



**INTELLECTUAL PROPERTY RIGHT IN BRAND MANAGEMENT WITH
SPECIAL REFERENCE TO TRADEMARK**

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ABSTRACT

The management of brands is significantly impacted by the presence of intellectual property rights (IPR), wherein trademarks are considered a pivotal element. This abstract delves into the correlation between intellectual property rights and brand management, with a specific emphasis on trademarks. Trademarks are considered significant assets for enterprises, as they symbolise the unique characteristics of their offerings and establish brand awareness and customer allegiance. Legal protections are implemented to prevent unauthorised usage or infringement by competitors, thereby ensuring the safeguarding of the brand's reputation and market position. The proficient administration of trademarks necessitates the implementation of a well-thought-out strategy that encompasses registration, enforcement, and maintenance procedures to optimise its worth and exclusiveness.

This article analyses different strategies and optimal practices for brand owners to efficiently exploit and safeguard their trademarks, with a particular focus on trademark management. The significance of conducting thorough trademark searches, implementing monitoring systems, and enforcing measures to mitigate infringement risks and uphold brand integrity is underscored. It highlights the pivotal significance of intellectual property rights, specifically trademarks, in the domain of brand management

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INTRODUCTION

The mobility of intellectual property is a widely recognised phenomenon, and governments have made concerted efforts to achieve harmonisation of patent, copyright, and trademark laws on a global scale. The topic of intellectual property was addressed in significant agreements such as the Paris Convention, also known as the International Convention for the Protection of Industrial Property, as far back as 1883. The European Patent Convention of 1973 and the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property have both contributed to the reinforcement of international regulations about patents.

The emergence of the knowledge economy necessitates a transformation in the current and former management frameworks and methodologies. The contemporary economy, commonly referred to as the knowledge economy, necessitates a prompt comprehension and effective administration of knowledge-centric resources, including but not limited to innovations and know-how. The duration required for acquiring knowledge has emerged as a crucial metric for evaluating the efficacy of an organisation, corporation, governmental body, or industrial sector. The more compressed the timeframe, the greater the likelihood of achieving success.

The significance of intellectual property rights (IPR) has increased in response to the evolving trade landscape, which is marked by global competition, elevated innovation risks, abbreviated product cycles, the necessity for swift technological advancements, substantial investments in research and development (R&D), production and marketing, and the requirement for highly skilled human resources. The process of globalisation, characterised by a multilateral trade system and a newly emerging economic order, has led to the breakdown of geographical barriers to trade between nations. The escalating introduction of variables in global trade is resulting in increased complexities and uncertainties.

Numerous commodities and technological advancements are promoted and employed across multiple nations. The liberalisation of trade in goods and services has rendered intellectual property rights (IPR) more vulnerable to infringement, resulting in insufficient remuneration for knowledge creators.

TRADE MARK ACT, 1999

The Trademarks Act of 1999 has modernised the trademark law. A trademark is a distinctive emblem utilised to differentiate the merchandise presented for purchase or otherwise introduced into the market by one merchant from those of another. The safeguarding of trademarks in India

has been in effect for a period exceeding four decades, following the regulations stipulated by the Trade and Merchandise Mark (TMM) Act of 1958. India acceded to the World Trade Organisation (WTO) at its inception. One of the accords pertained to the protection of Intellectual Property Rights, as outlined in the TRIPS agreement. India became a signatory to the Paris Convention in December 1998.

The Trade and Merchandise Marks Act of 1958 underwent modernization in response to contemporary developments in trading and commercial practises, the growing globalisation of trade and industry, the desire to promote investment flows and technology transfer, the need for a simplified trademark management system, and the implementation of significant judicial decisions. To accomplish these objectives, the Trademarks Bill was formally introduced in the year 1994.

The aforementioned Bill indicated proposed modifications that were being deliberated by the Indian government, however, it failed to be enacted in 1994. A thorough examination was conducted of the current legislation in light of advancements in trading and commercial practices, as well as the growing global nature of trade and industry. The Trade Marks Act of 1999, which replaced the Trade and Merchandise Mark Act of 1958, was passed by Parliament and received the assent of the President on December 30th, 1999. This act is also known as the Trademarks Bill of 1999. The Act encompasses several significant features, including an expansion of the definition of infringement of a registered trademark. This expansion includes action against the unauthorised use of a mark that is confusingly similar, not only about the goods and services covered by registration but also concerning goods and services that are so similar that a likelihood of deception or confusion exists. Additionally, an action for infringement will be available against the unauthorised use of a mark concerning dissimilar goods if the mark is similar to a registered mark that is well known in India and the owner's interests are likely to be adversely affected. The new legislation has reinforced the solution for trademark infringement by granting the police the authority to confiscate infringing articles without the need for a warrant.

COMPETING RATIONALES FOR THE PROTECTION OF IPRS

Intellectual property laws serve the dual purpose of granting inventors exclusive rights to their creations while also enabling them to derive financial benefits from their artistic, scientific, and technological innovations for a specified duration. The aforementioned rights do not apply to the tangible medium in which the work is manifested, but rather to the intangible creation itself. Nations have implemented legislation to safeguard intellectual property for primarily two

rationales. The objective is to legally codify the ethical and financial entitlements of authors in their works, as well as the entitlements of the general public to access such works. The second objective pertains to the intentional promotion of creativity, dissemination, and application of its outcomes as a governmental policy. Additionally, it aims to foster equitable trade practices that would facilitate economic and social progress.

There is a widespread consensus that knowledge and innovation have significantly contributed to the economic development of nations. The economic progress attained by certain nations during the 1990s is observable. Furthermore, the increasing significance of the intellectual property and the emerging trend of worldwide commerce stimulated the establishment of a linkage between intellectual property regulations and trade law, culminating in the incorporation of the TRIPS Agreement as a constituent of the accords within the ambit of the multilateral trade discussions during the Uruguay Round. The maximisation of shareholder value by knowledge-intensive industries is indicative of the significant influence and importance of intellectual property.

The World Intellectual Property Report 2011 titled "The Changing Face of Innovation" is a recent publication by WIPO that elucidates the significance of intellectual property (IP) rights ownership in the global innovation landscape. The report highlights how innovating firms across the world have made IP rights ownership a pivotal component of their strategies. The Report suggests that the increase in global patent demand, which has surged from 800,000 applications in the early 1980s to 1.8 million in 2009, can be attributed to the heightened investments in innovation and the globalisation of economic activities. Consequently, intellectual property policy has gained prominence in the realm of innovation policy.

According to Francis Gurry, the Director General of WIPO, the growth of innovation is no longer exclusive to high-income countries. The technological disparity between affluent and less affluent nations is diminishing. Local and incremental innovations are equally significant in promoting economic and social progress as compared to global technological advancements.

Intellectual property assets are not only utilised in commercial transactions, but are also exchanged independently through online platforms for the assessment, acquisition, divestiture, and licencing of patents and other types of intellectual property. The management of intellectual property by its buyers and sellers is akin to the management of financial assets by investors in stocks, options, and other financial instruments.

Robust intellectual property rights facilitate informed decision-making among consumers regarding the dependability, efficacy, and safety of their acquisitions. The enforcement of

intellectual property rights serves to guarantee the authenticity and high quality of products, which is a recognised and expected standard among consumers. Intellectual property rights promote the assurance and peace of mind that consumers require and markets depend upon.

PROTECTION OF TRADEMARKS

A trademark is a recognisable symbol or emblem utilised by an individual, commercial entity, or other lawful body to differentiate its products or services from those of other entities and to signify to consumers that the products or services bearing the trademark originate from a singular source. A trademark is a form of intellectual property that commonly refers to a distinctive sign or symbol, such as a name, word, phrase, logo, symbol, design, image, or a combination thereof. Registered trademarks are associated with specific exclusive rights that can be enforced through legal action for trademark infringement. On the other hand, unregistered trademarks are subject to enforcement under the common law tort of passing off. Trademarks encompass a wide range of elements, such as devices, labels, brands, names, signatures, words, letters, numerals, shapes of goods, packaging, colours or combinations of colours, smells, sounds, and movements. The system must possess the ability to generate visual depictions.

The function of a trademark is to safeguard the proprietor's entitlements by granting exclusive usage rights for the identification of goods or services, or by authorising third-party usage in exchange for compensation. The registered proprietor or owner of a trademark can utilise it as a tool to prevent other traders from engaging in unauthorised use of the mark. As per Section 78 of the Indian Penal Code, it is deemed illegal for an individual to engage in the falsification of a trade mark, falsely apply a trade mark to goods, or possess any instrument to falsify a trade mark or apply a false trade description to goods. Such actions are punishable by imprisonment for a maximum term of two years, a fine, or both. Section 482 of the Indian Penal Code stipulates that any individual who utilises a counterfeit property mark shall be subject to imprisonment for a period of up to one year, or a fine, or both unless they can demonstrate that they acted without the intention to deceive. As per Section 28 of the aforementioned Act, the act of registering a trademark confers upon its proprietor the sole entitlement to utilise the mark in connection with the goods for which it has been registered. Additionally, the proprietor is authorised to seek legal recourse for any infringement of the trademark following the provisions of the Act. The owner of a trademark possesses the legal entitlement to initiate legal proceedings for infringement of this right and to secure appropriate remedies.

As per Section 29, the utilisation of a trademark by an individual who is not the registered

proprietor or a registered user of the trademark, and which is either identical or deceptively similar to a registered trademark, constitutes trademark infringement. The registered proprietor is entitled to take legal action or seek redressal for such infringement.

INFRINGEMENT

Legal actions can be initiated against the violation of registered trademarks, and in such legal proceedings, the registration may be deemed valid in its entirety, even after a considerable period has elapsed since the date of registration. Unregistered trademarks that have gained a reputation in India or are internationally recognised as well-known trademarks are eligible for protection against unauthorised use through passing-off action.

In a legal proceeding concerning trademark infringement, it is required that the plaintiff holds a registered trademark, while the defendant is found to be using a mark that is deceptively similar to that of the plaintiff. Additionally, the use of the mark by the defendant must pertain to the goods that are covered by the plaintiff's registered mark, and must not be accidental but rather in the course of trade.

BRAND MANAGEMENT

The term "brand" has evolved to encompass a multitude of interconnected concepts. In its most limited sense, the term pertains to the symbol utilised by a business entity to differentiate its merchandise. In its most comprehensive sense, the term is employed to denote the entirety of constituent components that comprise a commercial organisation. A recent survey, as reported by Interbrand, involved a group of professionals from the business and academic domains who were requested to identify their preferred brand and provide a rationale for their choice. The focus of this chapter is on the utilisation of marks or logos by an organisation to differentiate its products or services from those offered by its rivals.

The significance of brands can surpass the collective worth of tangible assets possessed by an organisation, as exemplified by Coca-Cola's preeminent status. The foundational basis of the aforementioned enterprise's technology can be characterised as a mere set of instructions or guidelines. The organisation possesses a highly effective methodology for maintaining the confidentiality and enhancing the competitive advantage derived from the recipe and the brand's enigmatic aura linked to the merchandise. However, as Mr Coke-Is-It ascertained, the soft drink corporation was unable to impede specific modes of utilisation. The aforementioned example can be considered the epitome of successful branding.

In contemporary times, there has been a growing emphasis on the extent to which businesses are acknowledging the significance of their brands, akin to other types of intellectual property. According to a survey conducted in 2004, a small number of Indian companies recorded their brand assets on their financial statements. This implies that executives are not neglecting the significance of their brands. According to a survey conducted in the United Kingdom, approximately one-third of the participants regarded their corporate trademarks as the most significant form of intellectual property.

The significance of brands in contemporary business has led to the recognition of the crucial role of brand maintenance in preserving and potentially augmenting the value of a company's intellectual property. Consequently, effective management of this aspect is imperative. The comprehensive analysis of branding and marketing issues that are frequently examined by analysts is outside the purview of this book. The present chapter has a limited scope, as it concentrates on the fundamental principles related to brand selection, brand communication to the market, and brand utilisation to ensure legal protection for the brands.

PURPOSE OF BRANDS

Branding strategies can be employed to enhance the visibility and recognition of a business entity or its particular offerings. A brand can serve as a means of endorsing a specific type of technology that may not be directly associated with a product or service. The main objective is to confer acknowledgement to the organisation or its merchandise or amenity that will generate a favourable and distinctive impression on its customers compared to its rivals. Consequently, the aforementioned action will prompt the client, whether consciously or subconsciously, to opt for the products or services offered by the enterprise over those of its competitors. The aforementioned process results in the generation of revenue and profits that are subsequently reinvested into the corporate governance function aimed at fulfilling the needs and expectations of shareholders, investors, and other relevant stakeholders.

Establishing a recognisable brand can provide a business with the advantage of commanding higher prices for its offerings, fostering customer loyalty, expanding its customer base, and introducing novel products or services. Licencing opportunities offered by brands can serve as a means of generating supplementary revenue streams from either associated or non-associated products or services. The act of licencing a brand could potentially serve as a defensive strategy. By granting permission to a competitor to utilise the brand while adhering to the enterprise's

quality and marketing regulations, the enterprise may establish a boundary around the competitor's operations and gain proximity to said operations.

An organisation that has successfully established a recognisable brand may have a competitive advantage in generating revenue for its operations. Utilising those brands constitutes an additional means of monetizing the intellectual property of the enterprise.

CONCLUSION

To conclude, the management of brands is significantly impacted by the presence of intellectual property rights, particularly concerning Trademarks are crucial resources that enable enterprises to establish a distinctive brand image and distinguish themselves in the market. The safeguarding of trademarks via intellectual property rights serves to protect the investments and endeavours of enterprises in establishing their brands, while simultaneously promoting competition and innovation.

Trademark protection confers exclusive entitlements to enterprises to employ their unique marks in association with their commodities or amenities, thereby impeding others from exploiting their reputation and positive image. The safeguarding of investments in brand development is incentivized by this protective measure, which assures businesses that their customers will be able to confidently identify their products or services.

In addition, the implementation of intellectual property rights within the realm of brand management serves to foster equitable competition by prohibiting the unauthorised utilisation of trademarks, which may result in consumer perplexity or a reduction in the brand's uniqueness. This cultivates a robust commercial environment wherein enterprises can engage in healthy competition predicated on the calibre and standing of their products or services, as opposed to resorting to deceitful or misleading tactics. Moreover, the scope of intellectual property rights in the domain of brand management transcends geographical boundaries via international accords and conventions, thereby furnishing worldwide safeguarding for trademarks. The ability for enterprises to broaden their brand's global reach is facilitated by the assurance that their trademarks will be acknowledged and safeguarded across diverse legal systems. In the swiftly changing digital terrain, where the establishment of brand recognition and reputation is of utmost importance, the safeguarding of intellectual property rights serves as a crucial mechanism for brand administration. They enable enterprises to establish and safeguard their brand identities, promote creativity, and establish equitable conditions for competition. The preservation of a dynamic and diverse

marketplace, as well as the sustained growth and prosperity of businesses, can be secured by upholding and implementing intellectual property rights.

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