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IMPORTANCE OF TRADE MARK IN BUILDING BRAND IDENTITY : AN INTELLECTUAL PROPERTY RIGHT PERSPECTIVE

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ABSTRACT

Trade mark or logo plays a crucial role in identifying a company. People also try to copy the logo of different companies which is violation of intellectual property rights. To protect it from violation trade mark act was made. Logos plays a crucial role in building trust among the customers this shows how important a logo can be for a company. Logos also provide a unique identity to provide difference between two companies. This paper will allow you to explore significance of trademark in building brand identity from intellectual property rights perspective focusing on legal, economic and marketing importance. It will also provide case laws and evolving nature of trade marks.

INTRODUCTION

We are in the era where brand reputation is directly linked to market success and in that case a trade mark can be very valuable asset for a company. For example in Indian market various brands of shoes are present but some company rule the market one of them is nike many local private manufacturing unit tries to copy the logo and design of the shoes lets not focus on design which is protected in other part of intellectual property right. Logos come under both copy right and trade mark depending on the characteristics which being taken in the light. The artistic creation of logo can be protected under copy right act and Trade mark act protect it as identity of brand. In easy terms excluding some part of intellectual property right most of them protect intangible property that is property which can not be physically touched and tangible property are those property which can be physically touched. Coming back to point nike is seen as very good brand in eyes of the customer if some one uses there logo and use very cheap material in their shoes then the reputation of nike will start to get worse in the market. No

company wants to face loss and get excluded from the market that is why trade mark act was made to protect individuals right.

A brand is just more than a product or service it builds trust and good will among the customers and market . It is a key essential of brand identity which is logo, color ,tagline and design.

From intellectual property right perspective trade mark is not just legal safeguard it is a strategic asset that enhances brand visibility or make the brand stand out. It is direct reflection of brand identity , focusing on their legal , marketing and economic presence in the market.

TRADEMARK AND INTELLECTUAL PROPERTY RIGHT

Intellectual property rights are granted to creators and owners over their invention that can be artistic work , design symbols and names among these trademark presence is highly valued.

1. Identification of source trademark indicate the origin of source. 2. Protection of reputation and good will of the brand.

3. A registered trademark grants the owner an right to prevent unauthorized use of their product.

4. Trade mark are valuable commercial asset enabling identification of the company.

Under Indian trade mark act 1999 trade mark can include words, colors, shapes, sounds and even scents.

ROLE OF TRADE MARK IN BUILDING BRAND IDENTITY

1. Distinctiveness and recognition

In a crowded market a unique trade mark plays a crucial role in identification of individual company. For example apple a electronic manufacturing company is instantly recognized by customer by a unique logo of fruit called apple. Unique trademarks allows users to identify the company more instantly and gives a positive brand image of company in eyes of customer.

2. Consumer Trust and loyalty

Trade mark act as sign of quality and a promise made by company to its customer for providing and performing well on expectations of their customers. The trade mark become a symbol of reliability. For example the automobile manufacture company TATA logo invokes trust in India reflecting decades of reputation formed by providing quality products in the market encouraging repeat purchases by consumers.

3. Legal protection and Enforcement

A registered trademark provide legal right against violation or infringement of rights and laws. Company can take action against counterfeiters or un authorized use of products which may damage the brand image of the company. Trademark protection extends to logos, slogans, packaging and trade dresses ensuring that brand identity remains positive. Legal protection also enhances a company bargaining power in licensing, franchising and joint ventures.

4. Marketing and Brand communication

Trade mark is a diamond which used almost every where from advertisement campings, digital marketing, packaging to social media presence. A strong and correct trade mark provide a correct message to its audience. For example nikes just do it slogan combined with swoosh logo provides athletic and determination image to the world.

5. Economic and Commercial value

Trade mark can contribute to companies financial valuation well established company logos are financial assets that can be sold, licensed or even franchised in generating revenue beyond the core product or service provided by the company. For example Starbucks, CocoCola, Disney make money from merchandise, licensing and partnerships.

6. Global Brand expansion

In the era of globalization trademark ensures that brand identity is different from each other. Madrid protocol enables companies to register trademark in multiple jurisdiction protecting them from trademark violation in foreign markets this is very crucial for multinational brand.

LEGAL FRAME WORK PROVIDED FROM INDIAN AND INTERNATIONAL PERSPECTIVE

Indian Trademark Law-

The trade mark act 1999 provides the legal foundation for protection of trademark in India some key provisions are-

Section 2(1)(Zb)- Defines trade mark

Section 9- Grounds for refusal of registration of trade marks

Section 11- Relative grounds for refusal

Section 28- Grants exclusive rights to registered trademarks.

Section 29- Provides infringement remedies.

International Trade mark protection-

Paris convention for Protection of industrial property

Provides for protection of industrial property including trademarks across members country.

TRIPS agreement 1995

Sets minimum standards for ipr protection globally.

Madrid protocol 1989

Allows international registration of trademarks through single application making ease of administration.

CHALLENGES FACED IN TRADE MARK PROTECTION

Few challenges are-

1. Counterfeiting and Brand limitation

Online market places facilitate the sale of counterfeit products damaging the brand trust and revenue.

2. Global enforcement issue

Different jurisdiction has varying trade marks laws complicating international protection.

3. Digital and social media misuse

Domian copying, Social media false identity creation can damage brand identity.

4. Technological Disruption

Emerging technology like AI can create challenges for trade mark enforcement and brand identity.

STRATEGIES FOR STRENGTHENING BRAND IDENTITY THROUGH TRADEMARKS

1. Early Registration

Secure trademarks early to prevent conflicts and establish ownership.

2. Distinctive Branding

Use unique names and logos

3. Monitoring and Enforcement

Actively have a eye on online platforms and competitors to prevent infringement.

4. International Protection

Proper utilization of treaties like Madrid protocol.

5. Consumer education

Promote brand awareness among consumer for identifying real products.

6. Digital adaptation

Protect domain names ,digital assets , and social media handles.

CASE LAWS

1. Parle Products PVT.LTD. Vs JP&Co (1972) 1 SCC 618

The Appellant was the manufacturer of biscuits and owners of registered trade mark being a wrapper. The wrapper was used in connection with the sale if their biscuits known as “Parle’s Glucose Biscuits” printed on the wrapper. In March 1961 the Appellant came to know that the Respondent was selling biscuits in a wrapper which was deceptively similar to their registered trade mark. The District Court held that there are greater points of dissimilarity than there are of similarity between the two marks, so confusion was unlikely.

The High Court concurred with the district court’s decision, like the two wrappers limited to the extent that both were partly yellow and partly white in colour and both bore the design of a girl and birds. The girl on the wrapper in the Appellant’s product had a pot in her hand while the respondent had a hay-bundle in her hand. Further, the Respondent’s wrapper has cows and Appellant’s wrapper has 2 calves. The Supreme Court held that the packets were of the same size and colour scheme and although the design was not the same, thebore a close resemblance that could cause confusion. The Court said that in an action for infringement, the Plaintiff must, no doubt, make out that the use of the Defendant’s mark is likely to deceive, but where there similarity between the plaintiff’s and the defendant’s mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to

establish that the Plaintiff rights are violated. Therefore, if one mark is deceptively similar to another, the broad and essential features of the two are to be considered, they should not be placed side by side

to find out if there are any differences in the design and if so, if the differences are of a character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

2. **Cadila Health Care Ltd. v Cadila Pharmaceuticals Ltd. (2001) 5 SCC 73**

When Cadila Group was restructured, both the plaintiff and defendant got the right to use Cadila as their corporate name. The Plaintiff owned the rights for the trade mark for the drug Falcipharum, sold in India as Falcigo. The Respondent Company got permission a year later to manufacture and import the drug Falcitab with “Fal” being its essential point of reference. The Plaintiff filed a suit in Vadodra District Court claiming that their mark was registered, manufactured and sold in 1996. Falcigo further contains Artesunate for the treatment of cerebral malaria while Falcitab contains Mefloquine Hydrochloride. The plaintiff contended that these were last resort drug and confusion could be harmful. The Defendant noted that it was common practice in pharma to trade to use part of the word of the disease as a trademark to indicate to the doctors and chemists that a particular

product/drug is meant for a particular disease. Schedule H drugs are those which can be sold by the chemist only on the prescription of the Doctor but Schedule L drugs are not

sold across the counter but are sold only to the hospitals and clinics, hence no chance of confusion. The interim application filed by the District Court was dismissed and an appeal was filed in the High Court which held there it could not be said that there was a likelihood of

confusion. The Supreme Court refused to interfere with the order appeal against, and only examined the principles that are to be kept in mind while dealing with an action for infringement or passing off, especially in medicinal products. They said that there should be extra vigilance in case of medical products, so the likelihood of confusion should require lesser quantum of proof. Factors that should be considered while deciding such a case is:

1. Nature of the goods (word, label, device);
2. Degree of resemblance;
3. Nature of the mark;
4. Similarity in the nature, character and performance of the goods and rival traders;
5. Class of purchasers who are likely to buy the goods bearing the mark they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the good;
6. Mode of purchasing;
7. Any other surrounding circumstances.

3. **Proctor and Gamble v Joy Creators 2011 (45) PTC 541**

The Plaintiff is the manufacturer of “OLAY TOTAL EFFECT” anti aging cream in class 3 since 2007, and in 2008, the Plaintiff saw an advertisement from the registration of the mark “JOY ULTRA LOOKS TOTAL EFFECTS” in respect of the cosmetics of the defendants. The defendant has been using the label since 2001. The Plaintiffs filed the initial opposition proceedings and alleged that the defendant is using the words “TOTAL EFFECT” only in relation to anti-ageing/age defying products. The Plaintiff then initiated

passing off action. The defendant claimed that in their label “JOY ULTRA” is more prominently portrayed. Delhi High Court allowed the suit and restrained the Defendants

from using the trade mark “TOTAL EFFECTS” or any other deceptive variation. After taking note of various judgments, the court noted that for a successful action the plaintiff needs to establish that the trademark of the defendant “resembles its trademark in a substantial degree, on account of extensive use of the main features”

of the trademark. It was important to consider that a consumer would not have both products lying side by side and this would increase the chances of deception. The Court reasoned that Total Effects was an essential and integral part of the Plaintiff's trade mark, and its use with suffix and prefix and packaging will not change or be of significance once the essential part is used, and hence rules in favour of the Plaintiff.

4. 4 Max Healthcare Institute Limited vs Sahrudya Health Care Private Limited 2017 SCC Online Del 12031.

The Plaintiff Company Max Healthcare was established under a JV between Max India Limited and Life Healthcare Corporation. The Healthcare business was later transferred to Max India by Max Finance Services Ltd by virtue of a demerger. The Trade Mark 'MAX' was adopted and used by Max Financial Services Limited and its respective group Companies. The Plaintiff is also the registered proprietor of six label marks bearing the word 'MAX'. After finding out that the defendant carrying on the same business under the mark MAXCURE/MAXKURE HOSPITALS the Plaintiff filed the instant suit before the Hon'ble Delhi High Court for restraining the defendant from using any of the marks. The Court relying on the principle of essential features says that if a word forming a part of a mark has come to be associated with the goods sold under said mark of its owner, it

amounts to infringement of the mark itself when the word is adopted as a mark or part of a mark by another trader. The deceptive similarity between the rival marks must be decided

not only based on visual, structural and phonetic comparisons but also the nature of good/services and purchasing public. Therefore, they held that the word MAX forms an essential feature of the plaintiff's registered trademarks. Further they denied the test of infringement of its use on paper and said that in order to decide infringement, apart from ocular examination, the likelihood of confusion from

the perspective of a common man of average intelligence and imperfect memory must also be given equal weight, and it is important to take stock of various judgments to decide what constitutes as infringement of an essential part of a mark, the instant case was also decided on the principle of judging similarity by looking beyond just the visual comparison and into the impression the mark has created in the mind of the general public.

5. 5V. J. & P. Coats Ltd. vs Chadha & Co. (India) [AIR 1967 Delhi 141]

Plaintiff is a manufacturer in sewing and embroidery threads of all kinds. The goods that have been manufactured by the Plaintiff are sold in India under the trade mark "anchor Handicraft in class 28 in respect of threads of all kinds. According to the plaintiff's plea, the box mentioned above containing the plaintiff's goods is well known in the market and has been associated with the plaintiff-company. Sometime prior to the institution of the suit, the plaintiff came to learn that the defendants had begun manufacturing stranded cotton skeins and selling the same in boxes in which the plaintiff-company sells its goods. The Plaintiff further claimed that a large number of women were illiterate people and women. The defendant pointed out differences like the "anchor" mark for the Plaintiff and the "dog" for the defendant, Plaintiff's "Chandha and Co" and the defendant's "Clark's Company Paisley", while words like "Fast Colour" "Stranded Cotton" and "Nos. Of Skeins" etc., were common words used by all trades and for which no one could claim any monopoly. The Court held that where colour of rival boxes of thread was similar, even the illiterate users may well be expected to distinguish between the opposite marks 'Dog' and 'Anchor', which are the distinct essential features of the respective parties. Hence, the Court held that there was no probability of confusion.

Reference

1. The trade mark act



2. World intellectual property reports
3. Paris convention
4. Trips Agreement
5. Madrid protocol
6. Scc online
7. Air online
8. Delhi high court online

