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Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

TRADEMARK INFRINGEMENT AND CONSUMER CONFUSION

AUTHORED BY - V. RISHEENDRA VARMA

Abstract

This research paper explores the complexities of infringement of trademark, emphasizing the centrality of confusion of the consumers in both legal doctrinal and practical enforcement. Anchored in the “Trade Marks Act, 1999”, the study reviews statutory definitions, judicial interpretations, and key case law—including decisions such as “*Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*” and “*Amritdhara Pharmacy v. Satya Deo Gupta*”. It demonstrates how Indian courts apply principles like deceptive similarity, prior user rights, dilution, and trans-border reputation to protect brand identity and market integrity.

The paper investigates various defenses available to alleged infringers—fair use, prior use, honest concurrent use, parody, non-commercial use, and exhaustion of rights—supported by statutory provisions and landmark judgments. Special attention is given to the challenges arising from technological advancement and globalization, such as e-commerce infringement, domain name disputes, AI-driven branding, non-conventional trademarks, NFTs, and the metaverse. The role of dynamic injunctions and legislative adaptation is highlighted as vital for effective enforcement in the digital age.

Comparative insights from international treaties like TRIPS, “the Madrid Protocol”, and “the Paris Convention” inform the study’s analysis of global collaboration in trademark protection. The conclusion underscores that this law must prevent deception caused to consumers, preserve goodwill, and endorse legitimate competition, while balancing robust protection with legitimate commercial freedoms. The ongoing evolution of legal norms, judicial innovation, and legislative reform will be crucial in meeting future challenges and ensuring the continued relevance of trademark rights in the rapidly changing global market.

INTRODUCTION

A basic component of intellectual property rights, trademarks protect unique signs, symbols, logos, or expressions an organization to set its offerings in terms of products or services apart from others on the market.¹ In the contemporary global economy, brand recognition, consumer confidence, and company expansion all depend critically on trademarks. The infringement of these marks not only damages the brand owner but also mislead consumers, so generating uncertainty on the origin or quality of the items.²

Legal violation known as trademark infringement results from an illegal user of a mark either exactly like or deceptively similar to an already established trademarked item to cause confusion and concerns among the people.³ This idea is firmly ingrained in the principle of safeguarding consumer rights to make wise decisions as well as trademark owner interests. Determining whether trademark infringement has happened mostly depends on consumer uncertainty. It describes a situation whereby the typical consumer cannot tell the original from the infringing marks, so guiding erroneous purchases. Different tests are used by courts across borders to evaluate the possibility of confusion, the type of goods, the target consumers, and strength of the original trademark.

“Trade Marks Act, 1999” controls protection and application of trademark rights in India.⁴ It conforms to global norms set down by treaties like the TRIPS Agreement under the WTO government. Indian courts have underlined time and again the twin goals of trademark law: safeguarding consumers from dishonest practices and safeguarding of commercial goodwill of companies.⁵

This paper will explore the several dimensions of consumer confusion and trademark infringement. It will start with a basic knowledge of what makes a trademark and then go through a careful study of the legal systems in India and other economies including the UK, the USA, and the EU. Examined will be case laws and judicial precedents to show how legal ideas are applied. The paper will also go over remedies accessible to trademark owners,

¹“Trade Marks Act, 1999, No. 47 of 1999, § 11(1) (India), <https://www.wipo.int/wipolex/en/text/128107>.

² S.S. Rana & Co., *Trademark Misuse & Infringement in India*, <https://ssrana.in/ip-laws/trademarks-in-india/trademark-misuse-infringement-india>

³ Id.

⁴“Trade Marks Act, 1999, No. 47 of 1999 (India)”, <https://ipindia.gov.in>

⁵ Id.

defences accessible to claimed infringers, and changing trends shaped by digital platforms and world trade.

In the end, this paper seeks to be a complete tool for businesses trying to grasp the subtleties of trademark infringement and the legal systems accessible to handle it as well as for students and attorneys.⁶

Understanding Trademarks

A registered trademark is a unique sign, structure, or expression that distinguishes one source's services or goods from another. A trademark is simply a badge of origin and a powerful tool for establishing brand identity. In India, a trademark is defined as "Section 2(1)(zb) of the "Trade Marks Act, 1999", which allows one person's products or services to be visually differentiated from another's.⁷

Trademarks might be words, logos, colours, sounds, packaging, or a mix of all those elements. In some countries, non-traditional trademarks including smells and holograms have also lately attracted attention. A trademark's main purposes are to let companies build a reputation and confidence in the market and to avoid consumer uncertainty.

Legal recognition in both home and foreign systems emphasises the value of trademarks. For trademarks, the TRIPS Agreement requires, for example, minimum standards of protection offered by members.⁸ In India, registering a trademark gives the owner exclusive rights to use the mark and stop others from using like marks in a manner most likely to mislead or confuse consumers.

The Delhi High Court found in "Yahoo!, Inc. v. Akash Arora & Anr. (1999)" in favour of the plaintiff, stating that the defendant's use of a strikingly similar domain address constituted to passing off and that internet domain names are also eligible for trademark protection.⁹

"Amritdhara Pharmacy v. Satya Deo Gupta (1963)" is another significant decision in which the

⁶ "World Intellectual Property Organization, *Trademark Law Overview*, <https://www.wipo.int>

⁷ Trademarks Act, No. 47 of 1999, § 2(1)(zb), Acts of Parliament, 1999 (India)".

⁸ "Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

⁹ Yahoo!, Inc. v. Akash Arora & Anr., 1999 IIAD Delhi 229.

Supreme Court ruled that a mark must be evaluated holistically rather than dissected into its constituent elements in order to determine misleading likeness.¹⁰

The Court underlined once more that resemblance covers phonetic and conceptual similarity in addition to visual resemblance. There are several classifications for trademarks: suggestive, arbitrary, generic, descriptive. Arbitrary and known marks—like "Apple" for computers—are regarded as fundamentally unique and under strongest protection. Descriptive trademarks can only be protected if they have developed additional meaning—that is, if people have long associated the mark with a certain source.

To sum up, trademarks are a necessary instrument for companies to strengthen consumer loyalty and safeguard their brand identification. They also are quite important in guaranteeing that consumers are not confused and in stopping unfair competition. Therefore, the foundation of a fair and effective market system is the appreciation and defence of trademarks.

Legal Framework Governing Trademarks

Legal System Monitoring Notions of Reference National statutes, international conventions, court decisions mixed with national policies form the complicated legal framework controlling trademarks. Main legislation in India, “the “Trade Marks Act, 1999” replaced the former “Trade and Merchandise Marks Act, 1958.”¹¹ This legislation adheres to international intellectual property standards, notably those outlined in “the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)”, to which India is a signatory.¹²

“Section 2(1)(zb) of the Trade Marks Act” defines a trademark as “a mark able of graphically expressing the goods or services of one person from another and so differentiating them”. The Act specifies remedies for passing off and infringement as well as for registration, protection, and trademark rights execution.¹³

Globally, cross-border trademark protection finds structure in “the Madrid Agreement” and

¹⁰Amritdhara Pharmacy v. Satya Deo Gupta, A.I.R. 1963 S.C. 449”; (1963) 2 S.C.R. 484

¹¹“Trade Marks Act, No. 47 of 1999, Acts of Parliament, 1999 (India).

¹²Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Articles 15–21, 1869 U.N.T.S. 299.

¹³Trade Marks Act, No. 47 of 1999, Acts of Parliament, 1999 (India).

Protocol relating to the “International Registration of Marks”¹⁴ and the “Paris Convention for the Protection of Industrial Property (1883)”¹⁵. With one application, “the Madrid System”—run by the “World Intellectual Property Organisation (WIPO)” —allows trademark owners to pursue protection in several countries. Under “World Trade Organisation (WTO)” administration, the “TRIPS Agreement (1994)” offers minimum standards for member protection and application of trademarks. Article 15 through 21 of TRIPS control trademark laws stress diffractiveness, registration rights, and enforcement mechanisms.¹⁶

Judicial decisions enhance the legal framework even more by means of their interpretation of statutory clauses in the framework of real conflicts. The Supreme Court of India clarified the difference between infringement and passing off in “Kaviraj Pandit Durga Duty Sharma v. Navratna Pharmaceutical Laboratories (1965)”, stressing that the former affects registered marks while the latter safeguards unregistered trademarks based on prior use and goodwill.¹⁷ The Bombay High Court decided in “Bajaj Electricals Ltd. v. Metals & Allied Products (1988)” the need of protecting well-known trademarks and came to the conclusion that, even in cases of non-registered rights over a trademark, reputation and past use are absolutely vital.¹⁸ Moreover respected by the Indian court are global norms. The Supreme Court decided in “Milmet Oftho Industries & Ors. v. Allergan Inc. (2004)” that global reputation can surpass local registration, hence Indian courts have to defend internationally well-known trademarks to promote trade integrity worldwide.¹⁹

The 2017 Indian Trade Marks Rules provide procedural clarity in the registration and opposition process. They define standards for "well-known trademarks," speed processing, and streamline chores including e-filing under Rule 124.²⁰ Additionally included in the framework are quasi-judicial agencies like the Intellectual Property Appellate Board (IPAB), now merged under High Courts. This action was supposed to guarantee quicker court review and ease conflict resolution.

¹⁴Madrid Agreement Concerning the International Registration of Marks, Apr. 14, 1891, and Protocol Relating to the Madrid Agreement, June 27, 1989,

¹⁵Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as revised at Stockholm, July 14, 1967.

¹⁶Christine Haight Farley & Irene Calboli, *The Trademark Provisions in the TRIPS Agreement*, in *Intellectual Property and International Trade: The TRIPS Agreement* (Carlos M. Correa ed., Wolters Kluwer 2016).

¹⁷Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980 (India).

¹⁸Bajaj Electricals Ltd. v. Metals & Allied Products, AIR 1988 Bom 167 (Bombay High Court).

¹⁹MilmetOftho Industries & Ors. v. Allergan Inc., (2004) 28 PTC 585 (SC) (India).

²⁰Trade Marks Rules, 2017, Notification No. G.S.R. 875(E), Gazette of India, Ministry of Commerce & Industry (Mar. 6, 2017).

All things considered, case law, domestic law, and international treaties are combined in the legal system managing trademarks. It aims to compromise protecting trademark owner rights with advancing fair competition in the market. The continuous evolution of this structure reflects the growing importance of IPR in a global digital economy.

Trademark Infringement

Meaning and Elements the use of a mark that is either exactly or misleadingly similar to a registered trademark in a way that might lead to public confusion regarding the source of products or services without authorisation is known as trademark infringement. If such unapproved use compromises the registered mark's repute or uniqueness, it is considered an infringement under Section 29 of the Indian "Trade Marks Act, 1999".²¹

Demonstrating the following fundamental elements is necessary in establishing trademark infringement:

1. Trademark existence: The mark has to be properly registered under the Trade Marks Act.
2. Without the trademark owner's consent, the defendant must have used the mark or a similar one.
3. Mark Similarity: The registered trademark and the infringing mark must be identical or somewhat similar.
4. Confusion in the public: People must be prone to being misinformed or perplexed about the origin of the products or services.
5. Commercial Use: Instead of personal or descriptive ones, the infringing use has to be carried out for trade.

Emphasizing visual and phonetic similarities, the Supreme Court in "S.M. Dyechem Ltd. v. Cadbury (India) Ltd. (2000)" underlined the infringement test should be applied. It also made abundantly evident that an overall impression of the marks ought to be compared instead of dissecting them into individual aspects.²²

Furthermore, the 1969 ruling in "Ruston & Hornsby Ltd. v. Zamindara Engineering Co." set a

²¹Trade Marks Act, No. 47 of 1999, § 29, Acts of Parliament, 1999 (India)

²²Supreme Court dismisses the appeal, holds that "PICNIC" and "PIKNIK" marks have dissimilar essential features, NLFTaxLex (May 2024).

precedent by deciding that, should uncertainty be expected, the use of a similar trademark even with a disclaimer is not enough defense. The court highlighted once more that showing the possibility of confusion falls on the plaintiff.²³

Section 29(4) additionally addresses infringement involving well-known trademarks in conditions involving Though decided by the U.S. Court of Appeals, the Indian courts have embraced the concepts that protect well-known marks even in a territory without significant commercial presence in *ITC Ltd. v. Punchgini Inc. (2007)*.²⁴

When composite marks—text and design—the courts focus on the main aspect of the mark. The Privy Council decided in “*National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. (1953)*” that an average consumer's memory is not perfect and so the court must assess the general impression and dominant notion of the mark.²⁵

Moreover very important is the fact that basic likeness is not enough. The courts have to evaluate whether the likeness would probably cause mental confusion among the relevant purchasing public. This was underscored in “*F. Hoffmann-La Roche & Co. LTD. v. Geoffrey Manner & Co. Pvt. LTD. (1970)*”, in which just phonetic resemblance produced a determination of infringement.²⁶

Trademark infringement is essentially about the prospect of dishonesty or uncertainty instead of merely copying. Courts approach such problems with a pragmatic and consumer-centric mindset that guarantees brand integrity is maintained without so stifling actual competitiveness.

Consumer Confusion

The Basis for Infringement Uncertainty among consumers lies at the heart of the legal interpretation of trademark infringement. This test is primarily used by courts to determine if a trademark has been violated. Because two marks share similar qualities, the ordinary consumer is essentially deceived into believing that the goods or services in question originate from the

²³Can injunction be granted in case a trade mark falls under the test of likelihood of confusion or deception? TaxGuru (Nov. 2020)

²⁴*Itc Ltd. v. Punchgini, Inc.*, 482 F.3d 135 (2nd Cir. 2007).

²⁵*National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.*, AIR 1953 SC 357 (Supreme Court of India).

²⁶*F. Hoffmann-la Roche and Co. v. Geoffrey Manners and Co. Pvt. Ltd.*, 1970 (2) SCR 213.

same source, leading to customer confusion. The primary purpose of trademarks, which is to guarantee the consumer's identification of origin for the goods, is jeopardised by this uncertainty.²⁷

The “Trade Marks Act, 1999”'s Section 29(2) states that infringement results from the infringing mark creating public likelihood of confusion including the possibility of association with the registered trademark.²⁸ Confusion might manifest itself as actual confusion, first interest confusion, and post-sale confusion.

The Supreme Court of India emphasized in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (2001) the need of consumer confusion in trademark conflicts.²⁹ The court produced a list of elements to evaluate likelihood of confusion including type of the goods, mark similarity, kind of buyers, and mode of purchase. It said courts have to assess the "overall similarity" of the marks and how they affect a consumer of average intelligence and poor memory.³⁰

Jurisprudence recognizes three basic forms of confusion:

1. Where the customer thinks the defendant's goods or services are those of the plaintiff, there is direct, actual confusion.
2. When a customer is momentarily misled or drawn to the infringing mark but fixes the error before making the purchase, there is initial interest confusion. This was noted in *Brookfield Communications, Inc. v. West Coast Entertainment Corp.* (U.S. 1999), where the court found that initial interest confusion resulted from using a competitor's trademark in metatags.
3. After-sale Confusion results from the purchase having taken place and the product is now on public view. Observers could think the product belongs with the trademark holder even if the buyer is not confused. Applied in “*Ferrari S.p.A. v. Roberts*” (U.S. case), this theory guards brand image.

In Indian context, the post-sale confusion theory is still relevant in sectors like luxury goods, where third-party view influences brand value even though it is yet not clearly acknowledged by courts.

²⁷“Trade Marks Act, No. 47 of 1999, § 29, Acts of Parliament, 1999 (India).

²⁸Id.

²⁹*Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73

³⁰*Yahoo! Inc. v. Akash Arora &Anr.*, Delhi High Court”, 1999

The Supreme Court noted in “Amritdhara Pharmacy v. Satya Deo Gupta (1963)” that while deciding on the matter of confusion, the court must position itself as a man of average intelligence and inadequate memory.³¹ It was decided that "Amritdhara" and "Lakshmandhara" were enough similar to confuse rural buyers who were either semi-literate or illiterate.

The Bombay High Court underlined in “Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Ltd. (1996)” the need of family of marks and reputation. It acknowledged that the mark's established goodwill in a given sector could also lead to confusion in addition to visual similarity.³²

Consumer uncertainty also encompasses the concept of "likelihood of association," in which consumers presume a commercial relationship or licencing agreement between the claimed infringer and the trademark owner. Deceptive similarity, it was decided in “National Bell Co. v. Metal Goods Manufacturing Co. (P) Ltd. (1970)”, must be assessed by the general impression left on the mind of a consumer.³³

Usually, the plaintiff bears the weight of proof about consumer confusion. Actually, though, proof of confusion is not usually required. The typical customer believes that there is enough chance of ambiguity. This pragmatic approach was underlined in “Nandhini Deluxe v. Karnataka Co-operative Milk Producers Federation Ltd. (2018)”, where the Supreme Court underlined that evaluating uncertainty mostly relies on common usage and descriptiveness of marks.³⁴

Domain name confusion was another historic issue addressed in “Yahoo! Inc. v. Akash Arora &Anr. (1999)”. The Delhi High Court held that using the domain address "Yahooindia.com" was probably going to cause uncertainty in the globally well-known "Yahoo.com." The court stressed that even if the services were provided for free, there was enough chance of confusion to warrant relief.³⁵

Differentiation of the mark, strength of brand recognition, disclaimers, and variations in

³¹“Amritdhara Pharmacy v. Satya Deo Gupta, AIR 1963 SC 449

³²Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Ltd, AIR 1996 Bom 149, (1996) 2 BomCR 642

³³National Bell Co. v. Metal Goods Manufacturing Co. (P) Ltd., AIR 1971 SC 898”

³⁴“Nandhini Deluxe v. Karnataka Co-operative Milk Producers Federation Ltd., AIR 2018 SC 3516

³⁵Yahoo! Inc. v. Akash Arora &Anr., Delhi High Court, 1999

packaging or labeling help to reduce consumer confusion. These are not perfect defenses, though, and courts typically see things holistically.³⁶

Tests to Determine Consumer Confusion

Activities to Determine Customer Confusion To assist determine if there may be consumer misunderstanding, courts worldwide have developed a number of tests. The purpose of these tests is to determine if a typical consumer may be duped into believing that the defendant's products or services originate from or are associated with the plaintiff. The approach is not solely legalistic; it is based on how ordinary people see trademarks in the actual world.

India's Cadila Test

“Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. (2001)” is a well-known Indian case in which the Supreme Court provided a comprehensive list of factors to assess the risk of concerns:

The sort of products or offerings; the degree of resemblance between the competing marks; and its nature (label, word, or composite). • The class of buyers (degree of education, intelligence, and the likely care to be exercised); • The similarity in the nature, character, and performance of the goods; • The way of acquiring the items; • Any other factors

Emphasizing a whole comparison, the test highlights the poor memory of an average consumer. It acknowledges that uncertainty covers phonetic, visual, and structural similarities in addition to exact resemblance.³⁷

2. United States' Multi-factor Test

Various federal circuits around the United States have embraced multifarious criteria. The Polaroid Test set down in “Polaroid Corp. v. Polarad Elecs. Corp. (2d Cir. 1961)” is the most often referenced. Among the considerations are

- The plaintiff's mark's strength and the degree of resemblance between the marks.
- The probability of eliminating this gap;
- Product proximity;
- Actual confusion evidence
- The defendant's aim in selecting the mark

³⁶A Nuanced Trademark Distinction: 29(1) vs 29(2)?”

³⁷“*Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*, 2001 (2) PTC 541 (SC)

- The defendant's product quality;
- Consumer sophistication.³⁸

Analogously, “the Sleekcraft Factors (from *AMF Inc. v. Sleekcraft Boats*, 9th Cir. 1979)” center on related products and their marketing outlets. The main lesson is that U.S. courts evaluate the likelihood using a flexible, non-mechanical approach rather than demand actual confusion.

3. Europe's Global Appreciation Test

Applied under “Article 9 of the EU Trademark Regulation”, the Global Appreciation Test is conducted in Europe. This test assesses: the visual, phonetic, and conceptual similarities between marks; the uniqueness and reputation of the previous mark; the view of the average consumer; the whole impression left by the marks. “The European Court of Justice (ECJ) in *Sabel BV v. Puma AG* (1997)” decided that, given the interdependence of pertinent elements, likelihood of confusion must be evaluated worldwide. Confusion is more likely the more unique the earlier mark is.³⁹

4. Tripartite Test (Passing Off UK Common Law)

Though not specifically regarding statutory trademark infringement, the UK common law approach of passing off uses a three-part test:

Attached to the goods or services are goodwill or reputation, misrepresentation most likely will mislead the public; likelihood of damage to the goodwill

This test, famously utilised in “*Reckitt & Colman LTD. v. Borden Inc.* (1990)”, often known as the Jif Lemon case, emphasised the importance of customer opinion as well as industry context.

5. Indian Courts Beyond Cadila

Indian courts have added to the Cadila test useful observations. In “*F. Hoffmann-La Roche & Co. v. Geoffrey Manners & Co.* (1970)”, for example, the Supreme Court concentrated on phonetic similarity in pharmaceuticals. Likewise, the Delhi High Court underlined in “*Hindustan Pencils Pvt. LTD. v. India Stationery Products Co.* (1990)” that even a minor degree of uncertainty in educational products could be infringement.

³⁸*Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492, 495” (2d Cir. 1961)

³⁹ EU Trademark Regulation arts. 9; *Sabel BV v. Puma AG* (ECJ, 1997)

Comparative Note observations

Although their structures are different, these tests have as their common objective safeguarding consumers and maintaining the uniqueness of trademarks. Courts consider elements including visual similarity, phonetic similarity, market practices, and consumer behavior quite regularly. These tests' contextual and evidence-based character guarantees that trademark conflicts are decided upon case-by-case.

Statutory Provisions in India

Indian Statutes: "Trade Marks Act, 1999" Mostly controlling trademarks in India is the "Trade Marks Act, 1999". It combines the legislation about trademarks and offers registration, protection, and remedies against infringement. Incorporating international standards into Indian law, the Act conforms with the TRIPS Agreement.⁴⁰

Section 2: Meaning

Key terms including "mark," "trademark," "registered trademark," and "deceptively similar," are defined in Section 2 of the Act Specifically, "a trademark is any word, name, symbol, tool, or combination used to set apart goods or services".⁴¹

Section 9: Absolute Refusing Ground

Section 9 lays down absolute reasons for not registering. If a trademark lacks distinctiveness, describes or indicates the kind, calibre, or place of origin of products, is likely to mislead or confuse, or contains scandalous or offensive content, it cannot be registered.⁴²

Section 11: Relative Refusal Ground

This section serves as the foundation for consumer confusion laws. A trademark cannot be authorised if it is exact or nearly identical to an existing trademark, if it refers to the same or similar items or offerings, or if it is anticipated to cause confusion in the public, including the potential of linkage. Similarly, even across various products, well-known marks are protected from dilution or undue advantage under Section 11(2).⁴³

⁴⁰WIPO, Trade Marks Act, 1999

⁴¹Trade Marks Act, No. 47 of 1999, § 29, Acts of Parliament, 1999 (India).

⁴² Id.

⁴³ Id.

Section 29: Registration Trademarks Infringement

This is the most significant of all the provisions relating to trademark infringement. It states that the “use of an identical or confusingly similar mark in the course of business, in connection with products or services for which the trademark is registered, or in a way that is likely to lead to public confusion constitutes infringement of a registered trademark. Section 29's subparts explore several types of infringement in more detail:

Section 29(2): identical/similar marks on similar goods; Section 29(3): presumption of confusion in some circumstances; Section 29(4): protection against diluting well-known marks
Section 29(5) Use of registered trademarks in corporate names”

Section 30: Restraints on Registered trademark Effect

Here is a defense clause. It offers some allowed uses, including: personal name or address; descriptive use; comparative advertising, only provided it is not deceptive.

This strikes a compromise between fair use rights of others and trademark owner rights.

Section 134: Court Jurisdiction

District courts handle trademark infringement cases; plaintiffs can also start cases where they live or conduct business, so allowing flexibility.

Section 135: Suit Relief from Infringement

Offers remedies including: damages or part of profits; interim or permanent injunctions

- Distribution of infringing items

The “Trade Marks Act, 1999” guarantees a strong legal framework, so balancing public interest with market competition against brand owner interests. The legislative clauses shape India's dynamic trademark environment by offering both preventive and remedial instruments against infringement and uncertainty.⁴⁴

Indian Court Trends Particularly in issues of infringement and consumer confusion, the Indian court has been instrumental in forming the parameters of trademark law. India's courts—have regularly read the “Trade Marks Act, 1999” to support brand identity, deter unfair competition, and guarantee consumer protection.

1. Stressing Customer Opinion

Indian courts evaluate trademark infringement not just on a technical or phonetic level but also in the whole impression a mark generates to the general people. The Apex Court underlined the need of consumer opinion in “Amritdhara Pharmacy v. Satya Deo Gupta (1963)”, deciding

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that for a common buyer in a rural environment "Amritdhara" and "Lakshmandhara" were deceptively similar.⁴⁵

2. Safeguarding of Familiar Names

Indian law has steadily extended protection to well-known marks—including those without a physical presence in India—including those without The Supreme Court decided in “Milmet Oftho Industries & Ors. v. Allergan Inc. (2004)” that under Indian law global reputation and past use are legitimate grounds for protection. The case established that the goodwill of an international brand has to be protected even in the absence of Indian operations against infringement.⁴⁶

3. Phonetic and Visual Comparison

The Supreme Court noted in “F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd. (1970)” that, particularly in pharmaceutical products where consumer safety is at issue, uncertainty can result from phonetic similarity alone. Since then, this idea has been used in several circumstances, especially when the target market comprises semi-literate or illiterate consumers.⁴⁷

4. Internet Jurisprudence and Transborder Reputation

Trans-border reputation—which acknowledges the influence of worldwide advertising and the internet—has also been embraced by the Indian court. The Delhi High Court upheld Whirlpool's worldwide brand reputation in “N.R. Dongre v. Whirlpool Corporation (1996)”, even though it was absent from the Indian market. The Supreme Court weighed online reputation against actual market presence in “Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd. (2018)”, so developing the doctrine.⁴⁸

5. Applying reliefs and injunctions

To guard trademark rights, Indian courts aggressively employ both temporary and permanent injunctions. Based on deceptive similarity and public interest, the Delhi High Court Issued a stay in “Hindustan Pencils Pvt. Ltd.'s v. India Stationery Products Co. (1990)”. Taking

⁴⁵ “Amritdhara Pharmacy v. Satya Deo Gupta (1962), AIR 1963 SC 449

⁴⁶ MilmetOftho Industries & Ors. v. Allergan Inc. (1997)

⁴⁷ F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd. (1969)

⁴⁸ MilmetOftho Industries & Ors. v. Allergan Inc”. (1997)

consideration the behavior of the parties and whether the infringement was intentional, the courts also balance fair remedies.

Six. Fair Use and Comparative Advertising

Although Indian law permits comparative advertising under “Section 30 of the Trade Marks Act”, the court insists that it cannot be misleading or negative. The Delhi High Court set limits on how brands might compare their goods without violating another's trademark in “Reckitt & Colman of India Ltd. v. Kiwi TTK Ltd. (1996)”.

7. Parallel Imports and Doctrine of Exhaustion

Courts have also examined the validity of "parallel imports", in which genuine items are imported without the authorisation of the trademark holder. The Delhi High Court ruled in "Kapil Wadhwa v. Samsung Electronics Co. Ltd. (2012)" that after a product is legitimately sold, the intellectual property owner's rights are spent, and resale does not constitute infringement unless the product's condition or quality is compromised.

8. Conflict over Domain Names

As cyberspace conflicts grow, Indian courts have modified conventional trademark rules to fit domain names. The Delhi High Court decided in “Yahoo! Inc. v. Akash Arora &Anr. (1999)” that domain names can cause confusion and behave as trademarks. It issued an injunction prohibiting "Yahooindia.com" from being used for its misleading resemblance to "Yahoo.com."

9. Strict Liability and Motivation

Although intention to lie strengthens an infringement case, Indian courts have made clear that proof of intent is not required. Confusion is rather likely here. Even in the lack of malice, the Supreme Court maintained an injunction based just on the misrepresentation likely to cause confusion in “Laxmikant V. Patel v. Chetanbhat Shah (2002)”.

These court rulings expose India's strong and changing trademark jurisprudence. Indian courts have embraced both statutory mandates and equitable principles, so safeguarding consumer rights, brand identification, and market integrity across evolving economic and technical environments.

Famous Case Laws

Famous Case Laws Landmark trademark infringement cases across jurisdictions have shaped the legal interpretation of consumer confusion, dilution, and goodwill protection. These cases illustrate how courts apply statutory principles and interpret legal tests to resolve disputes.

1. **Apple Inc. v. Samsung Electronics Co. (US, 2012)**

Jurisdiction: “Northern District of California, United States District Court Apple claimed that Samsung had diluted its trade dress and violated its utility and design patents. The court determined that Samsung had intentionally imitated Apple's designs after finding significant similarities between Samsung's products and the iPhone.⁴⁹

Key Takeaway: The case reinforced the importance of protecting trade dress and design elements when they play a role in consumer identification.

2. **Yahoo! Inc. v. Akash Arora &Anr. (India, 1999)**

Jurisdiction: Delhi High Court This was one of the first Indian cases involving domain name infringement. The defendant used the domain “Yahooindia.com,” which the court found deceptively similar to Yahoo!'s trademark.⁵⁰

Key Takeaway: Domain names are recognized as trademarks and can be protected from deceptive imitation.

3. **N.R. Dongre v. Whirlpool Corporation (India, 1996)**

Jurisdiction: Delhi High Court Whirlpool claimed trademark rights in India based on international goodwill and advertisements, despite not selling products in India at that time. The court recognized trans-border reputation.⁵¹

Key Takeaway: The case introduced and upheld the doctrine of trans-border reputation in India.

4. **Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd. (India, 2001)**

Jurisdiction: Supreme Court of India Both companies marketed pharmaceutical products with similar names. The court laid down criteria for assessing deceptive similarity in medical

⁴⁹Apple Inc. v. Samsung Electronics Co., 786 F.3d 983 (Fed. Cir. 2012)

⁵⁰Yahoo!, Inc v. Akash Arora &Anr., Delhi High Court, 1999 IAD Delhi 229; 78 (1999) DLT 285

⁵¹N.R. Dongre v. Whirlpool Corp., Civil Appeal No. 10703 of 1996

products, emphasizing consumer safety.⁵²

Key Takeaway: Strict scrutiny is warranted in pharmaceutical trademarks due to public health implications.

5. Adidas AG v. Payless Shoesource, Inc. (US, 2008)

Jurisdiction: U.S. District Court, Oregon Adidas sued Payless for selling shoes with two and four stripes that were allegedly similar to Adidas's three-stripe mark. The jury awarded Adidas \$305 million.⁵³

Key Takeaway: The case reinforced protection for non-verbal trademarks and demonstrated the financial implications of infringement.

6. Starbucks Corporation v. Sardarbuksh Coffee & Co. (India, 2018)

Jurisdiction: Delhi High Court Starbucks objected to a local Delhi café's use of the name "Sardarbuksh." The court found the name and logo deceptively similar.⁵⁴

Key Takeaway: Courts in India are active in protecting global brands from local imitation.

7. TATA Sons Ltd. v. Greenpeace International (India, 2011)

Jurisdiction: Delhi High Court TATA filed a suit against Greenpeace for a parody game that used the TATA logo. The court held that parody and criticism are forms of fair use in certain contexts.⁵⁵

Key Takeaway: Trademark law must balance brand protection with freedom of expression.

8. Coca-Cola Co. v. Bisleri International Pvt. Ltd. (India, 2009)

Jurisdiction: Delhi High Court Coca-Cola alleged trademark infringement over the brand "Maaza," after Bisleri exported the beverage under that name. The court granted an injunction.⁵⁶

Key Takeaway: Export of goods using a mark can amount to infringement if rights have been assigned.

⁵²Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73

⁵³Adidas-America, Inc., v. Payless Shoesource, Inc., 546 F. Supp. 2d 1029

⁵⁴Starbucks Corporation v. Sardarbuksh Coffee & Co., CS (COMM) 1007/2018

⁵⁵Tata Sons Ltd v. Greenpeace International, 2011 in I.A. No.9089/2010 in CS (OS) 1407/2010

⁵⁶Coca-Cola Co. v. Bisleri International Pvt. Ltd (2009) 164 DLT 59.

Defences against Trademark Infringement

Law offers many defences to claimed violators. These rules try to strike a compromise between preserving of trademark rights and permitting fair use, free expression, and honest commercial practices. Courts evaluate these defences based on the facts of the case as well as common law rules and “Trade Marks Act, 1999” legal clauses.⁵⁷

1. One fair use under S.30 of trade mark act 1999

Descriptive Apply: When a trademark consists of conventional descriptive terms—that is, "sweet" for sweets—using them descriptively does not violate any rights.

o “Marico Ltd. v. Agro Tech Foods Ltd. (2010)”: The word "Losorb" was decided to be descriptive rather than trademark use.⁵⁸

- **Nominal Use:** Refer individually to the trademarked objects under a registered trademark. For example, resale Tata cars bearing the mark "TATA," without implying association.
- **Comparative Advertising:** Advertisers could present their items versus those of a competitor if the comparison is honest and non-deceptive.

Comparative marketing is permitted, within limits that it does not misrepresent or disparage, according to o “Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd. (1996)”.

2. Previous Use

Section 34 of the Act protects earlier mark users even with regard to another party later registration.

• “S. Syed Mohideen v. P. Sulochana Bai (2016)”: The Supreme Court decided that common law rights of a past user take place behind registered rights.⁵⁹

3. actual simultaneous use

Approved under “Trade Marks Act, 1999” Section 12; • Approved under “Trade Marks Act, 1999” Section 12; • Courts might tolerate coexistence if both sides have honestly and simultaneously used identical marks without knowing each other.⁶⁰

4. Non-commercial Usage

Using a trademark in a non-commercial or private setting does not amount to infringement.

⁵⁷Trade Marks Act, 1999, Sections 12, 30, 34”; India Code.

⁵⁸Marico Ltd. v. Agro Tech Foods Ltd., Delhi High Court (2010)

⁵⁹S. Syed Mohideen v. P. Sulochana Bai (2016), Supreme Court of India

⁶⁰Section 12 of Trade Marks Act, 1999

- For academic publications or satire, for example, mention brand names.
- “Tata Sons Ltd. v. Greenpeace International (2011)”: The Delhi High Court authorised environmental awareness parody of the “TATA” logo.

5. Parody and Personal Expression

Especially under Article 19(1)(a) of the Constitution, trademark usage in parody, satire, or criticism could be protected as free speech.

- Indian courts are realising, however imperfect, parody is a legal defence.

6. Once a trademark bearing goods is properly sold, run-down of rights (first sale doctrine) applies under Section 30(3) of the Act; the trademark holder cannot control its resale.

In “Kapil Wadhwa v. Samsung Electronics Co. (2012)” the Delhi High Court decided that import and resale of genuine products are permitted absent major deviations.⁶¹

7. Insufficient uniqueness or clarity

Defenders might argue that: • The trademark is either generic or not especially unique; • Consumers are not likely to be confused.

- The U.S. court found in “ITC Limited v. Punchgini Inc. (2007)” abandoned marks lack protection.

- “Parle Products v. J.P. & Co. (1972)”: The Supreme Court stressed how important customer image is to decide confusion.

8. Statutory Releases

Section 29(4) makes abundantly evident that infringement may not encompass use in conformity with honest procedures or in non-commercial environments.⁶²

These rights ensure that trademark law allows fair commercial and expressive applications and does not become overly monopolistic. Usually, the defendant carries the weight of evidence proving the applicability of these defences.

⁶¹“Kapil Wadhwa & Ors. vs. Samsung Electronics Co. Ltd., SCC Online Del 5172”
⁶²

Recent Trends and Technological Impact

Driven by technology and globalisation, the evolving terrain of trade has significantly changed trademark law. Changing consumer behaviour, new technology, and growing platforms have given both opportunities and challenges for consumer confusion assessment and trademark rights enforcement.

1. First emergence of online marketplace and e-commerce

Legal trade as well as fake goods now find home on e-commerce platforms such as Alibaba, Flipkart, and Amazon.

Monitoring infringers across borders challenges trademark owners.

- Platforms may be held accountable should they ignore notification and fail to respond quickly.

The Delhi High Court concluded in *Christian Louboutin SAS v. Nakul Bajaj (2018)* that e-commerce platforms actively engaged in product listings cannot claim safe harbour.⁶³

2. social media and influencers

Although brand communication now mostly takes place on social media, trademark abuse risk is raised by unauthorised brand references, hashtagging, or tagging confusing customers.

Maintaining brand identity today rely much on influencer disclosures.

3. Domain Name Domain Problems

Cyberquatting—that is, registering domain names either exactly like trademarks or deceptively similar—has become very prevalent.

Resolved by the Uniform Domain Name Dispute Resolution Policy (UDRP) of India, or WIPO. *o Yahoo! Inc. v. Akash Arora (1999)*: Delhi High Court ordered injunction against usage of the deceptively identical domain name "YahooIndia.com".⁶⁴

4. Branding Algorithmic AI

AI-generated material and AI-powered marketing tools could unwittingly infringe someone's rights:

Artificial intelligence is helping trademark search tools evaluate similarities more precisely; auto-generated logos or brand names could mirror current trademarks.

⁶³*Christian Louboutin SAS v. Nakul Bajaj & Ors., Delhi High Court,* 2018

⁶⁴*Yahoo! Inc. v. Akash Arora & Anr., Delhi High Court,* 1999.

5. Nonconventional Markers

Modern branding has generated non-conventional marks including: • Sound marks (like Nokia ringtone); less common but well-known worldwide: smell marks

- Motion traces and holograms

Indian law has developed progressively; the Trade Marks Rules, 2017 let such marks to be graphically depicted.⁶⁵

6. Metaverse Branding using NFT

Using trademarks in virtual goods and surroundings raises fresh problems: • Are digital versions of branded products infringing anything?

- Are NFTs featuring brand elements open targets for trademark research?

- “Hermès v. Rothschild (US, 2023)”: Hermès proved successfully trademark rights over NFTs MetaBirkins.⁶⁶

7. Blockchain and Effective Implementation

Blockchain is first emerging as a tool for time-stamping IP rights and anti-counterfeit supply chain validation.

Multinational corporations are trying blockchain-based trademark protection systems even though blockchain technology is still under development in India.⁶⁷

8. Legislative and Court Reactions

Indian courts are reactively addressing technological changes:

- Admitting control over foreign websites targeted at Indian consumers
- Granting dynamic injunctions varying with online presence or URL

For instance, Delhi High Court imposed a dynamic injunction against piracy websites in “Utv Software Communication LTD. v. 1337x.to & Ors. (2019)”, a precedent now extended to trademark conflicts.

At last, the connection of trademark law with technology is continually evolving. Though it provides new incursion strategies, technology affords brand owners enhanced tools for detection and execution. Ensuring laws and interpretation match digital innovation falls on policymakers and courts.

⁶⁵SinghaniaLaw.com, “Non-Conventional Trademarks: Sound and Smell,” 2025; Trade Marks Rules, 2017

⁶⁶“Hermès v. Rothschild, US District Court for the Southern District of New York,” 2023

⁶⁷IIPRD.com, “Blockchain Technology for Enhanced IP Protection in India,” 2024.

Conclusion

Thanks in part to changing jurisprudence and technology disruptions, trademark law is experiencing dynamic change. Maintaining brand identification and guaranteeing fair competition still depend on avoiding consumer uncertainty and trademark infringement. By means of careful legislative analysis, comparative legal insights, and historical case studies, this study has shown the several dimensions of infringement claims and the intricate procedures followed in order to assess uncertainty.

Originating in the “Trade Marks Act of 1999”, Indian law has developed to have a strong basis that balances common law with statutory rights. The Indian court has actively engaged in customizing global ideas to local circumstances as shown by the emphasis on the prior user principle, the diluting theory, and dynamic injunctions in digital environments.

Governments all around, including the US and the EU, have enhanced multi-factor tests to evaluate the possibility of confusion and given consumer opinion more priority. Due in part to legal requirements and worldwide trade, international cooperation is now absolutely vital for safeguarding trademark rights.

Modern events like domain name conflicts, NFTs, AI-generated branding, and the metaverse are also redefining trademark law, the book underlines. Legislators and courts under pressure have to design systems fit for the digital era while yet maintaining conventional legal values.

Trademark law's objectives, all things considered, are to prevent consumer fraud, maintain market integrity, and preserve goodwill. Legal systems have to keep carefully balancing protection and commercial freedom as businesses and brands evolve. The main determinants in enhancing this crucial area of intellectual property law will be future changes and court attention.

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