A vs. Suresh Kumar Sharma**

The French clothing company Lacoste S.A. filed an appeal for a permanent injunction against Suresh Kumar Sharma in this case before the Delhi District Court. Suresh Kumar Sharma, according to Lacoste, sold shirts with the "Lacoste" label, infringing on his trademark and passing it off. The Court ruled that Suresh Kumar Sharma was not entitled to use the name "Lacoste" and that his acts created ambiguity and disproportionate enrichment<sup>111</sup> for the public. Lacoste said that Suresh Kumar Sharma was violating the plaintiff's rights by passing off the items under their brand name, "LACOSTE," on their shirts and suits. After ruling in favor of the plaintiff, the District Court mandated that Suresh Kumar Sharma, the defendant, was not permitted to exploit the trademark or profit unlawfully from it. Consequently, the court issued an order for a perpetual injunction that forbade Suresh Kumar Sharma from going by the name "Lacoste

#### **Bajaj Electricals Limited vs. Gourav Bajaj & Anr.**

In this instance, the Bajaj corporation operates a number of enterprises, including Bajaj Electricals. They submitted a request for an interim injunction against the defendant, who established a website with the same name and conducted business under the names "Apna Bajaj Store & Bajaj

<sup>105</sup> <https://www.worldtrademarkreview.com/global-guide/anti-counterfeiting-and-online-brand-enforcement/2022/article/india>

<sup>106</sup> (2009) SCC Online Del 3940

<sup>107</sup> <https://lawbhoomi.com/marico-limited-v-abhijeet-bhansali/>

<sup>108</sup> <https://www.bananaip.com/ip-news-center/latest-trademark-cases-in-2022-part-1/>

<sup>109</sup> <https://www.bananaip.com/ip-news-center/latest-trademark-cases-in-2022-part-1/>

<sup>110</sup> <https://indiankanoon.org/doc/168923956/>

<sup>111</sup> <https://unimarkslegal.com/ip-news/remarkable-trademark-judgements-in-2020/>

Excellent." Bajaj Electricals said in this lawsuit that the Bajaj logo was registered as a well-known trademark. Additionally, they contended that the defendant violated their own statement, "Powered by: Bajaj," by using the company's name in their title. The plaintiff has been going by the name BAJAJ since 1961 and is well-known and accepted by the registry as well as the courts. The registrar referenced the plaintiff's mark<sup>112</sup> when reviewing the defendant's mark. These elements bolster the plaintiff's argument that the defendant adopted and used the contested name, trademark, label, and domain name dishonestly.

There is a compelling first argument in favor of granting ad-interim relief under these conditions. The plaintiff is likely to be harmed if the requested relief is not granted. Not one has been up on behalf of the accused despite notice. The court issued a temporary injunction against the defendant<sup>113</sup> because no one from the defendant's side could appear. The plaintiff has the advantage in terms of convenience. If the defendant's infringing activities persist, the plaintiff might likewise sustain irreversible harm. "Therefore, an ad-interim order pertaining to the prayer clauses of the interim application shall exist."

#### **FUTURE TRENDS AND CHALLENGES:**

It can be difficult to forecast how technology developments will affect trademark dilution, but some new patterns can offer some useful guidance. Immersive experiences that combine the real and digital worlds might become more common as VR and AR technologies develop. While this may present chances for brand owners to establish their presence in various settings, it also raises the possibility of trademark infringement. Trademark dilution concerns could arise, for instance, if people develop virtual areas or products with unlawful trademarks. People may now easily build physical objects thanks to the expanding use of 3D printing. This technology

might make it easier for anyone to reproduce trademark goods, which could result in a rise in the number of counterfeit<sup>114</sup> products. Trademark protection in the 3D printing industry will present new difficulties.

The application of blockchain technology to supply chain transparency is growing. Assuring the authenticity of products can aid in the battle against counterfeit goods and trademark dilution. The blockchain's smart contracts may potentially make it possible for trademark rights to be automatically enforced. Participants in a blockchain consortium comprising adversaries ought to implement appropriate steps to reduce the risk of antitrust, such as narrowly tailoring the information they transmit or entirely disregarding the communication of competitively sensitive information. To prevent employees in charge of pricing, marketing, strategy, and other crucial strategic decisions from accessing competitively sensitive information shared on the blockchain, safeguards to take into account include adopting read permission<sup>115</sup> restrictions and setting up permissions so that only intended recipients of data have access to a block of information. The antitrust concerns connected with any information sharing that is required for the blockchain arrangement might also be reduced by aggregating or anonymizing sensitive data or restricting the information exchange to historical information exclusively (instead of current or future data).

More advanced AI-powered content creation tools are available. The predictive retail paradigm is a relatively new concept. For these retail models to truly take off, they're required to be accurately calibrated to steer clear of the large-scale returns issue that is now plaguing the fast fashion industry. However, this retail model poses intriguing queries about trademark law notions like "post-sale confusion" and similar ones. A person can only be misled after they get a

<sup>112</sup> <https://www.bananaip.com/ip-news-center/latest-trademark-cases-in-2022-part-1/>

<sup>113</sup> [https://lawbhoomi.com/bajaj-electricals-ltd-v-gourav-bajaj-anr-2020/#Judgement\\_in\\_Bajaj\\_Electricals\\_Ltd\\_v\\_Gourav\\_Bajaj\\_AnR](https://lawbhoomi.com/bajaj-electricals-ltd-v-gourav-bajaj-anr-2020/#Judgement_in_Bajaj_Electricals_Ltd_v_Gourav_Bajaj_AnR)

<sup>114</sup> Trademark Dilution: Empirical Measures for an Elusive Concept - Maureen Morrin, Jacob Jacoby, 2000(sagepub.com)

<sup>115</sup> <https://www.foley.com/en/insights/publications/2021/10/legal-implications-of-blockchain-in-supply-chain>



branded goods, not when it is being sold, if they are not involved in the purchasing process. Predictive retail may signal a new type of post-sale misunderstanding by the customer, as opposed to the traditional form, which affects third parties in lieu of the consumer themselves. These tools may be used to produce content that contains unapproved trademarks, which could make it difficult for brand owners to recognise and resolve dilution issues. Conversely, artificial intelligence (AI) can also be used to more successfully detect and prevent trademark dilution. Because, on average, an AI application, that includes Amazon Alexa, recommends three products to the user when asked to search for a product to buy. AI has an impact on consumers' perceptions of the market, products, and brands even in situations where they have not delegated the purchasing decision to an application. Even though it is ultimately up to the consumer to make the purchase choice, they are faced<sup>116</sup> with a relatively restricted range of items to choose from since they are unaware of the entire variety of products that are available on the market. Once more, the AI software acts as an impediment between the consumer and the brand.

#### **CONCLUSION:**

In conclusion, technical developments are probably going to provide trademark holders with challenges as well as opportunities to counteract dilution. These developments bring fresh dangers of misuse and dilution along with new chances for brand exposure and engagement. In order to remain competitive, brand owners will need to use cutting-edge technologies like artificial intelligence (AI), blockchain, and predictive analytics to safeguard their brands in the rapidly changing digital space. It could be necessary to modify legal frameworks and enforcement tactics in order to tackle these novel obstacles.

In the digital age, trademark dilution poses a complex and dynamic issue to consumers, brand owners, and the legal system. The environment

for trademark enforcement and protection is getting more complicated as technology develops. Emerging technologies, social media, e-commerce, and online platforms have proliferated in the digital age. In their quest to safeguard and maintain the uniqueness and value of their trademarks, brand owners now face both opportunities and challenges as a result of these developments. Due to the transnational nature of the digital environment, trademark dilution is an international issue. It can be difficult to walk the tightrope between freedom of speech and trademark protection, particularly on online platforms where user-generated content is common. Legal frameworks must strike a compromise between defending the freedom to parody and express viewpoints and preserving trademarks.

In the digital world, there are many different ways to dilute a trademark, such as via squatting on domain names, impersonating someone online, counterfeiting, using trademarks without permission in user-generated content, and keyword advertising. The ways in which trademarks can be compromised have increased due to the digital environment.

<sup>116</sup> Trademark Law Playing Catch-up with Artificial Intelligence? (wipo.int)