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UNCONVENTIONAL TRADEMARKS: A COMPARATIVE ANALYSIS OF RECOGNITION, REGISTRABILITY AND ENFORCEMENT IN INDIA, UNITED STATES AND THE EUROPEAN UNION

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ABSTRACT

The rapid evolution of branding strategies in the modern marketplace has significantly expanded the scope of trademark law beyond traditional visual identifiers. This research paper examines the concept of unconventional trademarks, focusing on their recognition, registrability, and enforcement in three major jurisdictions: India, the United States, and the European Union. Unconventional trademarks, including sound, colour, shape, motion, and other sensory marks, represent a shift from form-based to function-based protection, where the primary consideration is the ability of a mark to distinguish goods or services in the minds of consumers.

The study adopts a doctrinal and comparative methodology, analyzing statutory frameworks, judicial decisions, and administrative practices in the selected jurisdictions. It highlights that while the United States adopts a flexible and liberal approach grounded in consumer perception, the European Union emphasizes clarity and precision, particularly in representation requirements. India, meanwhile, reflects a developing framework that recognizes certain unconventional marks but continues to face challenges due to statutory and procedural limitations.

The research further identifies key challenges associated with unconventional trademarks, including difficulties in graphical representation, the high evidentiary burden for proving distinctiveness, and the application of the functionality doctrine. It also explores emerging trends such as digital branding, multimedia marks, and the impact of technological advancements on trademark law.

Through a comparative analysis, the paper underscores the need for greater harmonization of legal standards across jurisdictions to facilitate global trade and ensure effective protection of

intellectual property rights. The study concludes by recommending reforms aimed at enhancing flexibility in representation, strengthening enforcement mechanisms, and promoting a balanced approach that protects innovation while safeguarding competition. Ultimately, the paper contributes to a deeper understanding of the evolving landscape of trademark law in the context of unconventional branding.

Keywords: Unconventional Trademarks, Distinctiveness, Graphical Representation, Comparative Trademark Law



CHAPTER 1 INTRODUCTION

1.1 **Background and Evolution of Trademark Law**

Traditionally, trademark laws were formulated with a focus on marks that could be visually perceived and were distinguishable as sources of the goods or services offered by an individual company from other competitors in the market. In most cases, trademarks have comprised words, logos, labels, and designs that can be depicted in graphical form. Trademarks have been established with the aim of protecting two major aspects: the goodwill associated with the business entity and preventing consumer confusion when purchasing products or services. However, changes within the current environment regarding global trade, technological advancements, and marketing trends require a new definition of trademarks.

Current branding practices involve more than traditional visual marks that are used in advertising and packaging. The use of sensory elements in marketing campaigns is becoming increasingly common. These sensory elements include sounds, colours, shapes, motions, and smells. Businesses utilize sensory elements to enhance the branding process through distinctive characteristics. A trademark should serve the purpose of identifying the source of goods and services to consumers. Therefore, unconventional trademarks should not deviate from the primary purpose of trademarks. In addition, trademark law has advanced to accommodate unconventional trademarks despite their challenges.

Unconventional trademarks have presented legal issues within trademark law due to the differences between conventional trademarks and unconventional trademarks. Trademark law has had to evolve to incorporate unconventional trademarks into its framework since the classical doctrines of trademark law cannot effectively address the complexities of unconventional trademarks.

1.2 **Meaning and Scope of Unconventional Trademarks**

Unconventional trademarks, which people call non-traditional trademarks, include all type of

marks that do not belong to standard categories of words and logos. The collection includes sound marks and colour marks and shape marks and motion marks and holograms and smell



and taste marks which exist in particular legal systems. Unconventional marks enable sensory experiences beyond visual perception because they present more abstract designs than standard trademarks do.¹

The essential trait that defines an unconventional trademark enables it to function as a source identifier because it does not meet the requirements of traditional trademark forms. The specific jingle of a brand and the unique design of a product both function as origin indicators when they have developed distinctiveness in consumer perception. The distinctiveness requirement determines how far such marks can extend because it acts as the fundamental element that protects trademark rights.

The legal system faces challenges when it tries to protect unconventional trademarks through existing trademark laws. The marks face registration issues because their visual representation needs to be proven through specific evidence which shows their unique qualities. All marks, including smell marks and taste marks, present challenges because people experience these sensory elements through different personal interpretations. The complexities of this situation demonstrate the requirement for a specialized legal system which must achieve two goals of protecting new ideas and maintaining clear legal principles.

1.3 Rationale for Protection of Unconventional Trademarks

The protection of unconventional trademarks is grounded in the same fundamental principles that underpin traditional trademark law, namely the prevention of consumer confusion and the protection of business goodwill. In an increasingly competitive global market, businesses invest substantial resources in developing unique brand identities that resonate with consumers on a sensory level. Unconventional trademarks enable firms to differentiate their products and services in ways that extend beyond visual branding.²

The acknowledgment of nontraditional trademarks generates fair competition because it enables businesses to receive advantages from their branding expenditures. Companies need to develop new marketing methods because they want to create distinct product identities through unconventional approaches. The protection of these marks helps consumers make better

¹ William M. Landes & Richard A. Posner, Trademark Law: An Economic Perspective, 30 J.L. & Econ. 265,

265–66 (1987).

² Agreement on Trade-Related Aspects of Intellectual Property Rights art. 15, Apr. 15, 1994, 1869 U.N.T.S. 299.



purchasing decisions while it also decreases their risk of confusion. The extension of trademark protection to nontraditional marks creates problems because it leads to excessive protection and potential creation of market monopolies. The exclusive rights granted to businesses for specific sensory elements, which includes colors and product designs, create barriers that prevent market competition while restricting access to vital market elements. Legal systems need to establish precise limits for protection rights because excessive protection can harm both market competition and technological progress.

1.4 Statement of Problem

People are starting to understand unconventional trademarks more now, but different legal systems still have problems with how they handle these trademarks. The criteria for recognition, registrability, and enforcement vary significantly between countries, which creates a fragmented legal system. Businesses that operate in multiple legal areas face difficulties because they need to understand different legal requirements and standards which exist in each area.³

The main problem exists because unconventional marks need proper representation. Certain jurisdictions have relaxed their need for graphical representation while other jurisdictions still require traditional methods. The different standards create confusion about which marks can be registered because they include marks that need special visual representation methods.

The legal system becomes more complex because distinctiveness needs to be proven and functionality doctrine needs to be applied. Courts and trademark offices often adopt differing approaches to these issues which leads to different results. The enforcement of unconventional trademarks creates special difficulties because proving infringement or dilution needs more effort than proving these things for regular trademarks.

1.5 Research Objectives

The main goal of this research study exists to conduct an in-depth study of the different legal systems that regulate unconventional trademarks across India and the United States and the European Union. The study aims to investigate how various legal systems provide recognition

³ Qualitex Co. v. Jacobson Prods. Co., 514 U.S. 159, 162–63 (1995).



and protection for unconventional trademarks while focusing on the requirements needed for trademark registration and the methods used to enforce trademark rights. The research study intends to identify crucial commonalities and distinctive elements that exist between these two legal systems while assessing their capability to resolve issues related to unconventional trademark usage. The study analyzes judicial decisions and statutory provisions along with administrative practices to develop an in-depth understanding of current trademark law developments.⁴

1.6 Research Questions

The research follows its main objectives through specific research questions.

The first question asks how India the United States and the European Union define and establish recognition for unconventional trademarks.

The second question asks about the different rules which determine whether marks can be registered in various jurisdictions.

The third question investigates the methods used to protect unconventional trademarks and the difficulties which emerge during this process.

The final question examines whether jurisdictions can be unified to develop a worldwide legal system which operates with greater uniformity.

1.7 Research Methodology

The research adopts a doctrinal and comparative methodology. The team conducts a comprehensive examination of legal statutes, judicial decisions, and academic publications that pertain to non-traditional trademark rights in chosen legal systems. The comparative approach enables the identification of common principles and divergent practices, thereby facilitating a critical evaluation of existing legal frameworks.

The analysis uses secondary sources which include journal articles and reports and commentaries to provide additional information and contextual understanding. The study also

⁴ Case C-273/00, Sieckmann v. Deutsches Patent- und Markenamt, 2002 E.C.R. I-11737.



draws upon international instruments to understand the broader framework within which national laws operate.

1.8 Scope and Limitations

The research investigates uncommon trademark systems by studying three legal systems which exist in India, the United States, and the European Union. The study restricts itself to these regions because they show different legal systems but it cannot investigate additional areas because of its time limitations and research boundaries.

The study investigates legal and doctrinal information although it conducts limited research through actual data collection. The selected jurisdictions only permit the study of taste marks which represent one type of unconventional trademark. The study intends to present an all-encompassing study which delivers a systematic evaluation of its research topic despite existing research constraints.



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CHAPTER 2

CONCEPTUAL FRAMEWORK OF UNCONVENTIONAL TRADEMARKS

2.1 Introduction to Unconventional Trademarks

The conceptual framework of unconventional trademarks emerges from the gradual expansion of trademark law beyond its traditional confines. Trademarks originally recognized only elements that people could see and create visual representations through graphical elements such as words and logos and symbols. Yet as markets developed and branding methods advanced more complexly the law started to recognize that distinctive elements which could identify the source of products or services extended beyond visual elements. The discovery of this fact established the groundwork for unconventional trademarks to develop which included various types of sensory and unconventional identification methods.

Unconventional trademarks are thus best understood as those marks that deviate from traditional forms yet perform the essential function of indicating origin. The system establishes a new approach to rights protection which shifts away from protection based on visual appearance toward protection based on actual ability to identify products through their signage. The current situation requires trademark authorities to review fundamental trademark rules which include distinctiveness and representation and the ability to function.⁵

2.2 Classification of Unconventional Trademarks

Non-conventional trademarks, which are not common in practice and cannot easily be categorized into any existing trademark classes, may be classified according to the type of sensory impression conveyed by the mark, such as visual or auditory. Examples of non-conventional marks that produce visual effects are color trademarks, shape trademarks, motion trademarks, and holographic marks. While these marks are unconventional, they still convey some kind of visual effect that renders them relatively tangible. Color trademarks are trademarks formed using one or more colors within a defined environment. Similarly, shape

⁵ Graeme B. Dinwoodie & Mark D. Janis, *Trademarks and Unfair Competition: Law and Policy* 19–21 (5th ed. 2018).



trademarks are non-conventional trademarks that consist of the shape of the product and/or packaging.

Non-conventional marks that are not visual include sound trademarks, smell trademarks, and taste trademarks. Non-conventional marks of sound have been accepted to a relatively large extent since they can be presented using musical notes or recordings. On the other hand, smell and taste non-conventional trademarks are highly controversial. This is because they create considerable difficulties when trying to represent them. The reason why the classification of non-conventional trademarks is important is because the classification reveals the level of acceptance that each type of trademark gets in terms of law.

The classification of non-conventional trademarks also helps in highlighting the changing nature of trademarks. While certain types of non-conventional trademarks have been largely accepted, others have not yet been fully recognized by most jurisdictions.

2.3 Distinctiveness and the Requirement of Secondary

Meaning

The fundamental requirement for trademark protection exists because distinctive elements define the trademark system, which protects both typical and nonconventional trademarks. The protection of a mark exists only when it can show which products or services belong to a particular business and which products or services belong to other businesses. In the context of unconventional trademarks, establishing distinctiveness requires proof through evidence which exceeds normal standards because the mark lacks inherent distinctive qualities. The process of establishing distinctiveness for unconventional trademarks occurs through their actual usage which markets them to consumers, a process known as secondary meaning.

The process occurs when the relevant public associates a particular mark with a specific source, even if the mark lacks inherent distinctive qualities. The initial status of a colour or product shape exists as a non-trademark element, but through continuous consumer use, it transforms into a recognized trademark. The requirement of secondary meaning reflects the functional approach of trademark law, which prioritizes consumer perception over formal characteristics. The process requires applicants to show powerful proof, which demonstrates that their mark

has reached established distinctiveness, according to its proof requirements. The evidence



requirements for this case need to include market surveys, sales figures, advertising expenditures, and all other consumer recognition indicators.⁶

2.4 The Requirement of Representation and Its Evolution

The requirement of trademark representation has emerged as a challenging point of disagreement for unconventional trademark protection. Trademark law established a requirement that marks must achieve graphical representation through visual representations which show their complete appearance. The requirement that marks must be shown through visual representation created major difficulties for marks which include non-visual elements such as smells and tastes.

The graphical representation requirement prevented certain marks from receiving protection because their existence needed to be shown through methods other than unchanging visual displays. The judicial system resolved this matter through court decisions which demanded that marks needed to achieve exacting standards of clarity and precision when being presented. The established criteria for these cases required that a representation should possess self-sufficiency because it needed to be understandable throughout its entire life while maintaining its objectivity.⁷

The requirement now allows more flexible implementation because European Union jurisdictions have started using technology-neutral representation methods instead of their previous requirement for exact graphical representation. The traditional requirements need revision because they cannot meet modern technological needs. The protection boundaries which protect intellectual property rights must be defined in a way that both authorities and the public can easily understand.

2.5 The Functionality Doctrine

The functionality doctrine functions as a fundamental principle which determines the boundaries of trademark protection for nontraditional trademark types. The doctrine states that functional characteristics cannot receive trademark protection because this would create

permanent control over essential product components which customers need to use the product.

⁶ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 163 (1995).

⁷ Case C-273/00, *Sieckmann v. Deutsches Patent- und Markenamt*, 2002 E.C.R. I-11737.



This principle ensures that trademark law does not encroach upon the domain of patent law or hinder competition.

Functionality exists in two distinct categories which include utilitarian and aesthetic functionality. Utilitarian functionality refers to features that are necessary for the operation or performance of a product, while aesthetic functionality pertains to features that contribute to the product's commercial appeal. The functionality doctrine becomes essential for evaluating unconventional trademarks when dealing with cases that involve shape and colour marks because designers must establish their trademarks through two competing requirements which are functional use and distinct trademark identity.

A product shape which improves performance and decreases production expenses will receive functional status, which makes it impossible to obtain trademark rights. Products may use certain colours as functional elements when those colours reveal particular product attributes. The functionality doctrine functions as a protective mechanism which prevents excessive trademark protection while protecting the interests of both trademark holders and businesses that compete with them.⁸

2.6 International Legal Framework and Harmonisation

International legal instruments which aim to create unified intellectual property regulations among different regions have shaped the evolution of nontraditional trademark protection methods. The TRIPS Agreement and similar treaties established fundamental requirements which countries must follow to protect trademarks through their right to protect distinctive signs that identify goods or services. The instruments establish general guidelines which do not provide complete solutions for nontraditional trademark protection because national authorities have significant power to determine their implementation. The legal systems of different countries create different levels of trademark protection because they reflect distinct legal traditions and national policy frameworks. International collaboration and ongoing discussions about trademark law continue to develop new branding methods through their influence on global trademark law development. The global trade framework requires intellectual property rights protection to become standardized through harmonization efforts which serve this

purpose. The unique nature of unconventional trademarks creates enforcement and recognition

⁸ *TraFFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 29–30 (2001).



challenges which make it difficult to establish consistent treatment standards for these trademarks.

2.7 Conclusion

The conceptual framework of unconventional trademarks shows how traditional principles and modern innovations create an active relationship between the two. The core goals of trademark law have remained constant yet the expansion of trademarkable materials has created a need for trademark law to reassess its essential principles which include distinctiveness and representation and functionality. Unconventional trademarks create new challenges for trademark law because they require legal systems to develop new rules that match current business practices.

The acknowledgment of these marks creates key problems between two areas which include trademark protection limits and the need to maintain market competition. The conceptual issues discussed in this chapter form the foundation for a deeper analysis of how different jurisdictions approach unconventional trademarks which will be explored in the subsequent chapters..



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CHAPTER 3

LEGAL FRAMEWORK IN INDIA

3.1 Introduction

The Indian legal system for handling unconventional trademarks has developed from its original strict limitations toward a modern system which permits greater flexibility. Indian trademark law has developed through globalization and advanced branding techniques to recognize non-traditional marks because of these international developments. Unconventional trademark systems face multiple legal obstacles because their distinct nature creates difficulties during their recognition process and their registration process and their enforcement process. Unconventional trademark protection in India exists through three main sources which include statutory interpretation and judicial innovation and administrative practice. The legislative framework defines trademarks through broad terms which the judicial system has used to recognize unconventional marks based on how courts view them and how the Trademark Registry accepts new branding methods.

3.2 Statutory Framework: The Trade Marks Act, 1999

The Trade Marks Act of 1999 serves as the fundamental law for trademark protection in India because it establishes complete legal procedures for trademark registration and protection. The Act defines a trademark in Section 2(1)(zb) as a mark which can be graphically shown and which helps to identify different goods or services that belong to different people.⁹ The definition extends its reach to cover every product design and packaging style and all color combinations which results in the recognition of certain unconventional trademark categories. The addition of these elements to the statutory definition created a substantial change when compared to previous laws because they restricted their application to specific cases only. The Act establishes an international definition through its inclusive definition which fulfills all requirements of the TRIPS Agreement. The graphical representation requirement determines whether unconventional marks can be registered because it restricts non-visual trademarks which include smells and tastes from obtaining registration.

⁹ Trade Marks Act, No. 47 of 1999, § 2(1)(zb) (India).



The Act establishes trademark definition standards while simultaneously specifying registration requirements which include the need for distinctiveness and the absence of any absolute or relative grounds for refusal. The provisions apply to both conventional and unconventional marks yet their implementation in the latter category creates particular difficulties.

3.3 Recognition of Unconventional Trademarks in

India

The process of recognizing unconventional trademarks in India has progressed through administrative and judicial developments which created the necessary framework for this recognition. Sound marks represent the most widely accepted type of unconventional marks among all existing unconventional marking systems. The registration of the Yahoo yodel trademark represents a major achievement because it established recognition for non-visual trademarks in India. The Indian Trademark Registry revealed its readiness to accept new branding methods as long as those methods fulfilled all established legal requirements through this particular development.

Indian legislation recognizes shape marks when a product or its packaging has a unique non-functional design. Trademark law allows for the registration of color combinations but single color marks face greater challenges because they must meet a stricter requirement for distinctiveness.¹⁰

The recognition of certain types of unconventional trademarks remains limited despite the progress made in recent years. The principal challenge arises from the need to provide graphical representation which proves extremely challenging for such marks. The protection of unconventional trademarks in India continues to be determined by both practical limitations and ongoing changes in legal understanding.

3.4 Registrability Criteria: Distinctiveness and **Graphical Representation**

Unconventional trademarks in India face registrability limitations which follow the same basic rules that govern traditional marks through their two essential requirements of distinctiveness and graphical representation. The assessment of distinctiveness depends on whether the mark can show the origin of products and services while creating separation from competing

¹⁰ Yahoo!, Inc.'s Application, (2011) (India Trade Marks Registry) (sound mark registration).



offerings. To prove distinctiveness for unconventional trademarks applicants must provide proof of acquired distinctiveness or secondary meaning.¹¹

The need for visual representation has created major challenges which prevent the registration of nontraditional trademarks. The mark must be represented in a manner that is clear, precise, and capable of being recorded in the register. This requirement guarantees that protection boundaries stay intact while both authorized personnel and the general public can access them. The system restricts which marks can receive registration because it requires marks to have visual representation. Indian authorities have adopted a pragmatic approach in certain cases, allowing representations such as musical notations or digital files for sound marks. The lack of specific legal requirements for unconventional mark representation has resulted in unpredictable and unstandardized practices.

3.5 Judicial Approach to Unconventional Trademarks

The Indian judiciary has established the legal framework for unconventional trademarks through its judicial interpretation of statutory provisions which it applied to current business conditions. The courts have established a forward-thinking method which establishes the need to protect new branding elements while maintaining core trademark law principles. The courts assess unconventional trademark applications by requiring proof that the marks are both unique and non-functional. Judicial decisions have established that experts must establish a proper equilibrium between safeguarding trademark rights and stopping businesses from claiming ownership of essential competitive elements.

Indian courts exercise restraint when deciding to provide protection for certain types of unconventional marks because they find it challenging to prove their case. The cautious approach demonstrates an understanding of how excessive trademark protection creates risks which must be protected to ensure competitive market conditions.¹²

3.6 Enforcement of Unconventional Trademarks

In India, the enforcement of unconventional trademarks follows the same basic rules which apply to standard trademark infringement and passing off cases. The registered mark grants

¹¹ Koninklijke Philips Elecs. NV v. Remington Consumer Prods. Ltd., (2002) UKHL 40 (applied in Indian jurisprudence on functionality).

¹² Cadila Health Care Ltd. v. Cadila Pharm. Ltd., (2001) 5 S.C.C. 73 (India).



exclusive rights to the owner who can pursue legal action against any unauthorized use of their mark. The available remedies for this situation include injunctions and damages and account of profits.

The enforcement of unconventional trademarks faces specific difficulties because proving infringement requires different methods than traditional trademarks. Unconventional marks require more detailed methods to assess similarity and determine the likelihood of confusion while traditional marks allow visual comparison between marks. In sound marks cases, the court must evaluate auditory similarity through an assessment that inherently includes subjective elements.

Passing off actions also play a significant role in the protection of unregistered unconventional trademarks. The plaintiff needs to prove three things: goodwill exists, misrepresentation happened, and damage occurred. The additional protection creates extra security for the trademark rights holders, but they still face major challenges to prove their case especially when dealing with lesser known trademarks.

3.7 Challenges and Limitations in the Indian Framework

The Indian legal system faces multiple difficulties even after making progress in recognizing non-traditional trademarks. The main challenge stems from the absence of comprehensive legal rules and regulations which should govern non-traditional trademark applications. Organizations now depend on public officials through their capacity to make choices and on court decisions which might create unpredictable results.

The ongoing need for graphical display remains an important obstacle which affects non-visual trademark applications. Although technological progress provides fresh methods for showing our work the existing legal system has not yet caught up with these recent innovations. The extensive proof requirements necessary to demonstrate trademark uniqueness present a significant obstacle for businesses that want to obtain protection for their non-traditional trademarks.

The worry arises from the possibility that exclusive rights will extend to fundamental elements which include colors and shapes that businesses need to maintain efficient competition. Indian



trademark law faces its most significant challenge in finding an appropriate solution between protecting trademarks and enabling market competition.

3.8 Conclusion

The Indian legal system for unconventional trademarks demonstrates continuous change because it requires legal protection to support innovative developments. The Trade Marks Act 1999 establishes a general framework, yet actual enforcement of unconventional trademarks depends on court decisions and government procedures. India has achieved substantial advancement toward recognizing specific types of unconventional trademarks, especially through its acknowledgment of sound and shape marks. The process of establishing distinctive features through formal protection methods faces multiple obstacles, which include difficulties in proving representation and enforcing rights. The development of branding needs organizations to establish specific guidelines together with a unified legal system that handles the challenges of unconventional trademarks.



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CHAPTER 4

LEGAL FRAMEWORK IN THE UNITED STATES

4.1 Introduction

The United States has become one of the most advanced regions to acknowledge and safeguard nontraditional trademarks. The United States trademark system provides more operational and adaptable protection for trademarks because it does not restrict trademark rights to visual marks, which is the common practice of most legal systems. The approach evaluates how well a mark functions to show the origin of products and services instead of assessing its physical appearance. The United States legal system serves as a trailblazer because it grants trademark protection to sensory marks and nontraditional trademark designs.

The existence of nontraditional trademark protection in the United States stems from judicial rulings and statutory law that permits flexible interpretation. Courts have consistently interpreted trademark law in a manner that accommodates evolving commercial practices, thereby allowing a wide range of marks to qualify for protection. The United States has become the top jurisdiction for recognizing nontraditional trademarks because of its open approach to trademark protection.

4.2 Statutory Framework: The Lanham Act

The United States trademark system operates under its main governing law, which is the Lanham Act that Congress passed in 1946. The Act defines a trademark broadly as any word, name, symbol, or device, or any combination thereof, used to identify and distinguish goods or services and to indicate their source.¹³ The definition permits identification of unconventional trademarks through methods which extend beyond actual trademarking practices. The definition permits courts and the United States Patent and Trademark Office to apply trademark protection standards through their discretion to determine protection. The Lanham Act enables any sign that can distinguish between products or services to receive trademark protection based on its actual usage as a distinctive mark. This functional approach has been instrumental in the recognition of non-traditional marks such as sounds, colours, and trade dress.

¹³ Lanham Act, 15 U.S.C. § 1127 (2018).



The Lanham Act defines trademarks while it establishes registration requirements which include distinctiveness and non-functionality criteria. These requirements apply equally to conventional and unconventional marks because they ensure that expanded trademark protection does not affect core trademark law principles.

4.3 Recognition of Unconventional Trademarks in the United States

The United States has allowed multiple unusual trademark types to become official trademarks because its legal system has advanced beyond traditional limits. Sound marks have become recognized as the first type of non-traditional trademark that people use throughout the world. The NBC chimes serve as one of the first sound marks that companies registered because U.S. trademark law has allowed businesses to use audio elements as brand identifiers since its inception.

Colour marks have received legal recognition when their holders establish both distinctive characteristics and non-functional features. The legal system of the United States permitted trademark registrations of colour marks which represented a major shift from established trademark rules. Trade dress protection extends to product packaging and overall design because these elements function as brand identification tools.

The U.S. legal system permits trademark registration of scents which serves as an unconventional mark yet such cases occur infrequently. The general acceptance of unconventional trademarks shows how marks should function as identifying sources according to consumer perception.

4.4 Registrability Standards: Distinctiveness and Secondary Meaning

The United States determines whether unconventional trademarks can be registered based on their distinctive character. Marks are classified along a spectrum ranging from inherently distinctive to descriptive and generic. Descriptive marks require proof of secondary meaning

which is known as distinctiveness to obtain registration whereas inherently distinctive marks require no additional proof.

The requirement of secondary meaning² exists as a vital necessity for unconventional trademarks. Many non-traditional marks, such as colours and product designs, are not inherently distinctive and must therefore demonstrate that consumers associate the mark with



a specific source. The requirement ensures that trademark protection only exists for marks which have gained the ability to identify their origin.

The U.S. legal system requires courts to focus on how consumers perceive products. Courts assess distinctiveness based on the likelihood that consumers will recognize the mark as an indicator of origin. The approach enables different types of marks to satisfy trademark law requirements because of its flexible way to determine distinctiveness.¹⁴

4.5 The Functionality Doctrine in U.S. Trademark

Law

The functionality doctrine serves as the primary constraint which limits trademark protection throughout the United States. The doctrine defines functional attributes as features which cannot receive trademark protection because such protection would deliver companies perpetual control over these features which must remain open for use by their opponents. The principle establishes essential value because it determines how unique trademarks should be evaluated through their distinctive elements and functional elements. The doctrine controls two types of functionality which include both utilitarian and aesthetic functionality. Utilitarian functionality describes product features which customers need to operate the product while aesthetic functionality describes product features which determine its market value. The courts maintain a legal precedent which prevents the protection of functional elements regardless of their unique characteristics. The functionality doctrine prevents trademark law from creating competitive disadvantages because it protects patent rights. The approach establishes intellectual property rights protection as equal to innovation development which serves as the fundamental aim of the policy.

4.6 Judicial Approach and Landmark Decisions

The judicial outcomes from court cases have been essential to developing procedures for identifying and safeguarding nontraditional trademarks within the United States. The Supreme Court of the United States confirmed in *Qualitex Co. v. Jacobson Products Co.* that a single color can serve as a trademark when it has gained distinctive recognition and its functional use has been proved.¹⁵ The decision established a new standard for trademark law by allowing non-

traditional trademarks to receive protection under the Lanham Act. The case of *Wal-Mart*

¹⁴ *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9–11 (2d Cir. 1976).

¹⁵ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 162–63 (1995).



Stores, Inc. v. Samara Brothers, Inc. dealt with the legal requirements for protecting product design through trade dress rights. The Court determined that product design needs to acquire secondary meaning to receive legal protection because it cannot have inherent distinctive status.¹⁶ The decision explained how distinctiveness principles apply to unconventional trademarks and showed that consumer perception is crucial to trademark assessment.

4.7 Enforcement of Unconventional Trademarks

The United States applies identical rules for enforcing unusual trademarks as it does for enforcing standard trademarks. Trademark owners may bring actions for infringement, dilution, and unfair competition under the Lanham Act. The key issue in such cases is whether the defendant's use of a mark is likely to cause confusion among consumers. The process of proving likelihood of confusion through unconventional trademarks requires additional proof methods. In sound mark cases, courts need to evaluate auditory similarities, while trade dress cases require them to examine the complete visual impact that results from a product's design. U.S. courts maintain their ability to modify existing legal standards according to the special requirements of unusual trademark cases. Famous unconventional trademarks receive protection from dilution, which serves as a vital method of safeguarding their trademark rights. This protection mechanism stops unauthorized parties from using a mark, which would decrease its unique qualities and damage its public image, even when there is no consumer confusion. The existence of these remedies demonstrates that the United States provides extensive trademark protection through its legal system.

4.8 Conclusion

The United States legal system permits multiple forms of nontraditional trademark protection which courts have developed through their judicial decisions and protect consumer rights. The Lanham Act provides a broad and adaptable foundation that has enabled the recognition of a wide range of non-traditional marks. The United States has built a strong system to protect nontraditional trademarks through landmark court decisions and its ongoing administrative procedures. The U.S. approach to trademark law shows multiple insights about how legal systems need to change for modern branding requirements because the system faces challenges with functionality and evidentiary standards.

¹⁶ Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205, 212–13 (2000).



CHAPTER 5

LEGAL FRAMEWORK IN THE EUROPEAN UNION

5.1 Introduction

The European Union (EU) has developed a distinctive and sophisticated framework for the protection of trademarks, which includes protection of nontraditional trademarks. The EU functions under a unified legal framework that integrates its regional laws with the legal systems of its member states, which differs from countries that depend on their national statutes. The dual system of the EU has established its position as a primary force that shapes contemporary trademark legislation through its impact on nontraditional trademark protections.

The EU creates a system for handling unconventional trademarks which balances between providing legal certainty and enabling flexible responses to new situations. The organization maintains its strict requirements for mark representation, yet it has shown readiness to change its rules because of technological progress and emerging business methods. The EU framework shows how legal systems can handle unconventional trademarks through flexible systems, which create straightforward and predictable outcomes.

5.2 Statutory Framework: EU Trade Mark Regulation

The EU Trade Mark Regulation serves as the main legal framework which establishes a unified system for trademark protection throughout the European Union member countries. The Regulation defines an EU trademark as any sign which can identify the products or services of one business from those of another business and which can be displayed in a way that lets official organizations and the public understand the precise details of what is protected.¹⁷

The current definition establishes a new standard that requires trademark registration to operate without the need for graphical representation, which existed in previous legal systems. The removal of the graphical representation requirement has been a transformative development, allowing for greater flexibility in the registration of unconventional trademarks. The system

¹⁷ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark art. 4, 2017 O.J. (L 154) 1.



enables digital representation of marks through various methods according to its technologically neutral design.

The Regulation establishes registration requirements which include distinctiveness and the existence of grounds that prevent approval. The law applies to all trademark categories through these provisions, which establish standardized procedures for legal enforcement.

5.3 Evolution of the Representation Requirement

The European Union trademark system is defined by its particular approach to the representation requirement. EU law required trademarks to have graphical representation capabilities which created major difficulties for nontraditional trademarks. The key issue of this matter was first resolved in the main ruling of *Sieckmann v. Deutsches Patent- und Markenamt* which established strict guidelines for trademark representation through the Court of Justice of the European Union.¹⁸

The *Sieckmann* principles require a mark to be displayed through a representation which provides clear and exact information that exists as complete content and which people can easily understand and which remains constant and should be evaluated based on established standards. The legal system required these standards which are known as "Sieckmann criteria" to ensure trademark systems worked effectively while providing legal certainty. The registration process for unconventional marks faced major challenges because these marks required special handling which included the registration of marks that did not have standard graphical representations such as smells and tastes. The EU established new laws which resulted in the elimination of the requirement to use graphical representations for trademarks. The current system allows trademark representation through any suitable method which uses existing technology as long as the representation achieves both clear and precise standards. The reform has expanded trademark registration possibilities while demonstrating the European Union's dedication to updating its legal system according to contemporary needs.

5.4 Recognition of Unconventional Trademarks in the

EU

The European Union has advanced its recognition process for various unconventional trademarks since it began relaxing its requirements to show trademarks. The current system

¹⁸ Case C-273/00, Sieckmann v. Deutsches Patent- und Markenamt, 2002 E.C.R. I-11737.



allows sound marks to be registered through audio files which eliminates the need for musical notation. The recognition of motion marks and multimedia marks and holograms shows how branding techniques have developed into new methods for creating brand identities.

The registration process for unconventional trademarks has advanced but certain trademark categories still present registration challenges. The representation of smell and taste marks faces major difficulties because their requirements must be demonstrated through methods that show direct clarity and exact precision and objective truth. The EU system now provides greater flexibility than its previous version yet it still restricts particular mark types through its existing evaluation processes.

The European Union approaches unconventional trademarks through its method which combines cautiousness with willingness to explore new possibilities. The organization has adopted new technologies while extending protection rights yet it preserves strict criteria which safeguard the trustworthiness of the trademark database. The system requires this equilibrium to maintain its core principles while eliminating any upcoming risks.

5.5 Registrability Criteria: Distinctiveness and Precision

However, distinctiveness remains a necessary criterion of registration in the EU, which applies to unconventional trademarks. It means that a mark should serve as a source distinguisher for the goods and services of one undertaking from the goods and services of others. In regard to unconventional trademarks, distinctiveness usually requires proving acquired distinctiveness since, most likely, such marks are non-distinctive at first glance.

In addition, a high importance of consumer perception should be noted in the context of the EU criteria of distinctiveness. Namely, the crucial question is how consumers would view the mark when deciding whether it is an indication of the source. Such an approach is consistent with the main purposes of trademark law.

The requirement of accuracy of depiction is of key importance in the case of EU registration of unconventional trademarks despite removing the requirement of graphical depiction of the

mark. It means that the precise presentation of the mark allows setting clear boundaries for the protection while helping third parties understand the scope of exclusive rights granted to owners.



Thus, although the EU requirements of representation and distinctiveness prevent registration of some unconventional marks, they promote legal certainty in the field under discussion.

5.6 Judicial Approach and Key Decisions

Judicial decisions have played a crucial role in shaping the EU's approach to unconventional trademarks. The *Shield Mark BV v. Joost Kist* decision together with the Sieckmann case established the sound mark registration requirements.¹⁹ The Court determined that sound marks need to achieve soundmark registration through their complete display and accurate display which includes musical notation for their representation. The EU system of representation together with its legal certainty measure establishes the foundation which EU member states follow during their decision-making process. The judiciary has established a practice which enables people to access the trademark register together with its complete record while they develop new types of trademark protection. The judicial decisions provide essential direction to both trademark applicants and governmental agencies which leads to the creation of a unified legal system.

The courts exercise caution when they decide to give mark protection because this practice can lead to competitive disadvantages and create legal ambiguities. The EU trademark law system demonstrates a cautious method which tries to protect trademark rights while maintaining fair competition between trademark owners and their market rivals and consumers.

5.7 Enforcement of Unconventional Trademarks in the EU

The European Union applies identical rules to protect unconventional trademarks as it does to protect traditional trademark rights. Trademark owners possess the right to initiate legal proceedings against unauthorized use of their trademarks which includes both identical and similar marks that create consumer confusion.²⁰

The European Union trademark system gives trademark owners a major benefit because its unifying system lets them protect their rights throughout all member nations. The enforcement process for unconventional trademarks will face difficulties because it needs to establish both

similarity and confusion likelihood. For example, sound and motion marks need special

¹⁹ Case C-283/01, Shield Mark BV v. Joost Kist, 2003 E.C.R. I-14313.

²⁰ Joined Cases C-53/01 to C-55/01, Linde AG v. Deutsches Patent- und Markenamt, 2003 E.C.R. I-3161.



evidence which requires particular sound and motion analysis to determine their similarity. The EU legal system protects famous trademarks from trademark infringement and brand dilution according to its established regulations. The protection which grants rights to use distinctive marks prevents others from using those marks in ways that would harm their unique identity and market presence.

5.8 **Conclusion**

The European Union created an extensive system to protect unconventional trademarks which continues to grow and develop. The EU demonstrates its commitment to trademark protection through its legislative changes and judicial decisions while maintaining clear and precise legal standards. The removal of the graphical representation requirement represents a significant step forward in accommodating unconventional marks. The current situation presents difficulties because some types of marks lack proper representation and distinctive features. The EU system shows how to balance innovative activities with regulatory requirements which can help other regions develop their own systems.



CHAPTER 6

COMPARATIVE ANALYSIS, CHALLENGES, EMERGING TRENDS AND FUTURE DIRECTIONS

6.1 Introduction

The comparative study of unconventional trademarks across India, the United States, and the European Union reveals a complex legal system which responds to policy needs through its approval of technological progress. While all three jurisdictions recognize the importance of protecting non-traditional marks, their approaches differ significantly in terms of recognition, registrability, and enforcement. Different organizations interpret fundamental trademark rules which involve distinctiveness and representation and functionality in different ways. The growing acceptance of unconventional trademarks as an authentic intellectual property type demonstrates that both systems have reached a common understanding.

This chapter undertakes a comparative analysis of these jurisdictions, followed by an examination of the key challenges associated with unconventional trademarks. The study investigates current developments while predicting future trademark law trends that will emerge in this specific area.

6.2 Comparative Analysis of Recognition of Unconventional Trademarks

The three jurisdictions demonstrate different approaches to recognizing nonstandard trademarks. The United States adopts the most liberal approach to recognizing nontraditional marks which include sound marks and color marks and trade dress marks and scent marks. The system provides broad recognition because the Lanham Act allows flexible interpretation and trademarks functionality serves as the primary method to identify product origin.

The European Union establishes a structured system which requires specific standards for precise trademark representation. The EU now accepts more unconventional trademarks than before but it still maintains strict regulations which create legal protection. The registration

process remains challenging for certain mark types because smell marks and taste marks maintain their registration difficulties.



The two approaches to trademark recognition find India positioned between their two extremes. The Trade Marks Act 1999 establishes a legal framework which allows nontraditional trademarks to gain recognition yet the system has developed through a cautious implementation process. The system recognizes sound marks and shape marks but other categories need further development. The system shows cautious behavior because it needs both administrative power and legal stability to support its needs for innovation.

The comparative analysis thus highlights a spectrum of recognition, with the United States at one end, the European Union in the middle, and India gradually evolving towards broader acceptance.

6.3 Comparative Analysis of Registrability Standards

The distinctiveness requirement and non-functional trademark test system define the key components of United States trademark regulations. The United States registration procedure permits non-visual marks to be registered because it does not require marks to be shown through graphical representation. The two main factors which courts use to evaluate trademarks are how consumers perceive the mark and whether the mark can identify its source.

The European Union requires distinctiveness to be shown but it needs accurate display of information to be demonstrated. The EU system still follows the Sieckmann criteria because it uses existing methods to evaluate marks despite losing its requirement for graphical representation. Marks need to be displayed in a way which clearly defines their protection boundaries through precise and objective explanations.²¹

In India, businesses must fulfill two criteria for their trademarks to be eligible for registration, which includes showing their specific trademark design and demonstrating their ability to distinguish their products from those of competitors. Although trademark law defines trademark protection broad, its requirement for graphical representation creates major obstacles for businesses that need to protect their unconventional trademarks. The law now creates ambiguity about which trademarks can be registered because it defines trademark rights through two distinct requirements. The three jurisdictions all acknowledge the importance of

²¹ Case C-273/00, Sieckmann v. Deutsches Patent- und Markenamt, 2002 E.C.R. I-11737.



distinctiveness, but their methods for demonstrating distinctiveness and handling evidence create different levels of access for unconventional trademark registration.

6.4 Comparative Analysis of Enforcement Mechanisms

The use of nontraditional trademarks creates distinct difficulties which apply to every legal system worldwide. The United States system enables trademark enforcement through its established case law system and its adaptable legal system which supports various trademark types. Courts have demonstrated a willingness to adapt traditional principles, such as likelihood of confusion, to the context of unconventional trademarks.

The European Union operates an enforcement system which creates unified protection for trademark rights across different member countries. The EU system creates practical obstacles because it requires multiple mark types to be understood in different ways. The assessment of similarity and confusion in cases involving unconventional trademarks often requires specialized expertise.

India provides enforcement options through its legal system which includes both infringement and passing off lawsuits. The current stage of enforcement development exists because unconventional trademark recognition remains limited. Courts have shown a willingness to protect innovative marks, but the lack of extensive jurisprudence creates uncertainty.

All three jurisdictions encounter similar difficulties when they try to enforce nontraditional trademarks because they must meet specific evidentiary standards and handle the different ways people experience sensory information.

6.5 Key Challenges in Protecting Unconventional Trademarks

The main problem with unusual trademarks begins when their need for appropriate representation. The legal system requires non-visual marks which include smells and tastes to

be shown through proper representation methods. The requirement for clear and accurate information still creates difficulties in jurisdictions which have eased their graphical representation rules.

The primary obstacle in this process involves establishing whether a product has unique characteristics. Unconventional trademarks need their distinctive capacity to be proven through



substantial evidence. The process of gathering evidence becomes increasingly difficult for applicants who work in regions with more demanding proof requirements.

The functionality doctrine represents a major obstacle because it specifically applies to shape and color trademarks. Courts need to distinguish between product features which only show uniqueness and features which determine how a product functions. Companies should avoid creating monopolies for essential operational elements because this situation demands careful assessment.²²

The use of nontraditional trademarks creates operational challenges for enforcing their rights because it makes violation and confusion evidence more difficult to establish. The assessment of similarity becomes more difficult because people perceive sensory information subjectively which leads to different personal experiences of similarity.

6.6 Emerging Trends in Unconventional Trademarks

The field of unconventional trademarking practices experiences rapid changes because of technological progress and shifts in consumer purchasing patterns. The most important current trend shows that brands increasingly incorporate digital and multimedia elements into their brand identity. The usage of motion marks and multimedia marks and virtual trademarks has increased because digital platforms have become more essential to businesses.

Artificial intelligence and data analytics emerge as new tools for organizations to develop their brands and protect their trademarks. The technologies enable businesses to create brand experiences which provide customers with personalized interactions and immersive experiences through unconventional trademark methods. The technology creates legal challenges which specifically relate to how people should own and safeguard trademarks that AI systems produce.

The international trade system leads to greater requirements for international trademark law unification through its expansion into global markets. The demand for standardized practices increases as organizations expand their business operations across different legal systems. The

²² TrafFix Devices, Inc. v. Mktg. Displays, Inc., 532 U.S. 23, 29–30 (2001).



TRIPS Agreement and other international agreements continue to shape global trademark protection systems.²³

6.7 Future Directions and Policy Recommendations

The future of unconventional trademarks relies on legal systems which must adapt to emerging challenges while keeping trademark law core principles intact. The representation requirement needs reform because jurisdictions still apply traditional standards to their legal practice. The use of technologically neutral representation methods will enable the registration of unconventional trademarks because these methods provide legal certainty.

The assessment process needs clearer guidelines which should define distinctiveness and functionality criteria. The solution will decrease uncertainty while establishing consistent rules for decision making. The Indian legal system needs better administrative guidance which can help establish and safeguard unconventional trademarks.

Legal standards need to become unified across different jurisdictions because this will help international trade while providing better protection for intellectual property rights. The business challenges which arise from operating in multiple markets will decrease when companies achieve higher alignment on their most important operational areas.

6.8 Conclusion

The study compares unconventional trademark systems that exist in India, the United States, and the European Union to demonstrate their shared legal standards and their distinct legal standards. The three jurisdictions acknowledge the significance of protecting non-traditional marks yet their methods differ regarding which marks they will acknowledge, which marks they will permit registration and which marks they will protect through legal action. The legal system requires a balanced framework that can adapt to the challenges of unconventional trademarks which include their representation and distinctiveness and their functionality. The rise of new branding techniques will drive the need for better protection of unconventional trademarks which will require ongoing international cooperation and continuous legal reforms.

²³ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 15, Apr. 15, 1994, 1869 U.N.T.S. 299.



CHAPTER 7

CONCLUSION AND SUGGESTIONS

7.1 Introduction

The development of unconventional trademarks brought about the most important change to modern intellectual property law. The traditional definition of trademarks, which considered them as visual elements, expanded to include multiple sensory and non-visual elements because brands developed innovative techniques and market competition increased. Legal systems throughout the world had to rethink their basic principles because new business practices emerged. The previous chapters examined different aspects of unconventional trademark recognition, registrability, and enforcement across India, the United States, and the European Union, which resulted in both progress and ongoing difficulties for the trademark system. The final chapter of the study presents its main discoveries while answering its research questions and proposing ways to improve the legal system that governs unconventional trademarks. The study examines how these changes will impact the future development of trademark law.

7.2 Summary of Key Findings

The study demonstrates that all three legal systems understand the need to safeguard nontraditional trademarks but they implement this protection through different methods and different levels of commitment. The United States stands out as the most adaptable and advanced legal system because its trademark regulations recognize both conventional and nontraditional trademark categories through functional trademark assessment. The judicial interpretation together with the Lanham Act's broad terminology creates an environment where trademark ownership can be understood through multiple possibilities.

The European Union accepts unconventional trademarks but implements them through its methodical and cautious method. The legal system demands clear and precise standards which restrict the types of mark that can be registered because of its focus on visual trademarks. The current reforms, which include the elimination of the graphical representation requirement, establish procedures that provide more flexible options. The EU framework establishes a system which maintains a precise balance between supporting new ideas and controlling existing regulations.

India is currently working on a complete system that will handle unconventional trademarks. The Trade Marks Act of 1999 establishes a legal framework which defines nontraditional trademarks through its overall definition yet enforcement of these trademarks remains limited. The need for graphical representation together with the lack of comprehensive guidelines has created a situation which results in both cautious and inconsistent practices.

The three legal systems protect unconventional trademarks through two main principles which include distinctiveness and functionality. The application of these rules to nontraditional trademarks creates difficulties which affect both the evidence needed and how the law should be understood.

7.3 Addressing the Research Questions

The initial research question investigated how India, the United States, and the European Union recognize unconventional trademarks. The analysis demonstrates that while all three jurisdictions recognize such marks, the extent and manner of recognition-based evaluation and assessment of these marks differ from each other. The United States adopts a broad and inclusive approach, the European Union emphasizes precision and clarity, and India adopts a cautious and evolving stance.

The second question related to the criteria for registrability. The requirement for distinctiveness exists as a common standard which all jurisdictions follow, yet each jurisdiction has its own methods for measuring distinctiveness. The United States does not impose a graphical representation requirement, whereas India continues to rely on it. The European Union has moved towards a more flexible approach, allowing representation through various technological means, provided it meets the criteria of clarity and precision.²⁴

The three jurisdictions establish their enforcement procedures through infringement and related actions but face substantial practical difficulties when dealing with unconventional trademarks. The two main challenges arise from the need to establish similarity between two elements and the requirement to demonstrate confusion potential especially when dealing with marks that lack visual components. The final research question examined the possibility of harmonization. The study shows that complete harmonization between different legal systems remains

²⁴ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark art. 4, 2017 O.J. (L 154) 1.



unachievable because each system has its own legal traditions and policy priorities yet vital areas such representation distinctiveness and enforcement standards show significant potential for convergence.

7.4 Critical Analysis and Observations

The current trademark system shows both positive and negative results because it now protects unconventional trademarks according to the current legal system. The system enables businesses to create distinctive brand identities which lead to innovative solutions. The system creates problems because it enables businesses to obtain control over elements which customers need for market competition. The functionality doctrine prevents protection of product features which customers need to operate or use the product. The application of aesthetic functionality cases shows difficulties in implementing these legal principles. Courts need to protect trademark owners rights while maintaining fair market competition for their rivals and customers.²⁵

The second observation demonstrates how technology now serves as a primary force that creates changes in trademark law. Branding now requires different types of protection because businesses use both digital and multimedia elements to create their brands. The enforcement system and regulatory framework face new challenges because of this development.

The absence of consistent legal standards between different legal systems creates major difficulties for companies that operate in the international market. The differences between various legal requirements and enforcement methods lead to trademark protection difficulties because they create multiple sources of uncertainty. The situation demonstrates the necessity for countries to work together and create standardized international agreements.

7.5 Suggestions and Recommendations

Based on the findings and analysis presented above, a few recommendations could be formulated to enhance the existing legislation concerning unconventional trademarks. First of all, it is necessary to introduce some flexibility and technologically neutrality in the procedure of trademark presentation. This suggestion would be especially appropriate for countries such

as India, which still retain the rule requiring graphical representation. In addition, this measure

²⁵ TrafFix Devices, Inc. v. Mktg. Displays, Inc., 532 U.S. 23, 29–30 (2001).



will increase the possibility of registering unconventional marks and provide some legal certainty regarding this issue.

Secondly, it is essential to develop additional guidelines that would be used when assessing the distinctiveness and functionality of unconventional marks. Such a step would contribute to reducing any ambiguity in this process and would enable the adoption of consistent decisions by administrative authorities and courts. Thus, the latter could receive specific criteria and examples of how to evaluate the distinctiveness and functionality of unconventional marks.

Finally, one should improve the current measures and procedures of enforcing the rights associated with unconventional trademarks. These measures could include introducing special procedures and standards of proof concerning similarity and likelihood of confusion in the cases under consideration. In turn, the use of expert opinions and technical tools would be very helpful in this case.²⁶

Finally, trademark laws require ongoing assessment and updates to match current technology trends and developing market standards. Policymakers need to implement a proactive method which anticipates upcoming changes while ensuring the legal system maintains its usefulness and operational efficiency.

7.6 Concluding Remarks

The legal field of intellectual property rights continues to develop new methods for protecting unconventional trademark assets. The branding activities of businesses need a legal system that can adapt to their evolving requirements because modern branding now exceeds traditional brand development methods. The comparative analysis of India, the United States, and the European Union shows progress in this field while presenting various remaining challenges. The different legal systems of the world handle non-traditional trademark protection differently, but they all recognize that this protection needs to exist to fulfill the essential functions of trademark law. The implementation of proposed reforms and the solution of problems through research will enable legal systems to handle modern branding needs while maintaining competitive markets and fostering innovation.

²⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 15, Apr. 15, 1994, 1869 U.N.T.S. 299.



BIBLIOGRAPHY

A. Books

- Graham B. Dinwoodie & Mark D. Janis, *Trademarks and Unfair Competition: Law and Policy* (5th ed., Wolters Kluwer 2018).
- J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (5th ed., Thomson Reuters 2020).
- Jeremy Phillips & Alison Firth, *Trade Marks Law: A Practical Anatomy* (2nd ed., Oxford University Press 2014).
- Narayanan P., *Law of Trade Marks and Passing Off* (7th ed., Eastern Law House 2017).
- W.R. Cornish, David Llewelyn & Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th ed., Sweet & Maxwell 2019).

B. Journal Articles

- William M. Landes & Richard A. Posner, Trademark Law: An Economic Perspective, 30 *J.L. & Econ.* 265 (1987).
- Dev Gangjee, Non-Conventional Trademarks in India: A Comparative Perspective, 21 *Nat'l L. Sch. India Rev.* 67 (2009).
- Irene Calboli, The Protection of Non-Traditional Trademarks: Critical Perspectives, 46 *Int'l Rev. Intell. Prop. & Competition L.* 785 (2015).
- Annette Kur, Trade Marks Function, Don't They? CJEU Jurisprudence and Unconventional Marks, 39 *Eur. Intell. Prop. Rev.* 434 (2017).

c. Statutes and International Instruments

- Trade Marks Act, 1999.
- Lanham Act, 15 U.S.C. §§ 1051–1127.
- EU Trade Mark Regulation, Regulation (EU) 2017/1001.
- TRIPS Agreement, Apr. 15, 1994, 1869 U.N.T.S. 299.

D. Cases

- Qualitex Co. v. Jacobson Products Co., 514 U.S. 159 (1995).
- Wal-Mart Stores, Inc. v. Samara Brothers, Inc., 529 U.S. 205 (2000).
- TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001).
- Sieckmann v. Deutsches Patent- und Markenamt, Case C-273/00.
- Shield Mark BV v. Joost Kist, Case C-283/01.
- Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73.

E. Webliography

- World Intellectual Property Organization, *Non-Traditional Trademarks* – www.wipo.int
- United States Patent and Trademark Office, Trademark Manual of Examining Procedure (TMEP) – www.uspto.gov
- European Union Intellectual Property Office, Guidelines for Examination – www.euipo.europa.eu
- Office of the Controller General of Patents, Designs & Trade Marks, Trademark Registry India – www.ipindia.gov.in

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