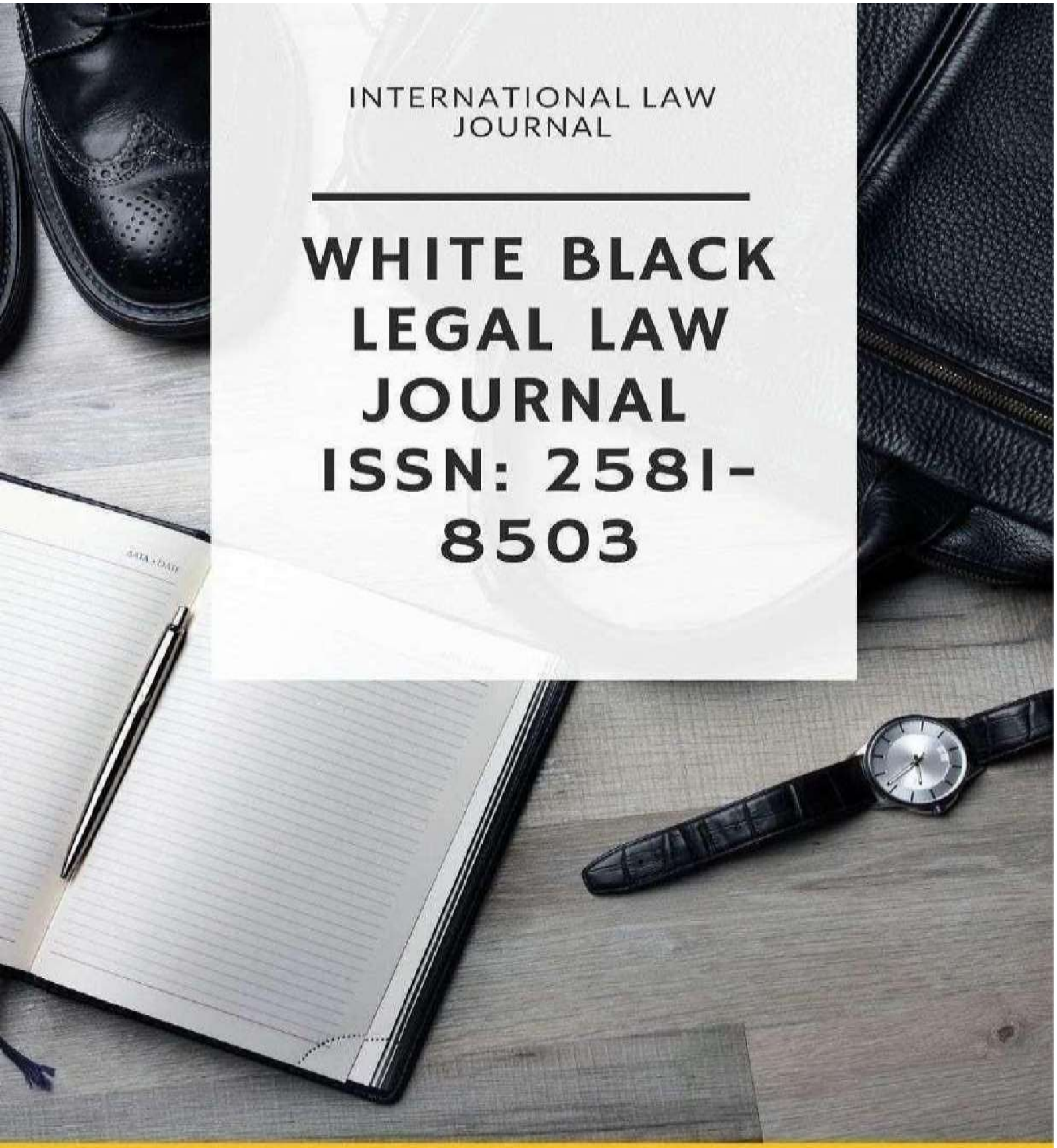

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THE EVOLUTION OF TRADEMARK LAW THROUGH THE ROSE-SCENTED TYRES CASE: A JOURNEY INTO NON - CONVENTIONAL TRADEMARKS

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ABSTRACT

One step beyond sight, India now acknowledges scent as identity **Sumitomo's rose-scented tyres** becomes its inaugural olfactory trademark. Not merely a novelty, this shift reflects years of gradual change in trademark thinking, in which senses other than vision begin to matter legally. From flat logos on paper to textures, sounds, even smells, branding has stretched boundaries, slowly nudged forward by market creativity. In this context, the tyre example stands out not because it is floral, but because it crossed a threshold previously closed. Rooted in the Trade Marks Act of 1999, early rules were hesitant, especially the cautious 2015 draft manual, which limited what could count as a mark. Yet an official decision dated November 21, 2025, changed direction; the CGPDTM finally accepted a smell if properly shown. Proof mattered more than idea, the burden shifted toward demonstrating presence, stability, clarity, all at once. Abroad, precedents existed as in Germany's Sieckmann ruling demanded precision most scent applications lacked. Across Europe, attempts faltered unless described chemically or technically, raising bars high. Meanwhile, Britain registered a flowery aroma back in 1996, showing flexibility earlier than others. America took another path relying on function, evidence, perception rather than rigid formulas. India borrowed none directly, yet echoes appear when comparing outcomes across regions. A key tool emerged locally the seven-part description method crafted by researchers at IIIT Allahabad. Rather than rely on words alone, they mapped odour using measurable qualities forming a kind of fingerprint. This structured approach satisfied concerns about vagueness long attached to fragrance claims. Distinctiveness had to be proven, not assumed; usefulness unrelated to product performance became critical, too. No longer can a feature ride on utility it must stand apart as an identifier, separate from

engineering benefit. What results is neither copy nor exception, but foundation of a new reference point built quietly into national practice. Future cases may involve sound, taste, touch, each judged under principles tested here first. Global patterns converge slightly, though local logic shapes interpretation uniquely. Expect further movement, driven less by theory than actual filings seeking space outside tradition.

Keywords: Trademark law, non-conventional trademarks, olfactory trademarks, scent marks, rose-scented tyres, graphical representation, sensory branding, sound marks, Trade Marks Act, 1999.

1. INTRODUCTION

1.1 The Changing Landscape of Brand Identity

These days, buying things looks different because brand identity goes beyond names or logos that simply show ownership. Instead of standing for origin only, symbols now shape emotions, affect decisions, and sometimes alter perception itself. Firms have moved past relying on visuals or words instead, they use sounds, smells, even touch to stick in memory. The way someone interacts with an item can quietly decide if they return later. Rarely spoken aloud, these moments still steer future purchases. Years have passed, companies began relying on distinct images, digits, symbols, labels to separate their goods from others. Origin clarity took priority on shoppers needed quick recognition, confusion had to fade. Progress arrived, technology shifted, competition grew tighter, prompting firms to build identity using more than just vision. Imagine tunes that linger quietly, a scent drifting near shelves, texture shifting beneath fingertips. Over time, forms, movements, hues, fragrances gained attention not through eyes but sound, touch, smell guiding choices silently, wordlessly.

Nowadays people recognize companies less by symbols alone. A tune that plays when opening an app might do it just as well. Even how something smells can signal who made it. Think about rich-toned palettes tied to high-end names. Shape matters too, not just what's printed on a label. Sounds stick in your mind as familiar hum from a device helps tell you where it came from. These signals work without showing a name at all. Rules meant for old-style marks struggle here. Courts used to need fixed visuals. Now scent, motion, or even texture claim space as identifiers. However, proof shifts slowly now recognition happens through experience, not just sight. Protection systems adapt, though unevenly.

Now picture this scent and sound marks stepping into courts as they belong there. Trademark

rules once focused on logos now face new players without shapes. Some countries began accepting smells as signs you can own. Others, slower, questioned if a tune or fragrance could really mark a brand. The US shifted first, then Europe tagged along. India stayed back, hands tucked under old rulebooks. Distinctive maybe later, visible that still counts more.

Even though India's trademark law allows wide forms like shapes, how things are packed, or mixes of colours courts still lean on older ideas about what counts as recognizable signs. The Trade Marks Act from 1999 opens doors, yet rulings often follow habits shaped by sight based proof and familiar patterns users supposedly notice easily.

1.2 The Rose Scented Tyres as a Paradigm Case

Surprisingly, the go-ahead given to Sumitomo Rubber Industries' perfume-based tyre mark shifts how India views brand identifiers. Not limited to sight anymore, "the acceptance of the application indicated openness toward olfactory branding within Indian trademark practice" this move sneaks scent into a system built for logos and symbols. Instead of relying on visuals alone, companies can now lean on aromas, so long as they leave an impression. Rarely does a case stretch IP boundaries this way, especially one involving something as ordinary as tires giving off a garden note.

What makes this case stand out isn't just how unusual it is, yet what it means for legal principles. Back then, scent-based trademarks often faced pushback in courts due to problems showing them visually, measuring accurately, or agreeing on perception. Judges and IP offices kept asking if smells could be shown clearly, without bias, every single time, meeting strict rules. Because of that, fragrance marks stayed among the rarest types of unconventional signs ever accepted.

A change took place in India once Sumitomo submitted its application. The Trade Marks Registry's approval suggested a wider understanding of trademarks, allowing non-visual experiences to signal brand ownership. Still, progress brings uncertainty as how these sensory signs appear matters, along with their distinctiveness, acceptable evidence, and future enforcement. Existing systems struggle to hold every new element without strain not clear if sticking to old-style visual rules blocks acceptance of sensory trademarks in India. Even though sounds now count under the 2017 Trademark Rules, smells still lack solid legal footing. Smelling like roses that tyre example opens doors to bigger debates on unusual marks in Indian law.

1.3 Research Methodology

A close look at how trademark rules have shifted begins with unusual marks, like the smell of roses in car tires in India. This work checks if current laws fit today's ways of building brand identity through senses. Instead of just logos or names, brands now use scent, sound, and feel. One concern stands out:

"The present research adopts a doctrinal and comparative methodology to analyse the evolution of trademark law with particular emphasis on non-conventional trademarks and olfactory marks. The study relies upon statutory provisions, judicial precedents, administrative orders, academic literature, and comparative jurisprudence from India, the European Union, the United Kingdom, and the United States.

With online shopping growing fast, old ideas about what can be drawn may no longer hold up. Rules made long ago face pressure from new forms of connection between product and perception. Digital markets change how people recognize brands, often without visuals. So, relying only on written descriptions might miss key parts of modern branding.

This paper discusses on:

1. Examine the historical evolution of trademark law from conventional marks to non-conventional trademarks;
2. Analyse the statutory framework governing non-conventional trademarks under the Trade Marks Act, 1999 and the Trade Marks Rules, 2017;
3. Evaluate international jurisprudence relating to scent trademarks and graphical representation;
4. Critically analyse the legal implications of the Sumitomo rose-scented tyres case;

Start by looking at how rules get in the way when it comes to registering scent or sound marks in India. Way beyond just paperwork, hidden habits inside legal systems slow things down too. Not every guideline fits these unusual types of branding easily. Some steps demand more proof than others allow. From start to finish, each phase holds back progress somehow. Even after approval, making rights real becomes another hurdle entirely.

Starting with laws on the books, this work looks at court rulings alongside official trademark guidelines. Journal pieces enter the mix, along with expert opinions, organizational papers, law-focused websites, and global studies tied to how marks are legally treated. Looking sideways, comparisons emerge using shifts seen in U.S. and E.U. practices, especially around smell-based brands and how visuals must be shown. From statutes to real-world interpretations, patterns form through side-by-side review.

2. History of Evolution of Trademark Law

2.1 Traditional Trademarks Old Approach

Out of habit, sellers began tagging items with signs, marks, or tags so buyers could tell one product apart from another. Names, marks, scribbles, labels, and gadgets these small signs made one shop different when others sold the same stuff. Slowly, they worked double duty: guarding a trader's good name, yet stopping buyers from confusion. Born from simple fairness, this way of marking evolved into today's idea of trademarks. More than claiming something yours, it guided fair selling as more options appeared. Back then, trademark rules focused solely on signs you could see and draw clearly. Protection mostly covered names, designs, containers, and initials, wrappers, along with artwork that stood out visually and stayed uniform. Because paperwork drove the system, showing a mark in graphic form became essential just to manage filings and reviews.

Later on, the TRIPS agreement pushed countries to align their rules, insisting they accept symbols that set products or services apart expanding what could theoretically count as a trademark. Yet progress stalled in many courts, where trademarks stayed limited often ignoring invisible traits such as smells or tastes. "Prior to the Trade Marks Act, 1999, trademark protection in India was governed primarily by the Trade and Merchandise Marks Act, 1958."

2.2 The TRIPS Agreement and Global Standardization

Back then, countries managed their own trademark systems without much coordination, leading to uneven protection across borders. A major shift happened as WTO members adopted the TRIPS agreement, reshaping how brand rights are upheld worldwide. Instead of isolated methods, a more connected approach began taking hold. Differences once common started fading as alignment became the goal. Where one country allowed sounds or colours as brands, another only saw value in classic visuals words, emblems, tags, designs.

Not every mark needs to be a word these days. Starting in **Article 15[1], the TRIPS** Agreement opened doors by saying almost any sign can serve as a trademark if it sets one company's offerings apart from another. TRIPS broadened interpretive scope through the phrase *"any sign capable of distinguishing".* Think shapes, symbols, even certain colour combos those count

[1] **TRIPS Article -15 Protectable Subject Matter-** *1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible*

too, so long as people use them to tell products apart. Written into the rules are things like names, numbers, letters, logos, and visual designs. Oddly enough, smells or sounds aren't directly mentioned there. Still, because the wording is loose, some countries have taken that as permission to register less traditional types of marks.

One reason TRIPS matters as it nudged trademark rules past strict forms into how signs actually point to origins. Focus now leans more on whether a mark sets products apart in trade, not if it fits old-school sight-based norms. Because of that shift, courts began accepting sounds, colours, packaging shapes, moving symbols sometimes even scents as protected identifiers. Over time, what counts as a trademark stretched well beyond paper sketches and printed logos. Still, the shift didn't immediately change how rules were applied on the ground. India's 1999 law accepted sounds, smells, and textures only in theory. Though written more openly than past versions, its real-world use stayed narrow. New possibilities appeared in print yet vanished when tested. Earlier laws had blocked such forms now they slipped through cracks but rarely settled. Courts demanded drawings or descriptions that senses beyond sight could not satisfy easily. "The requirement of graphical representation historically posed a significant challenge for olfactory marks" .Progress showed in words alone while practice held back. Change crept slowly even after wider doors seemed open. Ideas advanced faster than systems meant to carry them.

Out of step at first, the U.S. courts began accepting sounds and scents as brand identifiers while Europe held back, demanding clear visual forms. Only later did EU rules loosen up, shifting away from rigid drawing-based rules toward broader digital formats. This back-and-forth between regions shaped how countries like India think about unusual trademarks today. A scent of roses inside a tire made history once it gained official status as a symbol. That instant sent ripples across boundaries without noise. Faraway court rulings, though removed, bent hometown views just slightly.

2.3 Expanding Beyond Visuals Including Sounds and Colours

From thin air, brand signals moved beyond mere names and emblems. How something feels, rings, or drifts through the air now sticks in memory. Step by step, courts allowed senses outside sight to claim protection. Sounds came first, then tones, shapes, scents each earning rights if tied to one source alone. What once seemed odd now fits quietly into trademark practice.

"Sound marks emerged as a significant category of non-conventional trademarks where distinctive auditory signals perform source-identifying functions. Examples include jingles,

startups sounds, and audio branding associated with commercial entities". Out of left field, some noises started standing in for brands like that famous lion growl you hear before movies roll. Instead of logos, firms began leaning on catchy tunes or short clips of sound to stick in people's minds. One moment its silence, next there's a sudden burst the Yahoo shout cutting through like an old radio cue. Tech giants and phone networks followed suit, slipping sonic tags into ads and apps. These bits of audio they thrive where eyes aren't needed think podcasts, voice assistants, and car radios. Memory grabs hold faster when ears are involved, making these marks quietly powerful.

Only after 2017 did India lay out clear steps for registering sound logos, once new trademark rules demanded specific ways to file audio clips. Filing a jingle or tune now means sending it in certain digital forms, making the process less vague. Still, even with these updates, sounds must show they stand out in people's minds through actual public use. Recognition does not come automatically people need to link the noise directly to a brand over time. Much like older logo types, unique sound needs real world proof before winning legal status.

Over here, colour signs count as a key type of unconventional brand identifier. Not just any shade but specific tones sometimes paired in unique ways link tightly to certain goods or brands after long market presence. Seen it before that hue on packaging might stick in your mind without even knowing the name. Other legal systems have agreed: paint can mark ownership if buyers connect it directly to one source. Just make sure nobody grabs exclusive rights to a tint that others need too.

A lone shade can stand as a brand signal if buyers link it to one maker, the U.S. high court confirmed in ***Qualitex Co. v Jacobson Products Co., 514 U.S. 159 (1995)***[2]**.** Not every hue works, only those shaped by market habit into markers of origin. This ruling turned away the idea that tones cannot serve as signs, stressing their part in setting apart who supplies what. Recognition matters more than form when identity forms through use

One colour alone might work as a trademark, the European Court of Justice said in ***Libertel Groep BV v. Benelux-Merkenbureau, Case C-104/01, [2003] ECR I-3793***[3]Clarity matters most when showing how it stands out, even if people come to link it with a brand. Because of this ruling, future cases began demanding sharper definitions for symbols and signs beyond sight. Its impact rippled through decisions about what counts as valid visual proof.

The recognition of sound marks was affirmed by the European Court of Justice in ***Shield Mark***

[2] Qualitex Co. v Jacobson Products Co., 514 U.S. 159 (1995)
[3] Libertel Groep BV v. Benelux-Merkenbureau, Case C-104/01, [2003] ECR I-3793

***BV v Joost Kist,* Case C-283/01 [2003] ECR I-14313**[4] where the Court held that sounds may constitute trademarks provided they are represented clearly, precisely, and objectively. Precision stood at the core. So did objectivity. A beep, jingle, or chord might earn legal status, given enough clarity.

Still, while sounds and colours slowly won legal space, older laws lagged behind. Questions emerged not just about representation but whether perception of brand signals was even consistent. Purpose weighed in: could a shade or melody stay protected if it had real-world utility. Gradually, rulings shifted, viewing these traits much like traditional marks shaped by marketplace presence. Later came scent-based marks, pulling arguments about evidence and subjectivity out of the shadows. A quiet chance sparked talk around harder to define meanings. Imagine shifting from basic logos to scents as brand signals that shows how trademark thinking evolves. Courts stretch, trying to match the pace of originality, though they trip where tradition meets invention. A fragrance used as a mark that sparks arguments unlike most anything else. Capturing a smell, showing it exists, shielding it legally questions hang there, thick as fog.

3. Non-Conventional Trademarks

3.1 Conceptual Framework

"Non-conventional trademarks refer to non-traditional source identifiers extending beyond words, logos, and labels, including scent, colour, motion, hologram, shape, slogans, handwriting and sound marks where distinctiveness and source-identification are established".[5]But as businesses shifted tactics, leaning into emotion, identity, habit, digital reach, the idea of identification widened. Suddenly, hearing mattered too; so did smell, touch, movement. Not the usual stuff, yet each carried weight in pointing to a source. Slowly, these elements earned names: oddball marks, unconventional identifiers. Law had to stretch, adapt, and include them. One thing led to another recognition followed. Some trademarks show up as names, others slip in quieter forms. A jingle humming through an advertisement may do what bold print tries to achieve. Origin sometimes speaks through scent, not labels or signs. Recognition grows when colour acts unusually, that purple wrapping a candy bar it definitely come in your mind Cadbury dairy milk not every mark needs letters to be seen.

Shapes alone, think bottles with curves, have also gained protection when they carry brand meaning. Movements shown in ads, such as animated icons shifting place, may act as

[4] Shield Mark BV v Joost Kist, Case C-283/01 [2003] ECR I-14313.
[5] S.S. Rana & Co., "Non-Conventional Trade Marks", https://ssrana.in/articles/non-conventional-trade-marks (visited on 12 March 2026)

identifiers too. Three-dimensional patterns you feel by touch sometimes qualify if linked strongly enough to one provider. Where a symbol appears on packaging matters just as much in some cases. What counts now is whether people connect the signal to a single business, not whether it fits old rules. Recognition grows because courts care more about how consumers actually respond than rigid forms.

What backs the law on unusual marks comes down to function, not format so long as a mark tells people where something comes from. A noise, smell, hue, or design might gain protection if buyers link it clearly to one company alone. Most brands now reach people not just by being seen. They stir emotions, trigger senses, and sometimes pull up old moments from the past. Seeing is only part of what sticks.

That jingle from a commercial it clings like lint on fabric. Over weeks, sound bites morph into symbols through sheer repetition. A series of tones might point straight to one company instead of another. Think of chimes or short melodies, they whisper names without saying them. Even strange product silhouettes play along when folks tie form to origin, not function. Shapes begin meaning something once recognition sets in. Even shades or hues might come to mean one company when used long enough in a special way. As long as locking down a colour doesn't block others unfairly from using common visual choices in their work.[6]

Even though they're hard to pin down, scents still show up as trademarks more often now. Not like logos or jingles, noses don't agree on much, making smell tricky to prove in law. Each person senses odours differently, plus there is no standard way to draw or write what a smell looks like. Still, companies use distinct fragrances to make their goods stand out in customers' minds. In hotels, high-end shops, cars, and makeup lines, unique aromas help shape how people remember a brand. These perfumes become silent signals that stick around after the purchase.

A wider view of what counts as a trademark appears in the Trade Marks Act, 1999. Section 2(1)(m) opens the door wide listing things like symbols, tags, names, written signatures, even product shapes or colour blends. From there, it moves beyond just visuals because packaging and labels also fit inside that frame. What matters comes through clearly in Section 2(1)(zb): if something can be drawn on paper and tells one brand apart from others, it qualifies. Even though smells or sounds are not directly named, the wording leaves room for them to step in. Because nothing shuts the gate on unusual types, odd forms might still find their place within protection. Still, even with room to adapt, India's legal system leans on old ideas about what

[6] Dev S. Gangjee, "Non-Conventional Trade Marks in India" (2010) 22(1) *National Law School of India Review* 67 (visited on 20th May 2026).

counts as visible proof. Because of this, smells struggle to find their place in trademark law especially scents you can't see. One breakthrough came when rose-smelling tires won approval as the country's first recognized smell-based mark a turning point that shifts how unusual trademarks might be treated going forward. Unusual hurdles remain for odour related claims. Harder than any other unusual trademark type, scents bring deep problems in theory, law, and real-world use. Not like logos or even sounds, odours slip through fingers felt differently by each person, tough to pin down clearly. Because of that, putting them on a register stirs up serious legal questions as to show one fairly, keep it exact, and measure it without bias, grasp public understanding, and handle violations smoothly.

A whiff that tells you who made something that is what an olfactory trademark really means. Not just any perfume or aroma qualifies; it has to point straight back to one company. While pleasant or useful scents fill many products, only those serving as identifiers cross into trademark territory. Recognition by buyers matters most of them have seen a link between scent and seller. Standing apart from the crowd isn't optional it's essential.

Picture showing a smell has always been the biggest legal hurdle. Paper-based filing meant signs had to appear clearly on documents, visible and precise. Yet scents resist fixed images - perfume slips through the net of clear visuals. Words like **"smell of roses,"** "flowery note," or **"scent of cut grass"** often drift into vagueness, colour by personal memory instead of shared understanding. What scientists wrote down didn't match what people actually smelled too focused on molecules, not moments. Smell samples shifted over time, wore out fast, hard to handle right through testing.

Worries spread worldwide after Sieckmann faced off against the German Patent Office, when Europe's top court laid down rules for how trademarks must be shown clear, exact, complete on their own, reachable, understandable, lasting, unbiased. Smells could not make the cut using formulas, words, or actual samples since those fell short on predictability and ease of handling. Years passed before some nations warmed to smell-based trademarks, its impact rippling well past European borders. A single decision slowed progress, casting a quiet shadow over how scents were seen in law.

Smell isn't the same for everyone. A whiff that feels pleasant to one nose could feel sharp or dull to another. Past moments shape what sticks in memory when a fragrance passes by. Where you spent your childhood years plays a role too. Even small shifts like room temperature tilt perception slightly off centre. Bodies react in quiet, unseen ways no two exactly alike. Because of this, showing that buyers truly notice or remember a smell is much tougher compared to sights or sounds.

Most times, smell-based marks run into issues around usefulness. Not every scent is there to signal origin some just make things feel nicer or cover up bad smells. Take perfume, for example. The whole point of it is the aroma, so giving one company exclusive rights could tilt the playing field. Other products add fragrances simply to lift appeal or hide unpleasant notes. Because of that, courts look closely at whether a smell actually points to a brand or merely does a job. Only when it clearly identifies source might legal shield apply.

Proving a case takes extra steps when smells are involved. Courts might demand lab results, people's reactions, or specialists' views instead of just looking at symbols or words. Telling two scents apart isn't as clear cut as spotting differences in lettering or design. What feels misleading to buyers often lacks hard proof here. Judging likeness rests on shaky ground compared to straightforward visual checks. Even with these hurdles, today's brand strategies often lean on senses and feelings, pushing lawmakers to rethink strict views about scent based logos. The recognition of smell marks in certain jurisdictions, coupled with India's recent acceptance of the rose-scented tyre application, suggests a gradual movement toward greater accommodation of sensory branding practices within trademark law.

4. The Statutory Framework in India

4.1 The Trademarks Act 1999

India's main law for trademarks comes from the Trade Marks Act, 1999. This new act took over from the older one made in 1958. Instead of just copying past rules, it brought updates that match global standards especially those set by TRIPS. With time, how people see brands has changed; so did the law. Now it allows more than just names or logos. Even unusual signs can be protected if they help customers tell products apart. What counts isn't fixed it shifts with market life.

What makes the Trade Marks Act, 1999 stand out is how widely it interprets what counts as a mark. Instead of limiting itself, Section 2(1) (m)[7] pulls in everything from symbols and logos to names, numbers, shapes, even colour patterns or wrappers around products. Not one to stick only to old forms, it opens doors by listing various types without closing them off too soon. Even though sounds or scents do not appear directly in the list, the phrasing leaves room for growth. Because of that openness, lawmakers signal they are okay with more than just things you see. The law moves beyond strict visuals by design.

[7] *The Trade Marks Act, 1999, Section. 2(1)(m) mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;*

Later on, Section 2(1) (zb)[8] describes a trademark as something that can be shown visually while telling one person's products apart from another's. Because of this rule, two things are necessary above all the sign needs to stand out clearly as belonging to a single origin; at the same time, it has to work as an image or drawing people can see. Over time, these rules made it tough for unusual types like smells to qualify properly under the law.

One thing stands clear: a mark has to stand out to earn legal backing. To work properly, it points people toward one business, setting its items apart from others on shelves. Because of this, unusual types like noises, smells, forms, or hues need to show buyers link them directly to a particular seller, not just see flair or utility. Over time, solid proof usually becomes necessary, revealing how consistent market presence helped shape public recognition.

This rule lives in Section 9 of the Trade Marks Act, 1999. Found there are clear causes for refusing a mark without debate. A major barrier stands right at the front if a mark doesn't stand apart on its own, it won't qualify. That's spelled out in subsection (1), where signs must clearly set one trader's offerings apart from another's. Smell-based marks often stumble here because scent is personal, changeable, tied to function rather than brand alone. So proving they're truly unique demands far more effort compared to logos or names.

Still, Section 9(3)[9] blocks registration when a shape comes from the product itself, is needed for how it works, or gives the item most of its worth. While written for shapes, this rule points to a wider idea trademark rights mustn't lock up useful features. Smells can surprise you sometimes useful, sometimes just there to please the nose, not to tell where they're from. Slowly but surely, India's courts lag on fresh brand symbols, holding tight to outdated views of distinctiveness. Yet change creeps in recent rules hint at gradual evolution. A wider take on what counts as a "mark," along with changing habits at the registry, opens space for smell, sound, or texture brands if clear rules and proof methods ever arrive.

4.2 Trade Marks Rules 2017

Sound marks gained new ground under the 2017 rules shaping trademark procedures. Nowhere was this clearer than in Rule 2(1)(k), spelling out what counts as a visual depiction for brand

[8] *The Trade Marks Act, 1999, Section. 2(1) (zb) trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours;*

[9] *The Trade Marks Act, 1999, Section 9. Absolute grounds for refusal of registration.*
(3) A mark shall not be registered as a trade mark if it consists exclusively of--
(a) the shape of goods which results from the nature of the goods themselves; or
(b) the shape of goods which is necessary to obtain a technical result; or
(c) the shape which gives substantial value to the goods.

signs. Because of past hurdles, showing non-visual logos on paper mattered more than ever before. That detail opened doors previously shut to sounds seeking legal recognition. Without such framing, unseen brands struggled to meet old bureaucratic demands. Visual proof, once a roadblock, became a defined step instead. So it wasn't just paperwork more like reshaping access itself. Hearing a tune could now count as identifying a source, given proper layout. Not every format worked, yet structure gave room for innovation. Over time, expectations shifted from rigid forms toward functional presentation. Still, clarity came slowly, built into clauses most overlooked. Yet within those lines lay tools that changed outcomes quietly. No fanfare accompanied these changes, only steady redefinition. What used to block progress began allowing submissions once rejected outright. Even silence between notes found space in official thought. Thus, an update buried in procedure altered who could appear at all. Few noticed immediately, but impact grew behind the scenes. Eventually, listening replaced only looking when defining identity. Old limits faded not through protest, but rewritten instruction. One small rule helped shift perception inch by careful inch. Now sounds could count too, after years of trademarks focusing only on what you can see. Instead of just drawings or words, people began sending audio files when they wanted a sound protected. Alongside these clips, a written explanation or sheet music might also appear if needed. So it became clear to know who made something does not depend solely on sight. Still, progress shows how India's trademark rules now shift slowly toward tech-friendly norms. Even so, while sounds can be registered, scents remain stuck without proper process support. Because of this gap, smell-based marks face evaluation under old frameworks built for visual symbols only.

Most times, drawing a picture is key when it comes to trademarks, but smells don't fit that mould. Visual symbols show up neatly on screens; sounds play back just right. Yet a fragrance it slips through the cracks. Words used to explain scents tend to waver, meaning different things to different people. Chemical blueprints tell what's inside, not how it feels to breathe it in. Actual perfume samples shift over months fading, reacting, and changing subtly. So even if laws allow room for such marks under India's 1999 Trade Marks Act, real-world steps needed to register them still fall short. Hurdles remain baked into the system

One reason the approval matters is because Sumitomo Rubber Industries got a scent-based tyre mark through rose smell included. That suggests officials might now accept non-visual signs if presented clearly enough. Still unclear if this shifts legal thinking across IP offices or just slipped through quietly. Only time will show whether examiners treat this as routine or rare.

5. INTERNATIONAL JURISPRUDENCE ON OLFACTORY MARKS

5.1 The Sieckmann Case: The Global Benchmark

On 12 December 2002, a key ruling emerged from the Court of Justice of the European Union in the case of ***Ralf Sieckmann v Deutsches Patent- und Markenamt, Case C-273/00, [2002] ECR I-11737***[10] , it focused on trademark law, it became central to how Non- Conventional Marks especially scents, are represented visually. Instead of relying on broad concepts, the court examined Article 2 of First Council Directive 89/104/EEC in concrete terms. Because of this approach, its reasoning shaped later thinking about what counts as clear graphic depiction. Although dealing with one specific type of mark, the outcome influenced broader practice across jurisdictions.

Background and facts of the case

Before Germany's patent authority stepped in, Mr Ralf Sieckmann filed a request to register a scent mark covering certain service categories. Those areas appear in Class 35, along with parts of 41 and 42 under the Nice Agreement framework. Advertising tasks fall within that scope, while business consulting does too. Education activities are included as well entertainment offerings next to them. Legal advice forms part of it so do science-based projects. Computer coding also belongs among those listed services.

A smell people wanted to register involved **methyl cinnamate**, ($C_{10}H_{10}O_2$) a kind of chemical formula depicts the flavour, fragrance and this formula is widely used in pharmaceutical industries. Sieckmann tried to show it included several different approaches. The composition of a material can be shown through its chemical formula ***"C6H5−CH=CHCOOCH3C_6H_5-CH = CHCOOCH_3C6H5−CH=CHCOOCH3"*** A written description of the smell as: "balsamically fruity with a slight hint of cinnamon" An object carrying the scent was placed inside a vessel. This item went on record at the agency managing brand symbols. Its presence marked an official submission. Stored carefully, it served as proof of sensory identity. The deposit followed strict guidelines for non-traditional marks. After the rules for unusual symbols came a careful process. Because it could shift unexpectedly, workers moved it only one way. Then every step stayed fixed. Appeals led the case from Germany's patent authority to its federal court, where doubts emerged about visual representation rules for signs. Out of nowhere, doubts about established rules pushed Germany's patent judges to look elsewhere. Because meanings slipped through cracks in EU texts, they turned to Luxembourg for answers. With confusion clouding what Article 2 actually demands, the case drifted upward beyond

[10] *Ralf Sieckmann v Deutsches Patent- und Markenamt*, Case C-273/00, [2002] ECR I-11737.

single nations into wider legal waters.

Legal Issue

1. It wasn't the paperwork that held their gaze it was whether a scent could be owned. The idea lingered longer than expected, shifting how boundaries were seen. Something invisible suddenly had weight in the room.
2. Whether such sensory signs counted depended heavily on interpretation. As Sieckmann's approach came under scrutiny?

Analysis

Sieckmann proposed method needed to meet the bar set by Article 2. Clarity through graphical depiction was mandatory. It wasn't easy making a smell something you could see. Sketches didn't convince people, chemical diagrams failed too. Words alone never seemed enough. Somehow, what was shown needed clarity without losing meaning. One thought involved leaving behind actual pieces of the scent. Even so, sticking around and staying neutral wasn't easy. In the end, naming what couldn't be seen made all the difference.

Judgment of the Court

Even when smells help tell businesses apart, courts accepted them as trademarks just once specific rules were satisfied. A visible description had to exist without that, approval could not happen. Smells needed more than identity; the ECJ said a scent's image on paper must stand alone, stay fixed, reach everyone equally, make sense instantly, remain unchanged over time, come across without bias and above all, show clearly what it meant to represent.

5.2 The UK's First Olfactory Trademark (1996)

Rose Scented Tyre Mark Recognised in UK in 1996

Floral-scented tyres is that case actually reshaped how some legal systems view smell-based branding. A Japanese firm, Sumitomo Rubber Industries, secured protection in the UK for a rose-like aroma tied to rubber products. Not long after, courts elsewhere began referencing it India included it when weighing whether odours could function as identifiers. The decision stood out, quietly influencing debates on what counts as a trademark.

Back in 1994, Sumitomo submitted a request to register a scent-based trademark with the UK Intellectual Property Office, assigned reference number UK 00002001416. Filed October 31 that year, the submission defined the mark through sensory description rather than visual symbols. Later came official registration 1996 for tyres and similar products. Often seen as the UK's pioneering move, it marked one of the globe's initial approvals of a smell-based brand identifier. Moving beyond logos or symbols, this step opened doors to safeguarding non-visual

features in commerce.

It mattered because tyres usually smell like raw rubber - a scent people rarely link to something soft like roses. Surprise changed how people saw it, even though Sumitomo included the flower hint without warning. Not merging quietly, the fragrance caught attention by touching the sense of smell in a new way. By doing so, the aroma stepped past mere function and became memorable. A subtle twist made it stick.

Seen this way, the aroma did more than mask; it marked ownership. Function alone could not explain its presence. So the trait pointed toward source, not mechanics. Such subtle design choices often shape how users identify brands without noticing. A whiff became identity.

Back then, rules in the United Kingdom about how trademarks had to look were fairly open-ended especially for unusual types like scents. Instead of demanding a chemical breakdown or an actual smell sample, officials approved descriptions put on paper. That approach existed until European courts set tighter limits through their ruling in the well-known Sieckmann case. Because it happened earlier, the Sumitomo approval stands out as among the rare cases where a fragrance gained trademark status across Europe before those rules got tougher.

Because the UK granted registration, its weight grew showing scents can serve as trademarks if clearly unique and unrelated to a product's core function. Out of nowhere, odd little signals started showing up on people's radar - turns out they could actually matter in business. Courts across the globe began leaning on this moment, using it quietly as a nudge when faced with similar oddball cases about sounds, smells, or colours trying to act like trademarks.

One day, things shifted in India when Sumitomo tried to trademark its rose-smelling tyres through the national registry. Not building anew, it leaned on long-term use around the world, plus a past approval in Britain, arguing the scent stood for identity, not mere pleasure or function. Since other countries had agreed before, ideas like recognition by customers, distinctiveness earned over time, and knowledge that travels across borders started to matter more.

Years of steady market presence played a key role in backing the assertion. Starting back in 1995, Sumitomo introduced tyres infused with rose scent, building familiarity well before seeking legal recognition in India. By then, close to thirty years had passed time enough for buyers to link the smell directly to the brand. Because this exposure remained constant over time, it shaped public perception gradually. The ongoing application of the feature supported the idea that the aroma functioned like a signature, signalling where the product came from.

Because the UK approved a scent mark, its role in unusual trademarks stands out. That approval showed how something like smell hard to see or draw still tells one product apart from another.

Even now, courts and offices elsewhere look to it when weighing similar cases about smell-based marks. A few decades on, this case shapes thinking wherever senses meet brand identity.

5.3 The Fresh Cut Grass Case (EU, 1999)

The European Union later recognised the famous "freshly cut grass" scent registration associated with tennis balls. The smell was described as resembling fresh cut grass and was accepted because authorities believed the fragrance possessed distinctive commercial significance capable of identifying goods. The case became significant because it illustrated the possibility of smell mark recognition even prior to stricter judicial interpretation under Sieckmann. However, later jurisprudence substantially narrowed the practical viability of similar registrations by insisting upon rigid representational certainty and administrative objectivity.

5.4 The United States Approach

The United States has historically adopted a comparatively flexible approach toward non-conventional trademarks, including smell marks. Trademark protection under U.S. law focuses primarily upon source identification and acquired distinctiveness rather than rigid graphical representation requirements. Because of this, U.S. courts tend to accept sensory branding more easily. United States authorities have recognised scent marks where applicants establish that fragrance functions as a source identifier and does not constitute an inherent feature of goods. Examples include fragrances associated with sewing thread, lubricants, and retail experiences. The American approach therefore emphasises consumer perception and market function rather than formalistic representational criteria.

5.5 Rejected Olfactory Mark Applications

Even though some places barely acknowledge scent trademarks, plenty of attempts to register them still get turned down mainly because they're seen as functional, hard to depict, or simply too ordinary. What keeps happening shows how shaky the rules really are when it comes to smells claiming brand status, especially since showing a scent points to origin instead of just being part of what a thing is remains tricky at best.

Numerous scent mark applications have been rejected globally, demonstrating persistent challenges:

Chanel No. 5 (UK): Chanel's trademark application to register was not accepted as perfume couldn't become property in the UK when Chanel tried to claim ownership over No. 5's aroma

judges said what makes the liquid work can't be locked down. Smell, they ruled, isn't free real estate if it defines the thing itself as its functionality. The fragrance constitutes the commercial perfume on the market, and olfactory trademarks do not protect commercial perfumes.

Ripe Strawberries (EU, 2005): ***Eden SARL v. Office for Harmonisation in the Internal Market (OHIM), Case T-305/04, [2005] ECR II-4705,***[11] a French company Laboratories France Parfum SA submitted an application for a scent mark with the description "the scent of ripe strawberries". The EU Court rejected this bid in October 2005, stating evidence showed that strawberries do not have just one smell because varieties of the fruit were not alike. The Court held there is no generally accepted international classification of smells which would make it possible to identify an olfactory sign.

Peppermint Scent (US): ***In re Pohl-Boskamp GmbH & Co KG,*** **106 USPQ2d 1042 (TTAB 2013**[12]**)** TTAB refused registration of a peppermint scent for a pharmaceutical product, holding that a substantial showing of acquired distinctiveness is required to demonstrate that a flavour or scent functions as a mark.

6. The Sumitomo Rose Scented Tyres Case in India

6.1 Background and Application

Something shifted when **Sumitomo Rubber Industries Ltd** submitted its paperwork in India for scent mark registration as had never seen a case like this before. Firm based in Kobe, Japan this tire company filed request number **5860303** back on March 23, 2023. Its goal was Protection for items linked to cars and related parts instead of a logo or name, what they wanted protected was unexpected: a smell, specifically one that brings roses to mind, meant for use on tyres. While filing under intent to use rules in **Class 12**, the move stood out sharply across legal conversations. Until then, scents hadn't entered India's trademark landscape at all. Because of this, old ideas about what could qualify as a brand symbol suddenly faced new scrutiny under the 1999 law.

What gave weight to the case wasn't just how new it seemed, yet more so how sharply it pushed against boundaries within India's rules on trademarks - especially the rule demanding visual form found in Section 2(1)(zb) of the 1999 Act. Up until then, scents hadn't earned official status as protectable signs here, while officials commonly doubted whether smells belonged among registrable symbols. Back in 2015, the draft guidelines took a narrow view, stating

[11] Eden SARL v. Office for Harmonisation in the Internal Market (OHIM), Case T-305/04, [2005] ECR II-4705.
[12] **In re Pohl-Boskamp GmbH & Co KG, 106 USPQ2d 1042 (TTAB 2013).**

scent-based marks usually fail tests of clarity, exactness, and visible depiction. So when Sumitomo filed its claim, attention turned, not out of curiosity alone but because it quietly challenged long-held assumptions about what counts as brand identity in this country.

6.2 Initial Objections

Looking at the application, examiners raised issues based on Sections 9(1)(a) and 2(1)(zb) of the Trade Marks Act, 1999. While reviewing it, doubts emerged about whether a scent alone stood out enough as a brand identifier. Then came the question as how could such an scent even be shown visually, as rules demand This need for visual depiction still blocks many fragrance-based attempts in India. Since smells depend heavily on personal experience, pinning them down clearly feels nearly impossible. Their fleeting nature makes standardization tricky too. For years now, these hurdles have shaped how regulators view odour trademarks.

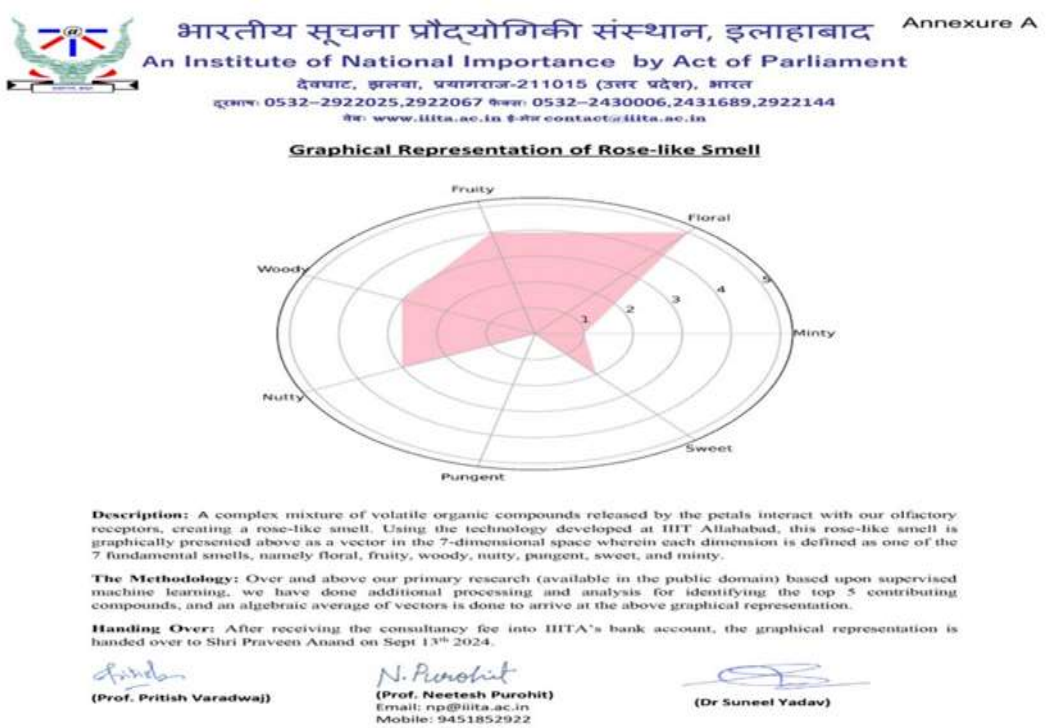
Out of step with old rules, the Registry stuck to its usual stance. Shaped by past rulings elsewhere, especially Sieckmann's tight limits, their view found roots beyond local borders. Smell-based marks never sat well with a system built on clear visuals and paper trails. Because India long trusted what could be seen and filed, scents felt out of place. So when Sumitomo faced pushback, it wasn't just about one case going wrong. The hesitation ran deeper - rooted in lasting doubt over whether smells belong in registries at all

6.3 The Amicus Curiae Meets Scientific Collaboration

Out of nowhere, the Trade Marks Registry appointed Mr. Pravin Ananad legal counsel being for its case. Not every case drags science into court, yet here smell became part of the equation. Since scents don't behave like logos or names, standard methods fell short. Someone had to bridge law with lab like precision. That role landed on him. Smelling truth goes beyond guidelines it mixes lab work with how things feel, tied up in what we see. Reality checks aren't clean; they twist through facts, reactions, and guesses all at once together, experts from the Indian Institute of Information Technology in Allahabad (IIT) began shaping a way to pin down scent turning something fleeting into fixed form. When human noses reached their limit, science stepped forward, filling gaps tradition had long ignored. Instead of hunches guiding views, a different goal grew up into real patterns tied to odours, repeatable each time. This small turn changes how trademarks are judged, hinting that legal routines may need fresh tools now and then. Suddenly, exact readings outweigh recollection when deciding a brand's aroma.

6.4 The Seven Dimensional Vector Model

A new way to pin down a rose's smell emerged when lawyers joined forces with researchers - not guessing, measuring instead. Shaped by data, not hunches, it became a sequence of seven points, each acting like a marker in air. Instead of descriptions, numbers give position. Like stars plotted across silence, the scent takes form through spacing. At the core stood researchers from IIIT Allahabad were Pritish Varadwaj, Neetesh Purohit, alongside Suneet Yadav, pushing past guesswork. Their method turns olfactory judgment into something you can plot, see, and hold. Instead of saying "it smells sweet," now there is shape, structure, dimension tied to sensation. What once floated in air as feeling now lands as data. Away from past missteps called out in Sieckmann where chemical codes, scent swabs, or fuzzy words fell short, the team treated aroma like data points across seven distinct axes. Each axis stands for a core category floral, fruity, woody, nutty, sharp, sugary, and cool. Through this lens, scent gains structure. Not guesswork, but geometry shapes how roses are mapped now. Smell shapes the air around it. Space takes form once scent arrives.


भारतीय सूचना प्रौद्योगिकी संस्थान, इलाहाबाद
An Institute of National Importance by Act of Parliament
देवघाट, झलवा, प्रयागराज-211015 (उत्तर प्रदेश), भारत
दूरभाष: 0532-2922025,2922067 फैक्स: 0532-2430006,2431689,2922144
वेब: www.iiita.ac.in ई-मेल contact@iiita.ac.in

Annexure A

Graphical Representation of Rose-like Smell

Description: A complex mixture of volatile organic compounds released by the petals interact with our olfactory receptors, creating a rose-like smell. Using the technology developed at IIIT Allahabad, this rose-like smell is graphically presented above as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet, and minty.

The Methodology: Over and above our primary research (available in the public domain) based upon supervised machine learning, we have done additional processing and analysis for identifying the top 5 contributing compounds, and an algebraic average of vectors is done to arrive at the above graphical representation.

Handing Over: After receiving the consultancy fee into IIITA's bank account, the graphical representation is handed over to Shri Praveen Anand on Sept 13th 2024.

(Prof. Pritish Varadwaj)

N. Purohit
(Prof. Neetesh Purohit)
Email: np@iiita.ac.in
Mobile: 9451852922

(Dr Suneel Yadav)

Figure 1: Graphical Representation of Rose-like Smell represented as a vector in 7-D space prepared by Prof. Pritish Varadwaj, Prof. Neetesh Purohit and Dr. Suneet Yadav of (IIT), Allahabad[13]

[13] *Graphical Representation of Rose-like Smell represented as a vector in 7-dimensional space prepared by Prof. Pritish Varadwaj, Prof. Neetesh Purohit and Dr. Suneet Yadav of (IIT), Allahabad*

Some smells were split apart by smart machines trained on past cases. Then tiny bits of specific substances showed up after being pulled through gas methods and having theweights checked. Shaped like a jagged ring made of mixed numbers, the design began to appear.

Now accepted where doubt once held sway. A shift unfolded behind closed doors. What once seemed too personal to measure now shows up as facts on paper. Laws can grab hold of it, thanks to shapes made from scent bits, what made this science project matter in court became clear fast. Because it turned smells into visual patterns, the tool aimed at meeting standard rules for trademarks clarity, consistency, visibility, longevity. Actually, its approach tackled a core problem dogging scent-based marks: how to show a smell plainly so officials could review and record it properly.

6.5 The CGPDTM Issues Key Ruling on 21 November 2025

That Tuesday in late November shifted something quiet but deep within India's legal landscape. On the 21st, Prof. Unnat P. Pandit, holding rank as head of patents and trademarks, approved a scent as brand identity. Not a logo, not a name, but the smell of roses baked into rubber. His nod gave shape to what had never been seen got protection for fragrance alone. Until then, signs needed eyes to register them. Now, memory could count more than marks. Smell stepped into law's frame, unrolling past symbols drawn flat on paper.

Because of how it worked out, clarity came through a seven-part direction system meeting key rules usually tied to showing trademarks. Seen as sharp enough, standing on its own, easy to grasp, neutral in tone, exact, and something you can draw clearly. Accepting the filing showed the office ready to rethink old process limits when science moves forward, tech shifts too.

Then came the order to publish the mark under ***Section 20 of the Trade Marks Act, 1999*** this time listed as an "olfactory trademark," complete with its written explanation and visual form in the Trade Marks Journal. Notably, the office confirmed the smell of roses had nothing to do with how tyres work or what they're made for, making it unrelated by nature or purpose. Instead of adding any practical benefit, the fragrance stood apart simply pointing to where the product originated. It played no role in improving grip, durability, or function of the tyre itself.

6.6 Historical Significance

Surprisingly, the Sumitomo case nudged Indian trademark law into new territory. Not merely about names or logos anymore, protection now stretches to smells under certain conditions.

https://www.bananaip.com/intellepedia/olfactory-trademark-india-rose-scented-tyres-legal-history visited on 23 May 2026

Only after proving clear identification and solid proof did this approval happen. Few countries allow such claims at all. India joining them wasn't sudden it followed strict criteria being met. Smell, once ignored, now holds legal weight when shown properly.

One step back, this ruling shifts how trademarks are seen in law. Not tied just too old ideas of logos on paper, it now opens doors for sound, smell, or feel in brand identity. Still, gaps remain how do examiners judge these new forms. Enforcement feels shaky without clear rules. Consistency across cases seems uncertain at best. The real test comes next: what happens when more unusual brands appear before India's legal gatekeepers. Only their choices ahead will show if this moment matters beyond itself.

7. India's Approach to Olfactory Marks Compared

7.1 Changes from the 2015 Draft Manual

Smell-based trademarks faced tough odds under the 2015 draft guidelines, shaped heavily by how Europe handled such cases. Instead of clear descriptions, scents brought confusion hard to pin down in paperwork. Because of this, Indian practice followed a narrow path, much like rulings after the Sieckmann decision. Uncertainty around defining smells kept them mostly off the registry.

Surprisingly, the nod to Sumitomo's rose-smelling tyres hints at a shift from past bureaucratic habits. Flexibility crept into view when the Trade Marks Registry allowed scents into the mix, reworking how laws might be read. Sensory branding found footing where it once faced resistance. The decision quietly opened doors without fanfare.

7.2 Alignment with International Standards

Meeting global standards

Though once hesitant, India accepted smell marks, including a tyre trace smelling of roses linked to Sumitomo Rubber Industries. One move at a time, laws here started reflecting worldwide trends on unusual trademarks odours included. Outside judgments played a big role; ideas seeped in after long stretches of courtroom fights in Europe, the UK, and the US. While other nations stuck to tight rules, this country leaned into adaptable methods for showing how a fragrance appears visually. Change arrived not via fixed standards, yet through down-to-earth tweaks that made sense in practice

Back in 2002, everything shifted for smell logos across nations after the EU court weighed in on the Sieckmann case. Stability became essential because symbols had to last without fading

or changing form. Because of that decision, descriptions must now speak clearly even if seen years later. Accessibility matters too since anyone should grasp what's claimed without help from experts nearby. Precision got equal weight alongside openness under those new standards. Understand ability stood out as vital, given how odd it feels describing odours in legal books. After that moment, IP offices everywhere began shaping their work around these rules. People often call them the Sieckmann Criteria, off the record they now shape decisions on registering unusual marks like smells.

Because of how it handled issues from the Sieckmann ruling, the Sumitomo case stands out. Earlier attempts at registering scent marks used only descriptive text or actual smell samples, yet India's approach took a different path. Graphical representations, built with scientific precision, formed part of the application there. Addressing core weaknesses found in Sieckmann became possible through such means. Unclear definitions, short-lived formats, and missing objectivity those were the flaws now being tackled

How Countries Handle Smell Trademarks

United Kingdom

Starting with smell-based marks, the UK moved quickly compared to others. Back in 1996, rose-scented tyres from Sumitomo gained approval through application number UK00002001416. Instead of samples or codes, examiners relied solely on descriptive text. Because of that choice, the case stood out as forward-thinking at the time. Even without advanced tools for capturing scents, protection was still given. Back then, a looser standard allowed more flexibility before Sieckmann set tighter rules. Once EU trademark laws aligned, registering scents grew far less viable across member states.

European Union

Hardly anyone succeeds in registering smell-based trademarks across the European Union. Though rules changed no longer demanding "graphical representation" the EUIPO still turns them down. Existing tools fail to capture scents clearly enough, precise enough, lasting enough, or without personal bias. These are the benchmarks set by Sieckmann. Technology lags behind legal needs. As things stand, fragrances stay outside trademark protection. Progress stalls where science stops short.

Although EU trademark rules allow non-visual signs in theory, scent-based trademarks cannot be registered today. The reason lies in current technological limits no widely accessible method exists to capture smells with enough clarity or consistency. Even though taste and fragrance indicators are acknowledged legally, they fail at the application stage. Without an accurate,

standardized way to document them, such sensory features stay outside practical protection. So long as representation remains imprecise, these forms lack enforceability within the system.

United States

Flexibility marks the approach taken in the United States. Most smells can't be trademarked, yet some get approved when they've become unique over time. What counts is evidence it needs to be clear the odours isn't there to make the item work better. Functionality becomes a barrier; thus, the aroma needs recognition apart from utility. Mainly, its role should point to origin, not enhance performance. This standard comes from how U.S. law interprets brand signals.

Though scent-based trademarks have gained acknowledgment examples include smells tied to craft thread or boutique environments they must clear high proof thresholds. Recognition by American legal bodies like the USPTO exists, yet linkage in public perception to one distinct provider remains essential. A smell alone won't suffice unless it clearly signals origin in buyers' minds. Proof often demands extensive consumer behaviour data. Unexpected approval happens only when evidence shows consistent brand connection.

India's Distinctive Approach

Midway through global debates on non-traditional trademarks, India's evaluation of Sumitomo's fragrance mark stands out, not quite as strict as Europe, yet more grounded than U.S. practice. Instead of depending solely on descriptive text a method tried in the UK during the 1990s authorities here turned to measurement based techniques deemed accurate enough to meet demands for consistency and clarity. Though rare, such moves point toward a system balancing innovation with legal rigor. Through documented analysis, rather than assumption, confidence in classification appears strengthened. However, shift indicates that suggesting trust lives better in what can be touched once senses start noting things. What emerges is less about novelty and more about reproducibility under scrutiny. One outcome is framework where smell can count, but only if repeatable evidence backs it up. What drives this is a push to cut confusion while still leaving room for odd symbols.

Later on, changes started making sense as tech moved faster than trademark books expected. Old ways of seeing logos face new tests now that senses beyond sight claim space in branding. India noticed this turn early, adjusting thoughts shaped only around how things look. Paper sketches used to define everything until real actions from the Indian Trade Marks Registry shifted ground. Once blurry areas gained shape particularly when Sieckmann showed flaws in trapping smells or sounds legally. Just because it's invisible doesn't mean it stays hidden clarity reveals what eyes miss. The portrayal stays accurate while meeting required limits. Smell isn't

the only thing catching attention, brands go beyond names and symbols these days. Around the world, scent joins sight as a quiet signal in crowded markets. India sees more businesses turn to odder ways of being recognized. Visuals take a back seat when tunes play, lights pulse, and surfaces invite touch. Even air carries clues, drifting past customers who remember without trying. Because of this, the Sumitomo filing matters beyond India's borders, shaping how countries talk about safeguarding unusual types of trademarks. Though shaped by changes in national law, this idea spills into wider debates worldwide about who truly owns creative work. Now beginning to recognize smells as brands, India inches toward alignment with certain international practices. At first, Europe was strict about how signs could be shown. Over time though, changes in EU rules dropped old limits on visual forms. Now, ways of showing marks do not depend on specific technology. Instead, they allow more flexible methods.

Just like that, the U.S. has long valued how consumers see a mark more than rigid filing rules. India allowing a scent as a brand signal leans closer to global norms, though still with care around proof and uniqueness.

7.3 Strategic Implications

Smells as brand identifiers could reshape how firms protect their identity, alongside shifting legal frameworks. Starting with scent, businesses build deeper feelings tied to items, making them stick in memory more easily while standing out where choices are many.

Businesses in India might soon find smell a bigger part of how they stand out especially hotels, car makers, stores, and high-end brands. Meanwhile, those who handle trademarks could struggle more unless rules adapt, along with sharper skills to judge smells people connect with, proof tied to senses, and cases where lines get crossed.

8. CHALLENGES IN REGISTRATION AND ENFORCEMENT

8.1 Registration Challenges

Graphical Representation: The graphical representation requirement remains the primary obstacle. The Trade Marks Registry has received trademark applications which fall under the category of rarest applications and challenge legal boundaries of the trademark law in India for olfactory marks.

Demonstrating Distinctiveness: When a vehicle fitted with tyres containing the present smell passes by, a customer perceiving the smell will have no difficulty in forming an association between the goods and the source of the goods, but this experience varies by environment and

individual.

Procedural Uncertainty: There are no specific examination or approval guidelines for olfactory marks. When a mark where the smell is well-known to members of the public, the use of the descriptive word for the said smell is good enough as its representation, but for amorphous, ambiguous smells like perfume, it will be difficult to describe and an objection can be taken that it is not capable of graphic representation.

8.2 Enforcement Challenges

Infringement Standards

Most problems tied to enforcing scent-based trademarks emerge within India's legal structure, specifically through Section 29 of the Trade Marks Act, 1999. When fragrance claims arise, judges examine if a similar aroma could mislead buyers into mistaken associations. That judgment reflects how an ordinary individual neither highly observant nor perfectly mindful might perceive things. Smells don't hit everyone the same way unlike a logo or brand name, they change from person to person. Since memory shapes how we smell, showing that people misread them becomes tangled fast.

Evidentiary Difficulties

Some scents leave traces that complicate legal proof of misuse. Days pass, then smells weaken air exposure plays a part, humidity nudges change, temperature swings speed decay. One expert might claim two scents match; another could disagree sharply. Even if chemical structures look alike, people may perceive them differently through smell alone. Questions about whether buyers recognize a specific odours. Those studies tend to lack consistency in how they're run. Because of such issues, protecting scent-based brands ends up harder than guarding logos or names.

8.3 Functionality Doctrine

The doctrine of functionality, established in **Parle Products v. J.P. and Co. (1972**),[14] a rule took effect blocking protection for traits vital to how something works, what it costs, or why it exists. Because of this, smells can't be trademarked if their job is practical, covering bad stinks or making a product work better. Instead, only non-functional aspects get legal shield.

A feature tied to how something works can't be trademarked if it affects what the item does or why people buy it. When a trait shapes performance or matters to function, legal branding

[14] Parle Products (P) Ltd. v. J.P. & Co. 1972 AIR 1359.

rights won't apply. What serves utility over identity stays outside trademark reach. If usefulness drives design, ownership claims lose ground. When it comes to scent-based trademarks, usefulness can block legal recognition. A smell meant to hide bad odours won't count if its main job is practical. If a fragrance makes a product more appealing or works better, that trait usually disqualifies it. What matters is whether the aroma points to where the item came from. Distinctiveness plays a key role only unique smells with no real function stand a chance. Marks based on smells must do nothing beyond signalling origin. Recognition by consumers as a brand identifier becomes essential here. Purely decorative or sensory appeal does not meet the threshold.

9. CRITICAL ANALYSIS AND RECOMMENDATIONS

9.1 Sumitomo Ruling and Its Doctrinal Impact

Smell gets its due in India's legal books after a long wait. A fresh take on rules lets science step in where old guidelines drew lines too tight. Pictures drawn from data now count, even if past handbooks said otherwise. This shift is it shows systems can bend without breaking. Not every rule sticks when progress knocks. There is a functional understanding of distinctiveness with focus on consumer perception and arbitrariness of the sign relative to goods. The scent of roses bears no direct relationship with the nature, characteristics, or use of tyres and is, therefore, arbitrary in its application to such goods, making it distinctive.

The Controller General of Patents, Designs & Trade Marks (CGPDTM) acknowledged the scientific, technical, and legal inputs submitted by the amicus curiae given the complexity surrounding the facts of this application, specifically the graphical representation of the smell mark.

9.2 The Proof-of-Concept Nature

The acceptance of Sumitomo's rose-scented tire is best understood as a proof-of-concept rather than an anomaly. It demonstrates that when applicants combine creativity in branding with robust scientific and legal preparation, the Indian system is capable of accommodating cutting-edge non-traditional marks.

A scent left behind by a car tire, smelling of roses and made by Sumitomo Rubber Industries, points toward new possibilities in India's approach to brand protection. Not just an odd case on its own this approval suggests change might be possible. Proof rooted in science helped make the difference here. Technology played a role too, allowing the smell to be described

clearly. Legal arguments held it together from start to finish. Tradition does not always have to win when facts back up something different. Marks may now stretch beyond sight into senses once ignored. One unusual example today could shape standards for future.

It turns out smells can count as legal identifiers if they're truly one of a kind, well-documented, even if rarely enforced. Sumitomo made it work by keeping detailed records, shaping a distinct image, staying visible over time. What once seemed unlikely gained ground because persistence paired with exact paperwork wore down doubt slowly. Acceptance didn't come fast just steady effort built trust where rules hesitated.

Nowhere is the shift clearer than here a small legal move that shifts Indian trademark views just enough to include smell, sound, motion, even texture. Because culture changes, so do rules; what once needed eyes now trusts ears, skin, and memory. Proof matters: if people know the mark, feel it, recognize it without seeing, acceptance grows. Slowly, through cases like this, law begins matching life. Recognition isn't only seen anymore.

9.3 Recommendations for Legal Development

Specific Regulatory Standards

Smells making their way into trademark law as clear guidelines may be necessary in India. Through revised Trademark Rules or consistent practice at offices, direction could make a difference. Representation methods, uniqueness thresholds, even function-based limits these matter. Predictability often grows when both applicants and reviewers share common benchmarks. Clarity tends to follow structured approaches. Standards like these shape fairer outcomes behind the scenes.

Clarify Infringement Standards

One shopper noticing a familiar smell may weigh heavier than test tubes full of data. How people sense similarity often steers court decisions more than scientific reports. Judges in India currently work without steady rules when handling perfume-related conflicts. Public perception, not laboratory charts, might become the deciding factor someday. Stability in brand protection depends on consistent measures across rulings. Uncertainty remains until someone draws firm lines on imitation boundaries. Most times, rules stick better once courts have ruled on them more than once. When it comes to using Section 29 of the Trade Marks Act, 1999, doing things the same way helps. Boundaries start making sense after several rulings pile up. Clarity usually shows up not before then.

Keep Evidence Secure

Smells vanish fast if rain, sun, or wind touch them, so keeping proof fresh needs smart steps

right from the start. Packaged wrong, even strong odours lose power before they reach testing. Timing slips through fingers like sand unless containers seal tight the second clues are found. Judges may toss out nose-based hints without clear laws to back their trustworthiness. Right now, India's legal playbook lacks exact lines for sniffed secrets to stand tall. Airtight wraps guard fragile traces better than loose folds ever could. Fragrance fades quieter than whispers when left too long in thin bags. Rules sleeping unused mean powerful sniffs might never speak in courtroom halls. First moves matter most, what happens seconds after discovery shapes later truth. Without steady standards, scent trails dissolve like mist at dawn. Out of nowhere, temperature swings might erase chemical clues quicker than anyone guesses. When methods follow messy reality instead of clean labs, facts survive more often. Judges look for steady patterns, missing clear routines lets uncertainty creep in. Starting right matters, tiny smells could matter later, provided storage begins properly. Ideas that seem solid on paper need to hold up in closed jars, whether it's freezing or sweltering outside.

Build Technical Expertise

Most folks judging smell clues lack full grasp of what's involved. Those handling trademark cases may gain by exploring lab methods for testing scents. A path opens when attention turns to how noses pick up aromas. Clarity in chemical makeup often means less uncertainty in reviews. Most of the time, better rules come after leaders finally understand how scents are made. Picture workshops where hands-on tests become part of learning it might help. When judges weigh evidence, their decisions lean on knowing what the data really means. Even if change drags, tiny moves still carry weight.

Introduce Formal Guidelines

Clearer rules might help India's trademark office explain how it judges scents. Instead of guessing, smell-specific guidelines could bring steady results. Businesses testing scent branding may act more confidently. Structure usually brings predictability, this holds true even in legal frontiers. Uniform examiner steps often lead to similar case outcomes. Clarity like this does not guarantee approval but it levels the playing field. Over time, systematic methods shape fairer decisions, even for non-traditional signs.

9.4 Viksit Bharat and Global Scaling

Seeing a tire mark smell like roses, tied to Sumitomo Rubber Industries, signals change - one matching India's long-term goals under "Viksit Bharat 2047." That plan aims at building an economy strong on home-grown ideas, ready to stand tall worldwide come 2047. Accepting unusual trademarks such as scents shows how Indian systems adapt slowly but surely, keeping

pace with shifts seen elsewhere in trade and tech.

Because modern branding leans more into sensory experiences instead of just names or logos, progress here matters. Smells recognized as brand identifiers push companies toward fresh strategies ones that build tighter links with customers while standing out in crowded markets. When a country accepts these new kinds of IP, it shows readiness to keep pace with worldwide business evolution. India moves ahead by adapting, signalling trustworthiness for forward-looking enterprises.

Because smell shapes perception, businesses in India might gain ground by weaving signature scents into their identity. Where taste, touch, and sight already matter deeply, adding aroma could deepen customer connection across fashion, dining, travel, personal care, health spaces, and shopping zones. Not limited to local appeal, these olfactory cues can travel well - helping brands stand out beyond borders. With thoughtful legal protection for such sensory signals, companies may secure value others overlook.

Because uncommon trademarks gain acceptance, efforts to boost innovation and distinct products receive quiet support. When businesses from India reach global arenas, standing out becomes easier if Non-Conventional marks like sounds or colours are shielded by law. Uniqueness, tied to fresh ideas, often gains strength when such identifiers are officially recognized. Progress in how brands are legally defined quietly feeds into wider plans for industry and wealth creation. Over time, these shifts align with national aims for advancement, even if slowly. Legal updates, though subtle, play a role beyond courts they shape how goods are valued abroad.

10. CONCLUSION

These days, brand rights aren't limited to symbols or words alone. Beyond visuals, protection stretches to scents, even noises heard briefly. Sounds odd yet a jingle or whiff might be legally guarded now. Because people notice brands differently, companies use colours or jingles to stand out. Technology helps too it allows new kinds of brand signals. Feelings matter now when recognizing a product. Even motion or a certain shade can point to who made something. Smells, once ignored, sometimes do the job. These changes did not happen overnight. Branding shifted as attention became harder to grab.

A sudden whiff of roses clinging to rubber flipped the script in Indian trademark law. Smell stepped into the spotlight, nudged forward by Sumitomo Rubber Industries. Vision used to rule- logos, shapes, marks you could see. Now something unseen pushes through. Paper trails

and crisp designs no longer hold full control. Quietly, the ground shifted beneath familiar rules. Quiet shifts began behind closed doors, tucked inside legal papers. Step by step, old routines loosen their grip, opening room for ways of knowing that aren't just about seeing. What seemed fixed years ago now wobbles under fresh interpretations.

Even so, big questions about rules and processes still hang in the air. Who speaks for whom is how systems prove their role where does proof fall short, and enforcement wobbles. Administration lacks steady rhythm. In places like the U.S., or across EU states flexibility shapes law without breaking trust in it.

Right now, India finds itself in a shifting phase. How scents become trademarks will hinge on if officials, judges, and regulators shape clear rules ones that acknowledge sensory identity while keeping markets fair and laws stable. That case about tyre smell didn't just ask if odours can be owned, it quietly questioned how well IP systems keep up with modern business life.