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## BULLYING OR SHIELDING? – A STUDY ON THE ASPECTS OF TRADEMARK BULLYING AND ITS IMPLICATIONS

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### Abstract

In this technologically advanced era, protecting the exclusive rights of intellectual property has become essential due to various forms of infringement. However, it is pertinent to note that the exclusive rights granted by law must be exercised within their scope, without encroaching on the boundaries of others. There are several practices where a particular brand or company attempts to dominate other entities by abusing their power in bad faith. Trademark bullying is a strategy where dominant entities aggressively enforce their trademark rights against smaller entities, claiming a likelihood of confusion or infringement. These bullies demand compensation from the other party without genuine claims and abuse their market position by sending threatening cease-and-desist notices, initiating legal proceedings claiming infringement, etc. This research examines when the conduct of such entities becomes an anti-competitive behaviour. It analyses the intersection between trademark law and competition law and explains the importance of consumer perception. The study discusses how claims for legitimate trademark protection can potentially affect the market economically and emphasises the need to address this issue. The paper reviews the positions of various countries regarding opposition to trademark bullying. Additionally, the study shows how trademark bullying is strategically practised through the misuse of domain names and social media elements. The research concludes with suggestions to control trademark bullying in the marketplace and necessitates the importance of clear measures to prevent trademark law from being exploited by dominant companies and fixing proper criteria to determine the aspects of trademark bullying.

**Keywords:** Trademark bullying, protection, confusion, consumer, infringement, dilution, exclusive rights.

### I. INTRODUCTION

A trademark is one of the primary forms of intellectual property that indicates the source of goods or services in the marketplace. It is a mark that can be represented graphically and distinguishes a good or service from others.<sup>592</sup> Trademark law plays a significant role in preventing confusion and deceptive activities that can potentially harm consumers. It also protects businesses by helping them establish a better reputation among the public. To protect

their respective marks, businesses and companies employ various strategic measures to prevent infringement and dilution. But, in various cases, the trademark owners with powerful financial and strategic backgrounds often misuse their exclusive rights to abuse others.

Trademark bullying is one such practice where the right holders use their trademarks to threaten or pressure smaller companies to assert dominance in the market, often demonstrated in the United States and India.

<sup>592</sup> Trade Marks Act, No. 47 of 1999, § 2(zb) (India)

According to this practice, large companies and enterprises send cease and desist letters, file infringement suits, and seek injunctions mainly to impose unnecessary legal costs, hinder small enterprises from entering the market, and increase their public visibility. Such activities undermine the primary goal of trademark protection, which is to safeguard brand identity and promote fair competition, ultimately allowing dominant enterprises to overpower smaller competitors and pose unethical challenges.

It is necessary to address the issue, as this sort of practice can affect the right of occupation of the entrepreneurs and unethically restrains the entry of businesses in the marketplace. This strategy creates a win-win situation for the larger enterprises in case of taking the dispute to litigation due to their strong financial stability. Due to this, there arises an importance to create laws and regulations to eradicate these types of strategies.

The primary objectives of this paper further

- (i) To define the scope of trademark bullying and identify the factors distinguishing the exercise of exclusive rights from bad-faith abuse of those rights.
- (ii) To examine how aggressive enforcement of trademark rights amounts to anti-competitive behaviour by interconnecting the trademark laws and competition laws.
- (iii) To evaluate the impact created by the dominant entities on consumer perception.
- (iv) To compare the legislative and judicial approaches towards trademark bullying in various countries.
- (v) To study the emergence of trademark bullying in digital spaces.

## II. INTERSECTION OF TRADEMARK AND COMPETITION LAWS

The Trademark and Competition laws share a common objective to maintain fair competition in the marketplace without allowing any brands to exercise their exclusive rights in bad faith. Trademark law protects the exclusive rights of the brand so that the goodwill and reputation associated with a mark will not be used in an unauthorised manner. The law primarily safeguards logos, symbols, names and other related elements, which serve as a brand identity.

On the other hand, Competition law aims to prevent any practices or strategies that promote unfair competition. It can be in the form of abusing the dominant position or restrictive trade practices, etc.<sup>593</sup> The intersection between these two domains is particularly prominent in cases where there is an illegitimate exercise of trademark rights, significantly affecting the competitive equilibrium in the market and consumer welfare.

Trademarks are valuable economic intellectual property, acting as an indicator of the product's quality, which can never be used for the purposes of abusing the competitor, resulting in anti-competitive events. It is inclusive of aggressive trademark enforcement, like trademark bullying by the dominant position holders in the marketplace to exclude their competitors, control distribution channels or even against non-competitors, to cause publicity to their brands. It becomes further complicated as there is a serious concern in deciding these types of practices, as the abuse of their dominant position, or legitimate efforts to protect their intellectual property.

Both the legal domains show their significant involvement in countering deceptive trade practices. The trademark laws, like the Trademark Act, 1999, contain the provisions of

<sup>593</sup> Sadhana S, Kunder, Bindu Ronald & Shivani Rajesh, Consumer Protection under Competition Law: Highlighting Relevant Market Issues under Digital Market, 6 *International Journal of Health Science*. 11752 (2022), <https://doi.org/10.53730/ijhs.v6ns5.11054>.

trademark infringement, protecting the registered trademark and also, the unregistered marks can be protected by the common law remedy, like passing off, by proving the instance of consumer confusion, misrepresentation and damage to the goodwill.

Also, the Competition Act, 2002, depicts anti-competitive practices that may show inclination towards the vulnerable position of trademark holders in certain cases and the measures to control and eradicate such activities.<sup>594</sup> It is significant to note that the key element playing a vital role and common to both trademark and competition laws is the perception of the consumer.

The distinctiveness and value of a mark are determined by consumers.<sup>595</sup> When consumers associate a mark with certain standards, it acts as a key determinant in influencing their decisions about purchasing such goods. However, the subjective perception of consumers can be influenced when dominant trademark owners use such powers to distort their understanding. The larger and dominant entities handle aggressive enforcement actions like trademark bullying to threaten or litigate against smaller entities with less financial or legal power; consequently, consumers may be deprived of any innovative products in the market, undermining consumer welfare.

Hence, Trademark and competition laws both attempt to preserve the consumer perception from various perspectives and targets in eradicating such strategies by complementing each domains. Trademark bullying lies in the area between these two domains, where it potentially restricts smaller entities from entering the market, narrowing consumer choices and weakening the price competition. Thus, both domains necessitate controlling

dilution of consumer trust towards brands and appreciating healthy competition in the marketplace.

### III. THE CONCEPT OF TRADEMARK BULLYING

#### A. What is trademark bullying

There is a lacuna in defining the term “trademark bullying” in various trademark laws around the globe. It can be traced as a practice that emerged from various media outlets, resulting in serious concerns. The report of the US<sup>596</sup> between the top US brand and a small entity, leading the United States to face the problem. Based on the report, an attempt was made to define trademark bullying.

It is the vexatious practice of a trademark owner who uses the trademark rights in order to harass and intimidate another business. It can be beyond what the law reasonably allows to be interpreted.<sup>597</sup> The larger entities handle this type of strategy to show their market presence as well as create an unhealthy market environment by unnecessary threats against the parties, even though such legal claims are nonexistent.

So, to put it simply, a trademark bully is a company or a brand that seeks to create an invisible barrier to the small business to enter the market place by perceiving such businesses as a danger to its intellectual property, prominently trademark in this case, though its legal claims against such parties are for the purpose of showing their market presence and in the blanket of protecting their intellectual property rights.

#### B. How an entity bullies another entity

The misuse of intellectual property rights constitutes abuse of such rights, where, in this case, it can also be seen as trademark abuse. From the attempts to define trademark bullying, it can be understood that there is just a fine line between protecting the trademark of a

<sup>594</sup>“Trademark and Unfair Competition Law: Interrelations and Differences.”, *Thelegalschool.in*. (2025) <https://thelegalschool.in/blog/trademark-and-unfair-competition-law>

<sup>595</sup> “Distinctiveness of Trademark: Decoding Graphical Representation, Distinctiveness, and Global Significance in Trademark Law, *LegalServiceIndia.com* (2021), <https://www.legalserviceindia.com/legal/article-14936-distinctiveness-of-trademark-decoding-graphical-representation-distinctiveness-and-global-significance-in-trademark-law.html>.

<sup>596</sup> Review of Report to Congress Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting April 2011. n.d. USPTO. US: US Congress. Accessed October 10, 2025.

<sup>597</sup> *ibid*

particular entity and using such rights as a weapon to deter other entities into the market in different ways. It can be in the form of excessive litigation threats, like sending a cease-and-desist letter or filing suits against targeted businesses with little legal resources, even when there is no infringement. Larger entities often send threatening letters or notices to shake the confidence of the smaller entities, though there is no common ground of trade between each other.

It pushes the smaller enterprises to comply with the orders of the larger ones, due to fear of high-cost litigation.<sup>598</sup> The suits can be filed as an attempt to monopolise the commonly used words or phrases, genuinely not belonging to any particular brand. The constitution of the strategic litigation process is solely to drain the financial resources of smaller entities and to make their brand prominent among consumers. The trademark bullies are least bothered about the result of the cases, but rather, they intend to shackle the position of the smaller enterprises.

There is also a potential risk of consumers misusing trust and faith in their trade names. It is important to note that companies often register their marks in multiple classes or languages, which creates a significant barrier to entry for others.

Most major brands, like Apple, have been criticised for asserting broader rights over commonly used words such as “apple” and “pod,” even in industries unrelated to those terms. Those Corporations may also file oppositions to new petitions to cancel the existing marks, without stronger grounds, and exploit procedural delays as a competitive tactic. This is often used for media exposure by publicly abusing others, often with groundless accusations of infringement, thereby undermining their credibility and market presence.

Such bullying often uses cease-and-desist letters to stop the usage of certain trademarks.<sup>599</sup> These letters often contain baseless claims with no proper explanation and clarity on their stance, merely to put pressure on the recipients into compliance with the same. Furthermore, trademark bullies initiate opposition and cancellation proceedings against such small entities. There is a blurred boundary between the required measures taken for the enforcement and the abuse of the rights. If these kinds of practices are not corrected, it results in creating an imbalance between the legislative intent of the trademark laws and the limitations conferred by such laws on enforcing rights.

It is pertinent to note that the most of the bullies often end up as the dominating companies, achieving their goal of gaining the attention of the public. They also have a strong financial background and resources to initiate such proceedings and send vague cease-and-desist letters, having everything to gain and nothing to lose from carrying out such strategies. Due to the grey area in effective and overarching enforcement, it becomes a tedious process to find out when an issue arises.

The “Trademark bully” is the tag earned by such companies when they repeatedly extend their rights regarding enforcement against small competitors. The goodwill of such companies will also be at stake, and excessive enforcement may lead the judicial bodies to question the validity and scope of the trademark itself in certain circumstances. In addition to this, the USPTO’s Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting Report<sup>600</sup> recognises the issues surrounding enforcement, which can cause harm to innovation. Such bullying companies cross the boundary of the periphery of “likelihood of

<sup>599</sup> *ibid*

<sup>600</sup> U.S. Patent & Trademark Office, Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting (2011), <https://www.uspto.gov/sites/default/files/trademarks/notices/TrademarkLitigationStudy.pdf>.

<sup>598</sup> Jessica Shechtman, No Bullying Allowed Here: Adopting a Misuse Doctrine to Defeat Trademark Bullies, 45 *CARDOZO L. REV.* 685 (2023). Available at: <https://larc.cardozo.yu.edu/clr/vol45/iss2/7>

confusion” towards their claim for trademark enforcement by prosecuting the entities that are using an allegedly similar mark for non-competitive goods and services.

It can also be understood that when an owner of dissimilar marks enforces their rights against the marks regarding the usage of non-competitive goods, it amounts to trademark bullying.<sup>601</sup> Thus, the tactic of trademark bullying can be seen in various forms, like making exaggerated and vexatious claims regarding similarity made even when there is no clear likelihood of confusion, where a large company constantly disrupts the businesses of smaller entities to drain their financial resources.

### C. Why is it necessary to address this issue

Trademark bullying creates a wider impact, not only upon the entity but also on the marketplace and consumers as a whole. It is the need of the hour to address this issue due to negative consequences on businesses, the economy and society in general. It is a clear example of the promotion of unfair competitive practices. The entities holding strong market space utilise their dominant position in a way that results in unfair competition, affecting the consumers and other competitors in the marketplace. This strategy causes the gain of monopolies for dominating entities in their respective industries and leading to a lack of choices for consumers. However, due to the grey area in deciding bullying and enforcing rights, genuine claims from such big entities can also be affected in some instances.

There are several hurdles in facing the trademark bully due to certain legal implications. The trademark litigation costs are the primary barrier for the smaller entities, where there will be a requirement for evidence and studies on consumer perception. There is also a difficulty in tracing the aspects of the likelihood of confusion and dilution. The claims

demanded by the bullying entities will be on the essence of the trademark dilution, where it will be suitable to challenge the marks in the legal proceedings.

It also creates potential damage only to the small entities, attempting to gain consumer attention positively. But if it happens to the small entities to face legal hurdles, it adversely impacts their market presence easily. This issue is persisting due to a lack of statutory mechanisms in various jurisdictions across the globe. The measures of the US somewhat acknowledge the issue compared to other countries. There is a lacuna in determining what constitutes trademark bullying due to the fine line between bullying and claiming against trademark dilution. The perception of the consumers is also often unnoticed in most circumstances.

Moreover, trademark bullying stifles innovation and limits creativity, causing a hindrance to freedom of speech. It negatively impacts the smaller businesses in initiating their trade in the marketplace and creates an inherent fear in individuals and smaller entities. Even the way of fair use is interrupted through those cease-and-desist letters, causing intimidation and obstructing freedom of speech in both commercial and non-commercial ways.

### IV. BULLYING IN THE NAME OF PROTECTION?

As stated before, most of the big entities find loopholes in the trademark law regarding the grey area between trademark bullying and rightful enforcement of trademark holders' protection and utilise the same for dominating other competitors.

#### A. Criteria to determine whether it is bullying

Unfortunately, trademark bullying was not defined anywhere, and almost every country, to counter this issue, fits it into the provisions and frameworks against unfair trade practices, unfair competition, groundless threats, applications filed in bad faith, claiming overarching protection beyond which the mark

<sup>601</sup> Legal, A. 2021. “Trademark Bullying: A Legal Means to Illegal Ends,” *Lexology*, Fox Mandal. March 17, 2021. <https://www.lexology.com/library/detail.aspx?g=72ae12b4-4b83-4ec4-a0d2-96d9aa534be5>.

can be protected and false and misleading usage of the marks. To decide whether the circumstance warrants the genuine enforcement or mere trademark bullying, it is necessary to infer as to whether such an entity claiming trademark infringement has abused its dominant position against the other party.

To put it simply, if the entity is well-known and established and there is a reasonable and foreseeable expectation that the alleged trademark infringement will severely affect the reputation of such entity, then there arises a necessity for enforcing the rights of the trademark holder as in the legislative framework according to the respective countries. If the same entity misuses its dominant position to establish a monopoly over the mark, this scenario can be termed trademark bullying.

However, there are no specific criteria to determine what constitutes trademark bullying and how it differs from the genuine enforcement of trademark holders' rights. It can only be determined after it enters the doors of the Courtroom, where there is already victory on the side of the dominant position-holding companies. Thus, it is necessary to determine whether it is a mere abuse or a genuine application before it enters the Court.

### **B. Misusing the protection against trademark infringement**

Trademark law has the primary focus upon protecting consumers from deception and confusion. However, these protections can be misused and misappropriated by entities with a potential financial background, in order to intimidate smaller businesses than themselves. This trademark bullying occurs when a trademark owner unreasonably asserts infringement claims beyond the legitimate scope of their rights. They suppress the legislative intent of the trademark laws and use the same to serve their improper goals, such as achieving market domination, suppressing other entities and expanding exclusive rights beyond what the statute supports for them.

### **1. Overarching trademark infringement claims**

Registration of the mark provides steady trademark protection under the legislation in various countries, like India. It actually poses advantages like exclusive rights, validity of presumption, legislative protection and standard remedies. However, the bullies often use these as a weapon to extend their monopolies on the market beyond the exclusive limits. The users leverage their exclusive rights to suppress fair competition despite the actual distinctiveness or market price of the registered mark.

The usual and common strategy used by the trademark bullies is to stretch their scope of trademark protection in a manner beyond what the law gave them due to registration of their mark. It overarches to the extreme, where it covers the uses that do not essentially attract the requirements to claim protection against infringement.

The other brand may not have created any consumer confusion, affected the identification of the source, or occurred in unrelated markets, causing any trademark dilution. The unbearable pressure will be put on the smaller entities by initiating legal proceedings, which can be strategically and financially handled by those larger companies. Even though their claim is not strong enough to win the case, the larger entities successfully create mental anguish and fear in the smaller ones through this.

Strategic practices and misappropriation like these potentially affect and undermine the principles of trademark law, which aims to eradicate unfair competition and protect fair and legitimate commercial activities. In addition to this, there are well-known trademarks, which are mostly unregistered under the trademark legislation, but enjoy enhanced protection in the form of claiming trademark dilution.

While these rights are justified to safeguard marks with significant reputation, they can also be potentially abused. There is a significant

distinction between the famous trademarks and the well-known trademarks. The famous trademark is the one that is widely recognised by the general public and has a strong reputation across various and multiple industries.

It possesses stronger emotional associations and is safeguarded against misuse and dilution, even in other unrelated industries. Google, Coca-Cola and Apple are some of the examples of famous trademarks. On the other hand, a well-known trademark is a recognised brand within a specific industry or a particular geographic region. It has a reputation, which is significant enough to be protected beyond the general scope of trademark law.<sup>602</sup>

For the protection of these marks, trademark dilution and common law remedies are opted for, where dilution through blurring or tarnishment is intended to prevent the weakening of the distinctiveness of the famous mark. The trademark bullies exploit this doctrine by alleging dilution against the entities whose utilisation is not connected to the specific mark. It can be in the way of claiming dilution for the uses that are non-commercial and geographically distant, and strong oppositions against registration of such marks in unrelated industries, even though there is no confusion on the part of consumers. As the claims for trademark dilution require no confusion, the large entities often use them tactically to monopolise ordinary and generic works, colours, or shapes.

One of the best examples of trademark bullying is the case, *Adidas America Inc. v. Forever 21, Inc.*<sup>603</sup> Adidas sued Forever 21 for selling apparel and clothes bearing the three-stripes design, which is what Adidas called “confusingly similar”, invoking its registered “Three-Stripe Mark” for clothing and related wear. Forever 21 countered the dispute by arguing that those

stripe patterns hold mere ornamental or decorative value, where they are not made for source identification and thus do not cause trademark infringement. The case showed the implications of the trademark regime, where the Courts emphasised the necessity for the brands to uphold their trademark rights. Forever 21 opted for a settlement after facing significant financial and reputational damages.

The settlement involved not only a monetary aspect but also included the terms that prohibited Forever 21 from utilising similar designs in the future, ensuring the integrity of the trademark of Adidas.<sup>604</sup>

The observers of this case included critics, who saw this dispute from a trademark bullying perspective, also. Although this case is viewed to be a case ensuring the trademark protection of a brand, it was observed as an aggressive enforcement of rights by the powerful brand over a very generic design, causing a genuine disruption in legitimate design freedom in the fast-fashion sector, thus showing how wider trademark claims can significantly intimidate the smaller entities even when the consumer confusion is questionable in such circumstances.<sup>605</sup>

Also, in the case of *Monster v. Vermonster*<sup>606</sup> the trademark holders of the “Monster” energy drink filed a suit against the brewery manufacturers of “The Vermonster”. Monster Energy Drinks contended that the name of Vermonster would cause confusion among consumers. The case was dismissed by pointing out the clear distinction between the marks that one is an energy drink and the other is a beer. There exists no possibility for the likelihood of confusion in the minds of the consumers. This is one of the significant cases where, after this case involved

<sup>602</sup> Bao Tran, Famous Trademarks vs. Well-Known Trademarks: Key Differences and Implications, *PatentPC* (Apr. 8, 2025), <https://patentpc.com/blog/famous-trademarks-vs-well-known-trademarks-key-differences-and-implications>.

<sup>603</sup> *Adidas America, Inc. et al v. Forever 21, Inc.*, No. 3:2017cv00377 - Document 198 (D. Or. 2018)

<sup>604</sup> Generis Legal Intelligence, Trademarked Design Infringement: The Case of Forever 21 vs. Adidas, *Generis Global Legal Services* (Nov. 5, 2024), <https://generisonline.com/trademarked-design-infringement-the-case-of-forever-21-vs-adidas/>.

<sup>605</sup> TFL, Forever 21 Sues Trademark ‘Bully’ Adidas, Says ‘Enough Is Enough’ – *The Fashion Law* (Mar. 6, 2017), <https://www.thefashionlaw.com/forever-21-sues-trademark-bully-adidas-says-enough-is-enough/>.

<sup>606</sup> Concept of Trademark Bullying and Landmark Cases, *Intepat.com* (2025), <https://www.intepat.com/blog/concept-of-trademark-bullying-and-landmark-cases>.

measures were taken to address the trademark bullying and the US Department of Commerce and the US Patent and Trademark Office presented a report to Congress on this issue.

The Trademark Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting report was made to address the issue of intimidation of smaller businesses by opposing the unreasonable interpretation of the scope of trademark protection.<sup>607</sup> However, regarding the claims of famous trademarks, the Indian Trademark law does not mandate establishing the case of trademark dilution, unlike the US requires proof that the mark is famous in the area and well-known to the general public. Thus, this lacuna permits the bigger entities to formulate self-serving claims of famous or well-known marks.

Although the entity relying only upon the reputation and goodwill earned by it for years has to work more to fight against improper usage by the third party, it can never be validated when such entities affect the rights of other entities to enter the market without affecting the other marks. In these cases, to identify infringement, it is necessary to determine whether there is any economically adverse impact created, whether the brand reputation has been tarnished, and whether there is any potential confusion caused. If these factors remain unsatisfied, it is clear that the dominant entity is exercising overarching powers and causing trademark bullying.<sup>608</sup>

## 2. Fair use in Trademark law

Fair use plays a significant role in trademark law. It can be categorised into descriptive and nominative fair use<sup>609</sup>. In simple terms, descriptive fair use is to use the mark of a party to indicate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services, whereas the nominative fair use is to use a

trademark in order to refer to the goods or services of a particular trademark owner provided it is reasonably necessary. It can be in the way of parody, news, criticism, commentary, etc.<sup>610</sup> It is pertinent to note that for applicability of normative fair use it will not amount to infringement if the defendant establishes that the use of the mark is reasonably necessary for describing the article is adapted for use with the plaintiff's goods, then the use was bona fide, and that the effect of the use complained of is not likely to deceive the public as to the trade origin.<sup>611</sup>

Regarding trademark bullying, the dominant entities often misinterpret fair use as infringement or dilution. The best example is the case of Louis Vuitton v. Penn Law University<sup>612</sup> where the University made a symposium poster with the "LV" monogram, replacing it with "TM", incorporating copyright symbols. Louis Vuitton claimed that there was a wilful infringement and dilution, and sent a cease-and-desist letter warning that the design potentially misleads the company approved it. But it was replied from the recipient Counsel that there is no likelihood of confusion, and it comes under non-commercial, educational and fair usage.

From this scenario, it can be understood how strategically the dominant entities try to monopolise the markets where fair use serves as an essential requisite to check on overreaching trademark claims, as well as permitting others to resist in such cases.

## V. THE POSITIONS OF THE US, EU AND INDIA ON TRADEMARK BULLYING

Efficient measures have been taken by various countries to counter baseless trademark claims, specifically on trademark bullying.

### A. United States

In the United States, the practice of trademark bullying has been referred to and considered as

<sup>607</sup> *ibid*

<sup>608</sup> *Supra note 10.*

<sup>609</sup> The Trademark Act, 1999, §30 (India).

<sup>610</sup> Doctrine of 'Nominative Fair Use' under Trademark Law, *AZB* (Sept. 22, 2021), <https://www.azbpartners.com/bank/doctrine-of-nominative-fair-use-under-trademark-law/>.

<sup>611</sup> *Hawkins Cookers vs. Murugan Enterprises* (2008) 36 PTC 290 (Del).

<sup>612</sup> Robert F. Firestone, PIPG, *PIPG* (Nov. 2, 2015), <https://www.pennip.org/ipnews/2015/10/30/recap-lymh-v-penn-law-event-with-robert-f-firestone>.

an overreaching enforcement of the trademark rights by a dominant trademark owner against a smaller business. The USPTO, in its report<sup>613</sup> defines a trademark bully as “a trademark owner that uses its trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow.”<sup>614</sup>

The US had also broadened the scope of protection for the entities affected by these strategies in the form of Anti-SLAPP (Strategic Lawsuit against Public Participation) laws and regulations.<sup>615</sup> The purpose of these regulations is to protect free speech and dismiss claims that are abusive and cause harassment. In addition to this, the State regulations permit the defendants who may not possess sufficient resources to counter litigation to recover litigation costs from the plaintiffs.

It also necessitates that only when there is a likelihood of confusion and irreparable loss or potential damage caused can the plaintiff benefit. It is acting as a hurdle for the dominant entities to bully with groundless claims. But the underlying issue in adopting this solution is that this exists primarily in state law, and most of the anti-SLAPP motions are denied practically, allowing to continue with the litigation to continue, putting the defendants at a disadvantaged position.<sup>616</sup>

Then, the Lanham Act<sup>617</sup> does not explicitly mention trademark bullying, but the Courts have the power to award the fees of an attorney to the party in certain exceptional cases, like when the party acted with malafide intention or abused the process of litigation<sup>618</sup>

Like the case of *Monster*<sup>619</sup>, in the case of *Apple v. Prepear*<sup>620</sup>, Apple is a leading seller and

producer of electronic products. It tried to influence a smaller entity, “Prepear”, to let go of its mark. Prepear is a recipe sharing application that has the logo, possessing a drawing of a pear outlined in green colour against a white background and a leaf facing downward. The logo of Apple is a half-eaten apple with the leaf facing upward. It was understood that both logos are quite distinctive and their goods and services are also dissimilar.

In response to Apple's bullying, Prepear chose to use social media as a platform to counter Apple's actions and challenge its abuse of its dominant position. Prepear also stated that they were forced to let go of several employees to counter the litigation process and to defend their suit financially. This clearly shows how the dominant entities exercise powers beyond the protective scope, even though there is no cause of confusion. Like this scenario, there are certain cases where it is evident to determine whether there is an infringement or just an abusive exercise of the exclusive rights.

Thus, it can be understood that, from the US perspective, effective protection is offered through rules, regulations, and judicial sanctions. The Lanham Act also provides indirect protection against trademark bullying but there is a lacuna in protecting the entities in more efficient way because in most cases, the legal proceedings are initiated by the dominant trademark owners where the smaller entities are compelled to defend their stand due to which their resources will be potentially drained.

## B. European Union

In the European Union, there is no deliberate mention of the practice of trademark bullying, but there are certain measures taken against such unfair competitive practices in general.

Under the EU trademark regime<sup>621</sup>, the European Union Trademark Regulation 2017/2001 includes

<sup>613</sup> *Supra* note 13.

<sup>614</sup> Roxana Sullivan, Trademark Bullying: Defending Your Brand or Vexatious Business Tactics?, *IPWatchdog.com* (July 16, 2015), <https://ipwatchdog.com/2015/07/16/trademark-bullying-defending-your-brand-or-vexatious-business-tactics/>.

<sup>615</sup> *Supra* note 10.

<sup>616</sup> *ibid*

<sup>617</sup> Lanham Act, 15 U.S.C. §§ 1051–1141n (amended by Public Law No. 116-260) (U.S.).

<sup>618</sup> Lanham Act, 15 U.S.C. §§ 1051-1141n, §35 (US).

<sup>619</sup> *Supra* note 20.

<sup>620</sup> Apple Inc., Opposition Against Prepear Logo, No. 91250768, U.S. Trademark Trial & Appeal Bd. (2020–2021).

<sup>621</sup> Tom Scourfield-Cms et al., Annual Review of European Trademark Law 2021 in Review, 112 *Trademark Rep.*(2), <https://www.inta.org/wp-content/uploads/public-files/resources/the-trademark-reporter-european-union-trademark-law/TMR-Vol-112-No-02-EUAR-0428-Secured.pdf>.

certain significant protection, which provides a safeguard against the reputation-based claims, although the precise language on trademark dilution has not been used.<sup>622</sup> In addition to this, if there is an absence of potential usage of an EU trademark in the EU for five uninterrupted years, revocation for non-usage of the trademark can be invoked.<sup>623</sup> This provision helps in fighting against bullying, where, in most cases, the dominant entities register various marks but show no usage of them.

The most significant case in the EU about trademark infringement aligns with the practice of trademark bullying, is between Supermac v. McDonald's, where McDonald's registered the "Big Mac" trademark with the EUIPO in 1996, including various classes. On the other hand, Pat McDonagh tried to expand its operations into the UK and other parts of Europe by means of "Supermac". However, McDonald's objected to trademark applications of Supermac because it could cause possible confusion among consumers by stating the similarity between their "Big Mac" and "Supermac". McDonald's had also previously blocked the attempts of Supermac to register trademarks in other countries.

To counter this conflict, Supermac filed a request with EUIPO to cancel McDonald's Big Mac trademark based on trademark bullying, arguing that McDonald's was using its exclusive rights improperly to prevent fair competition rather than protecting the product, which it uses actively and genuinely. Irrespective of defences from McDonald's, its Big Mac trademark had been revoked by EUIPO because the company had not proven genuine and active use of the mark in the EU, and the evidence was insufficient from its side.

The decision was appealed by McDonald's, where it was found by the Board of Appeal that

the original decision set too high a standard for proving the usage, especially for the well-known marks. Meanwhile, Supermac registered its name in the EU and was allowed to expand its market into the UK and other EU countries. Thus, from the EU trademark regime, it is evident that even though there is no explicit provision for trademark bullying, the user requirements and protection based on the reputation of the brand keep an eye on abuse.

Such requisites act as a barrier for the dominant brands for unauthorised registration and non-usage of such marks. The provisions from the directives also play a vital role in ensuring fair competition in the markets.

### C. India

The Indian Trademark legislation had foreseen the possibilities of abuse and misuse of rights and imposed a provision in the Act to counter such disputes. According to Section 142 of the Trademarks Act, 1999,<sup>624</sup> if a person threatens any other through circulars, notices, advertisements, etc, with an action of infringement, the person who was subjected to such warning and threatening can sue for a declaration that the threats are unjustifiable and necessitating an injunction to stop such threats and damages. There is also a burden on the side of the person who sends such notices that the trademark is registered, and there is an actual infringement. However, practically, the bar to prove malicious or unjustified grounds is set quite high by the judicial sanctions, which potentially limits the effective deterrence.<sup>625</sup>

Also, to refute the trademark registration, bad faith acts as a relative ground, which has been interpreted broadly, where if there is any dishonest intention, lack of honest commercial purpose, any form of squatting on marks like cybersquatting, registration to exploit the

<sup>622</sup> Council Regulation 2017/1001, on the European Union Trade Mark, Article. 8(5) (EU)

<sup>623</sup> "The Big Mac Battle: McDonald's Trademark Loss in the European Union," *LegalServiceIndia.com* (2019), <https://www.legalserviceindia.com/legal/article-16742-the-big-mac-battle-mcdonald-s-trademark-loss-in-the-european-union>.

<sup>624</sup> Section 142 Trademark Act: Safeguard against Groundless Threats, *TheLegalSchool.in* (2019), <https://thelegalschool.in/blog/section-142-trademark-act>.

<sup>625</sup> Trademark Bullying: When Brand Protection Becomes Market Suppression, *The IP Press* (May 31, 2025), <https://www.theippress.com/2025/05/31/trademark-bullying-when-brand-protection-becomes-market-suppression/>.

reputation of the other, or reserving marks misleadingly.<sup>626</sup>

In addition to that, well-known trademarks have a secured position too under the Indian trademark regime. The provisions lay down factors to assess whether a mark can be considered as a “well-known mark”.<sup>627</sup> Also, the misuse of a well-known mark can amount to trademark infringement even on dissimilar goods or services, paving the way for claims against dilution and bullying of trademarks. This practice has been identified in the case of Milmet Oftho Industries and Allergan Inc,<sup>628</sup> where it was decided that if there is no intention from the side of multinational companies to enter India or introduce the products in India, they should not disrupt Indian companies in cases where the Indian companies are genuinely using their mark in India, and have developed the product and introduced it first in the market.

Moreover, in the case of Subway India Pvt Ltd. v. Infinity Foodstuff Pvt Ltd.<sup>629</sup> The Plaintiff sued the smaller business, as their business “Suberb” was alleged to be infringing the well-known “Subway” mark. The Court declared that there is no likelihood of confusion, but yet even after the defendants changed their name, logo and other details due to persistent saddling with heavy legal fees. From these circumstances, it can be understood how financially stronger brands can affect the businesses of smaller entities even when there is no confusion from the consumers’ side, and even a clear explanation has been given by the Judicial bodies.

Likewise, in the case Big Basket v. Daily Basket,<sup>630</sup> where the Big Basket had served a cease-and-desist letter, demanding abandoning its name, shutting down the app and surrendering the “Basket” containing domains. There was a clear

distinction between the operation of business by these two entities. Big Basket threatened domain seizures through the notices and even labelled Daily Basket a fake one. Due to such actions of Big Basket, the recipient agreed to mediation at a high cost.

In the case of M/s ITC Limited vs. Nestle India Limited,<sup>631</sup> ITC launched Sunfeast Yipeee! Noodles with a variety named “Magic masala” sued Nestle for copying the name. But the Madras High Court held that the terms “Magic” and “masala” are common in the culinary industry where monopolisation of such terms cannot be done by either party. Also, in the case of Jones Investment Company, Inc. vs Vishnupriya Hosiery Mills,<sup>632</sup> where the plaintiff, a US clothing brand, sued the defendant for using their trademark “Jones”, alleging that the defendant’s local brand caused consumer confusion and that their trademark is used globally.

The defendant argued that it has been using the trademark since 1993, and the products of the Plaintiff were not sold in India. It was held by the IPAB in favour of the defendant that multinational companies, having no sales in India, cannot restrict the domestic companies that have adopted the mark first in the market. Likewise, in the case, Bata India Limited vs Vitaflex Mauch GmbH,<sup>633</sup> the primary question answered by the Delhi High Court was whether the notice sent by the defendant amounted to a threat and whether the plaintiff was entitled to claim damages and an injunction. The Court asserted that it amounts to a threat and is unjustifiable. In this case, the plaintiff had filed against the defendant for restraining the defendant and making baseless threats.

It is evident from the legislative and judicial actions that although there is a provision for such threats but there is a lacuna in clarifying what amounts to a groundless threat. But the judgments had tried to provide a clear

<sup>626</sup> Imputing Bad Faith in Trade Mark Infringement Disputes, *Mondaq.com* (2024), <https://www.mondaq.com/india/trademark/1549890/imputing-bad-faith-in-trade-mark-infringement-disputes>.

<sup>627</sup> The Trademarks Act, 1999, §11 (India)

<sup>628</sup> Milmet Oftho Indus. v. Allergan Inc., (2004) 12 SCC 624 (India).

<sup>629</sup> Subway India Pvt. Ltd. v. Infinity Foodstuff Pvt. Ltd., [2023] (India).

<sup>630</sup> Anupriya Dhonchak, BigBasket and Daily Basket Row – Confusion or Bullying?, *SpicyIP* (March 4, 2021), <https://spicyip.com/2021/03/bigbasket-and-daily-basket-row-confusion-or-bullying.html>.

<sup>631</sup> M/s ITC Ltd. v. Nestle India Ltd., AIR ONLINE 2020 MAD 914 (India).

<sup>632</sup> Jones Inv. Co., Inc. v. Vishnupriya Hosiery Mills, WP No. 3851 of 2015 (India).

<sup>633</sup> Bata India Ltd. v. Vitaflex Mauch GmbH, CS(OS) No. 1112/2006 (India).

explanation and factors for the determination of such threats, like causing confusion, the intention of the multinational companies to sell their product in India, prior filing of the trademark, etc. But there are cases where even when the Courts decided clearly about the absence of confusion, still the recipient of such threats were forced to take down certain essential aspects of their business. In addition to that, after facing financial challenges, in most cases, the conflict has been cleared between the bully and the victim.

## VI. TRADEMARK BULLYING IN THE DIGITAL SPACES

### A. Domain name disputes

Commonly, in digital spaces, domain names play a vital role in identifying a business. It has a potential value as a commercial asset, which often functions as the online embodiment of a brand. This has an incredible value, where it has become easier to enforce aggressive tactics by the trademark holders in several cases, even when the smaller entities' use is legitimate and non-commercial.

The prominent example is *PETA v. Doughney*<sup>634</sup> where the defendant had registered a parody website titled "People Eating Tasty Animals." Although the content was satirical, PETA sued the defendant on the grounds of trademark infringement and cybersquatting. The Court held in favour of PETA, holding that the defendant's domain name created a likelihood of confusion and was registered in bad faith.

For this scenario, there have been genuine contentions from both sides that support and oppose this decision. It was held to be tarnishment by the defendant as it potentially affects the goodwill of the company, as well as litigation process was chosen strategically to suppress criticism and parody, showing how, in the name of countering domain name disputes can give overarching powers to the dominant companies.

If there is any dispute regarding domain names, the same can be addressed by the WIPO Uniform Domain Name Dispute Resolution Policy (UDRP). It is pertinent to note that the doctrine of passive holding can potentially align with trademark bullying.

The concept that the passive holding of a domain name without active usage can constitute bad faith, as stated in the case of *Telstra Corporation Limited v. Nuclear Marshmallows*,<sup>635</sup> where this case established that bad faith is not restricted to active misconduct, but also when there is no action in the domain can also be deemed to be malafide usage. This amounts to trademark bullying when domain names have been registered and when there is no usage from the registrant, and if anyone uses it, the registrant makes claims against it.

### B. Bullying through social media

Like in domain name disputes, trademark bullying is increasingly seen on social media to manipulate users in certain cases. The dominant brands disguise the aggressive tactics in the name of comparative advertising, using influencers to promote the brand as well as attack other brands to show monopoly, or sponsored content without good faith to disparage the marks of the competitors, blur brand identity and exert unfair competition. It was decided in the case of *Reckitt Benckiser v. Procter & Gamble*<sup>636</sup> in the media, claims in the implied form can stimulate issues relating to the misuse of a trademark. In light of this case, it is evident that such conduct is amplified on social media platforms. Trademark bullying can be done by misusing hashtags. It was decided in the *Fraternity Collection, LLC v. Fargnoli*,<sup>637</sup> the Court recognised hashtags as source identifiers where any targeted misuse amounts to infringement or unfair competition.

<sup>634</sup> *People for the Ethical Treatment of Animals, Inc. v. Doughney*, 263 F.3d 359 (4th Cir. 2001).

<sup>635</sup> *Telstra Corp. Ltd. v. Nuclear Marshmallows*, No. D2000-0003, WIPO (Feb. 18, 2000).

<sup>636</sup> *Reckitt Benckiser (UK) Ltd v. Procter & Gamble UK*, [2004] EWHC 619 (Ch).

<sup>637</sup> *Fraternity Collection, LLC v. Fargnoli*, No. 3:13-cv-00664, Document no. 62 (S.D. Miss. 2015).

## VII. CONCLUSION AND SUGGESTIONS

Trademark bullying is the practice in which rights-holders engage in aggressive enforcement of their exclusive rights. The line between legitimate protection and anti-competitive conduct becomes blurred. The existing and potential solutions have been seen in the US and include the US Anti-SLAPP regulations and rules to counter the conflict between the parties and compensate the aggrieved party. The federal rules emphasise penalising the Attorney in cases when false and frivolous applications are framed. The other countries manage to include this practice within their laws, but there is still a necessity to address the issue efficiently.

The judicial interpretations in various countries are construed in a manner that sufficiently addresses the issues and potential solutions.

However, it is pertinent to note that even in the cases when the recipients are advised to ignore the threatening cease-and-desist letters, shaming the bullying entities and initiating the suits against them appear to be the effective solutions, these solutions cannot help in stopping or lessening the impact created due to trademark bullying. Apart from demanding new legislation or authorities to keep an eye, after these disputes enter the courtrooms, it is necessary to address the issues before such disputes enter the Courts. Also, when the entity claiming protection against the infringement and the alleged infringing entity counter the mandatory settlement stage before entering legal proceedings, it will potentially decrease the number of suits in this regard, filtering the bullying entities and allowing only genuine and actual infringement claims.

There is also a necessity to adopt a proportionality test or suitable criteria to determine what amounts to trademark bullying, where such a settlement before filing the suit answers whether the requisites are satisfied. Thus, there is a necessity to potentially address this issue specifically, along with other

competitive practices, by ensuring the rights of the victims of such abuse of exclusive rights.

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