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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 PROTECTION FOR NON-CONVENTIONAL MARKS: SMELL, SOUND, AND COLOUR MARKS IN INDIA

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ABSTRACT

This research paper analyses the impact of globalisation on the cultural landscape of India by considering its effect on travellers, tourism, and hospitality. Registered non-conventional trademarks smell, sound, and colour marks non-conventional trademarks a unique trademark identifier non-conventional marks a trademark identifier that is unique through the senses.

Pre-set legal boundaries pose considerable obstacles towards registering non-conventional trademarks. The paper analyses The Trademarks Act of 1999 and the Marks Rules of 2017 to uncover how the Indian Trademark Registry and the Indian legal system as a whole treat such

marks. To illustrate the Indian context, other jurisdictions such as the EU and the US are also included to determine what India is lacking legally and procedurally. The paper illustrates the legal problems of distinctiveness, graphical representation as well as the consumer perception through case laws and academic discourse. The research offers Indian trademark law realignment strategies with global developments supporting the use of advanced digital and sensory branding.

INTRODUCTION

Traditionally, trademarks have been names, logos, symbols, and other visual marks. But with the advent of creative branding methods and a competitive marketplace, companies are turning to Non-Conventional elements like sounds, smell, colours, and even textures to differentiate their products. Such trademarks are called non-conventional trademarks.

Non-conventional trademarks are sensory and help establish an association between the consumer and the product or brand. The characteristic Nokia ringtone, for instance, the specific purple colour of Cadbury, or the scent used in a high-end store, help identify and distinguish the source of goods or services. Such marks tend to leave a deep impression and create strong brand loyalty, even without conventional words or logos.

The Indian law, The Trade Marks Act, 1999, which regulates trademark law in India, does not categorically enumerate non-conventional marks, but its definition of a "mark" covers them sufficiently. Still, in reality, their registration and protection present a number of problems.

Across the world, such as in the United States of America and the European Union, there has been significant development in the recognition and registration of Non-Conventional Trademarks. The Indian legal system, while drawing its inspiration from global standards like the TRIPS Agreement, is in a transformative stage as far as these Non-Conventional marks are concerned. Relatively few non-conventional marks have been favourably registered in India, and none at all have been the subject of extensive judicial explication.

This research paper aims to examine the scope, recognition, and legal treatment of non-conventional trademarks in India, with a specific emphasis on smell, sound, and colour marks. It also attempts to compare Indian approaches with global paradigms and evaluate significant

judicial rulings and registry practices. The research is not only important for grasping a comparatively new field of intellectual property law but also for looking into the ability of law to accommodate shifting commercial realities. As brands continue evolving beyond conventional logos and labels, legal regimes have to keep pace to provide suitable protection to such evolving forms of brand identity.

LITERATURE REVIEW

The subject of non-conventional marks has been one of growing academic attention, especially with the new trend in branding that transcends conventional words, logos, and visual symbols. Some Indian and overseas authors have contributed to the challenges and potential of having such marks registered and protected, including smells, sounds, and colours. Together, these writings assist in grasping how the legal system has developed and how far it still has to proceed to accept such marks.

Indian jurisprudence scholars such as Dr. B.L. Wadehra, in his book *Law Relating to Intellectual Property*, talk about the wide definition of a trademark as per the Trade Marks Act, 1999. He writes that although the legislation permits registration of Non-Conventional marks such as colours, shapes, and sounds, pragmatic issues are involved, particularly for smell and taste marks.¹ As per him, such marks are having trouble meeting the requirements of graphical depiction and uniqueness, both of which are necessary under Indian law for registration.

Globally, authors such as Cornish, Llewelyn, and Aplin in *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* provide a comparative approach.² Their book helps describe how the United States of America, the European Union, and Australia have progressively established legal frameworks to register and safeguard Non-Conventional trademarks. The authors concentrate on legal concepts such as acquired distinctiveness, consumer perception, and secondary meaning, which are vital in establishing the distinctiveness of non-conventional marks.

Aside from scholarly textbooks, legal journals, and blogs have played a great role in influencing the modern interpretation of Non-Conventional Trademarks in India. SCC Online, Bar &

¹ Dr. B.L. Wadehra, *Law Relating to Intellectual Property* (LexisNexis 5th ed. 2012).

² W.R. Cornish, D. Llewelyn & T. Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (8th ed. 2013).

Bench, and Mondaq articles often critique the realistic challenges for applicants seeking registration of sound or colour marks in India. For instance, they point out how the Indian Trade Marks Registry demands a clear, unambiguous, and objective depiction of something that is not easily possible for sensory marks such as odour.

A number of Indian case commentaries are also valuable reference points. In *Christian Louboutin SAS v. Nakul Bajaj*, the Delhi High Court established a precedent for colour trademarks by recognising the red sole of a shoe as a distinctive mark pertaining to a luxury brand.³ Likewise, in *Colgate Palmolive v. Anchor*, the disagreement over the application of a red and white colour combination focused on how colour schemes can be employed to function as source identifiers.⁴ In addition, articles written by law students and publications by IP law firms such as Anand & Anand and Naik Naik & Co. frequently discuss India's slow coming to terms with non-conventional trademarks. They highlight that although the law is couched in liberal language, the lack of procedural guidance and precedent leaves applicants in doubt.

TYPES OF NON-CONVENTIONAL TRADEMARKS

1. Sound Marks

A sound mark employs an uncommon audio or musical content to signify the source of goods or services. It helps clients associate a sound with a company, product, or brand. Examples are the roar of the MGM lion, the Intel chime, and the Nokia ringtone.

In India, sound marks became officially registrable with effect from the Trade Marks Rules, 2017. It should be accompanied by an MP3 sound file (up to 30 seconds) and a graphical representation, such as musical notation. India's first approved sound mark was the "Yahoo!" yodel. Nonetheless, sound marks are still uncommon in Indian trademark practice and will be granted only if they distinctly differentiate the product or service from others in the market.

2. Colour Marks

Colour marks apply a particular shade or set of colours to signify a brand. Examples of these are Cadbury's purple for chocolates, Tiffany's robin egg blue for jewellery boxes, and the red sole on Christian Louboutin shoes.

³ *Christian Louboutin Sas v. Abu Baker & Ors.*, (2018) 250 DLT 475 (Del).

⁴ *Colgate Palmolive Co. v. Anchor Health & Beauty Care Pvt. Ltd.*, (2003) DLT 51 (Del).

In India, colour marks are protected under the Trade Marks Act, 1999, subject to the fact that they have gained distinctiveness by persistent use and awareness of the public. A single colour is more difficult to register compared to combinations since a single colour tends to lack distinctiveness. One Indian case is *Christian Louboutin SAS v. Nakul Bajaj*, where the Delhi High Court recognised the protectability of a single colour used distinctively.

3. Smell Marks

Smell marks are a particular scent employed to differentiate a product or service. They can be strong indicators of a brand, such as a repeated floral odour used in packaging or a particular fragrance connected to a brand. Across the world, the European Union and the United States permit some smell marks (e.g., a floral odour for tennis balls).

Yet, in India, legal registration of smell marks is still not practical. The Trade Marks Act demands a graphical representation of the mark, something that is not possible for smells unless detailed by exact chemical formulae or universally used olfactory descriptions. To date, no smell mark has been registered under Indian law.

4. Shape Marks

Shape marks are the three-dimensional shape of a product or its packaging that makes it identifiable from others. Typical worldwide examples are the shape of the Coca-Cola bottle and Toblerone chocolate's triangular shape.

The Indian Trade Marks Act, 1999, provides for registration of shape marks where they are distinctive and not purely functional. The shape should not be the consequence of the nature of the goods themselves or be required to achieve a technical effect to be registrable. Indian courts have upheld such registrations where the shape became distinctive due to extensive use.

5. Taste Marks and Touch Marks (Emerging Types)

Taste marks entail the use of a unique flavour to differentiate a product, while touch marks entail unique textures or surface patterns. These are extremely subjective and hard to graphically represent, and hence, under current Indian law, virtually impossible to register. Even in the US or EU, these marks are hardly awarded because there is no concrete identification standard, and there are chances of confusion among consumers.

EVOLUTION OF NON-CONVENTIONAL TRADEMARKS

Logos, symbols, captions, signs, names and images have been traditional trademarks used to identify products, services or brands from a very long time but owing to a paradigm shift in branding strategies in recent times, non-conventional marks like colour, shape, smell, taste, etc. are being employed by various companies to identify their products in the global market.

The arguments and discussions regarding trademark protection of nonconventional marks have been dominant for over 100 years now. Although the legal protection and registration of non-conventional trademarks have evolved very recently, it has been utilised by several renowned brands for over a decade now. For example, the shape of the bottle of the Coca-Cola beverage, the blue gift box of the Tiffany firm, which serves to create a unique identification among consumers and the pink colour trademark of the Owens Corning Corporation are some of the first registered notable non-conventional trademarks.

The WIPO set up a committee for the study of trademarks in the form of the Standing Committee on the Law of Trademarks. The committee discussed non-conventional trademarks and divided them into visual and non-visual marks. Colour, shape and holograms are visual trademarks, while non-visual marks consist of sound, taste, smell and touch. Afterwards, in 1956, it was realised that the definition provided to trademark was extremely general in its nature. The matter was initially time discussed during the Vienna meeting and then in Brussels. In the year 1994, the TRIPS agreement was approved, beginning development in trademark rights. The definition provided by the TRIPS trademark agreement was broad and was provided on the basis of the nature of the marks, which can be treated as trademarks, and based on the functional definition, the distinctive function of trademarks is also essential to provide protection. Article 15 of the TRIPS agreement gave a very vague list of what can be regarded as a trademark, which encompassed signs, logos, symbols, letters and combinations of colours or signs as well. As far as the TRIPS agreement is concerned, Non-Conventional trademarks should also be protected since they are used as a trademark and also have a unique character that will help to distinguish a particular product. From the 19th century, a lot of solid scholastic works as well as debates were conducted in Europe with respect to the protection granted to non-conventional trademarks. A case was also made in Bolivia in the early 20th century, where non-conventional marks, such as sound, shape, etc., were given protection since they could be graphically represented and possessed distinctive character. Despite registration and protection

of non-conventional trademarks having been consistently agitating for the past 20 years, they have plenty of issues particularly in the case of visually non-perceptible non-conventional trademarks such as smell, touch and taste because they may cause a lot of confusion in the consumer's mind as well as because of the inability of these marks to be graphically depicted.

ROLE OF NON-CONVENTIONAL TRADEMARKS UNDER EU AND US JURISDICTIONS

Global recognition of trademarks now goes beyond conventional marks in the form of words, logos, and symbols to encompass non-conventional marks like sounds, colour, smell, shape, and texture. The European Union (EU) and the United States (US) have been leaders in this development, with valuable lessons on how established trademark regimes can evolve to accommodate changing brand needs. This part discusses the way in which the EU and US jurisdictions have approached the registration, enforcement, and recognition of novel trademarks.

1. European Union (EU)

The European Union Intellectual Property Office (EUIPO) has taken a comparatively liberal approach towards Non-Conventional Trademarks. The framework within the EU is largely regulated by the European Union Trade Mark Regulation (EUTMR) and informed by directives like Directive (EU) 2015/2436. The move away from the need for graphical depiction in 2017 has particularly facilitated the registration of sound, multimedia, and motion marks.

Sound Marks: Within the EU, sound marks are admissible as long as they are representable through musical notation or an audio file. After removing the graphical representation condition, applicants now present digital sound files directly. One well-known example is the Tarzan yell, which is registered as a sound mark.⁵

Colour Marks: The EU permits the registration of colours and colour combinations on an individual basis, provided that the applicant demonstrates that the colour has gained distinctiveness. This has been the position in the case of *Libertel Groep BV v. Benelux-Merkenbureau*, whereby the European Court of Justice (ECJ) ruled that a colour per se is able to be a trademark under Article 2 of the Directive⁶, if it is able to distinguish between the goods or services of one undertaking and the goods or services of other undertakings. But the general

⁵ EUIPO, EUTMR, Art. 4; see also registration of Tarzan yell as a sound mark

⁶ *Libertel Groep BV v. Benelux-Merkenbureau*, Case C-104/01, [2003] ECR I-3793 (ECJ)

association of a colour with a product is not enough. In *Heidelberger Bauchemie GmbH*, it was held by the ECJ that there must be clarity and specificity in the description of the colour combination⁷ so that both consumers and authorities know the precise scope of protection.

Smell Marks: Although theoretically valid under EU law, smell marks have been difficult to register. One of the rare instances is the registration of a perfume that smelled like "the smell of freshly cut grass" for tennis balls. This registration was later criticised and not taken up as a precedent due to the absence of an objective and systematic way to describe the scent. The 2002 *Sieckmann v. Deutsches Patent- und Markenamt* case set out the "Sieckmann Criteria," which required that a mark be represented, precisely, self-contained, easily retrievable, intelligible, durable, and objective.⁸ The case refused registration of a smell chemically defined as methyl cinnamate, based on its inability to meet these criteria.

Shape Marks: Shape marks are allowed by EU law but are limited. Article 7(1)(e) of the EUTMR precludes registration where the shape is due to the nature of the goods themselves, is inherent to obtain a technical effect, or confers significant value on the goods. The *Louboutin red sole* was a significant case where the ECJ recognised the red colour used on a shoe's sole as an acceptable trademark, not a shape but a colour position mark.

2. United States (US)

In the US, the *Lanham Act* regulates trademark registration. The US Patent and Trademark Office (USPTO) takes a comparatively open stance towards unusual marks, being concerned mostly with consumer perception and secondary meaning. Marks should be distinguishable and capable of identifying the goods or services of one party from those of another.

Sound Marks: The US protects sound marks if they are unique and serve as source indicators. The NBC chimes were the initial sound mark registered in the US in 1950. Others include the MGM lion's roar and the THX Deep Note. The USPTO permits applicants to file sound recordings together with descriptions.

Colour Marks: In *Qualitex Co. v. Jacobson Products Co. (1995)*, the US Supreme Court held that a single colour can be trademarked, as long as it has secondary meaning.⁹ The court held that the green-gold colour of Qualitex's dry-cleaning press pads performed a source-identifying function. This precedent-making decision settled that colours, along with other Non-Conventional signs, could act as trademarks pursuant to the Lanham Act.

⁷ *Heidelberger Bauchemie GmbH*, Case C-49/02, [2004] ECR I-6129 (ECJ)

⁸ *Sieckmann v. Deutsches Patent- und Markenamt*, Case C-273/00, [2002] ECR I-11737 (ECJ)

⁹ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995)

Smell Marks: The US is also among the very few jurisdictions that have issued smell marks. A good illustration is *plumeria blossom* scent for sewing threads, which was registered in 1990 by OSEWEZ. The USPTO calls for a written description of the odour and evidence of the fact that the scent is non-functional and distinctive. Smell marks are rare, even though the USPTO is open to issuing such marks despite the high evidentiary burden and challenge in establishing distinctiveness and non-functionality.

Shape Marks: Shape marks, or trade dress, are common throughout the US. The shape cannot be functional and must have gained distinctiveness. Some examples include the Coca-Cola bottle and the Pepperidge Farm Milano cookie. Product design is more difficult to protect than product packaging in the US, and courts use strict scrutiny to make sure functionality is not being monopolised.

Touch and Taste Marks: Although the US allows theoretical protection of taste and tactile marks, practical difficulties stand in the way of their acceptability. Candidates would need to prove the mark is inherently distinctive or has acquired distinctiveness, and that it is not for a functional purpose—requirements which are highly unlikely to be fulfilled.

ROLE OF NON-CONVENTIONAL TRADEMARKS UNDER EU AND US JURISDICTIONS

Trademarks in India are regulated by the Trade Marks Act, 1999. Under this act, a wide definition of what a "trademark" is has been given. As per Section 2(1)(zb), a trademark is any mark which may be graphically represented and which distinguishes the goods or services of one person from the goods or services of another. This definition also covers marks of shapes of goods, of their packaging, or a combination of colours. Moreover, Section 2(1)(m) also defines a "mark" to encompass devices, brands, labels, names, signatures, letters, numerals, and combinations thereof. These broad definitions have increasingly made way for the acknowledgement of non-conventional trademarks within Indian trademark law.

A. Sound Marks in India

India acknowledged sound trademarks for the first time in 2008 when Yahoo Inc. received registration of its well-known three-note yodel¹⁰ and became the first to be accepted as a sound mark in the nation. ICICI Bank's corporate jingle later became the first sound mark registered

¹⁰ P. Manoj, *Yahoo Awarded India's First Sound Mark; Nokia in Queue*, Live Mint (Aug. 22, 2008), <https://www.livemint.com>

by an Indian firm in 2011.¹¹ Other familiar sound trademarks are Nokia's default ringtone, Britannia's four-note bell, and MGM's lion's roar.

For the registration of a sound mark in India, an applicant needs to file an MP3 recording (not over 30 seconds) with a graphical representation of its notations, as prescribed under Rule 26(5) of the Trade Marks Rules, 2017. In addition to this, the Draft Manual of Trade Marks Practice and Procedure mandates that an application must clearly state that the mark is a sound, or else it would be assumed as a word mark. The mark should also exhibit distinctiveness, i.e., the mark should be linked to the product or service in the minds of buyers.

The Shield Mark doctrine, which governs sound mark registration all over the world, is also adhered to by India,¹² so that sound trademarks are required to have certain representational and distinctive requirements.

B. Colour Marks in India

Colour marks may be single colours or colour combinations. Indian law favourably permits the registration of colour combinations under Sections 2(1)(m), 2(1)(zb), and 10(1) of the Trade Marks Act. The law, however, remains silent regarding single colour marks, and the requirement of distinctiveness under Section 9(1)(a) again puts restrictions on them.

Based on the scarcity of available colours, colour depletion theory has been invoked to avoid monopolisation of certain colours. The judiciary has been inconsistent with verdicts in terms of colour marks. The Delhi High Court decided in favour of Colgate in the case of *Colgate Palmolive v. Anchor Health and Beauty Care* (2003) that the red and white colour scheme applied in packaging was distinctive enough to receive protection. But in *Cipla v. MKI Pharmaceuticals* (2007), it was held that a monopoly in a colour is not allowed and denied protection to an individual colour.

Later cases such as *Dabur India Ltd. v. Shree Baidyanath Ayurved Bhawan, Seven Towns Ltd. v. Kiddiland*, and *Deere & Co. v. S. Harcharan Singh* reaffirmed the protection of colour combinations that had gained distinctiveness.¹³ But counter-decisions, such as in

¹¹ *ICICI Secures Rights for Corporate Jingle*, The Indian Express (Mar. 12, 2011), <https://indianexpress.com>

¹² *Shield Mark BV v. Joost Kist*, Case C-283/01, [2003] ECR I-14313 (ECJ)

¹³ *Dabur India Ltd. v. Shree Baidyanath Ayurved Bhawan Pvt. Ltd.*, (2012) 51 PTC 441 (Del); *Seven Towns*

Britannia Industries Ltd. v. ITC Ltd. (2017), indicate that the onus rests heavily upon the applicant¹⁴ to establish that the colour combination has gained secondary meaning in the market.

In addition, in *Christian Louboutin v. Abu Baker (2018)*,¹⁵ the Delhi High Court ruled that individual colours cannot be registered under Indian law and rejected Louboutin's application for the red soles of its luxury shoes.

C. Shape Marks in India

The form or shape of goods is specifically established as an acceptable type of trademark in Indian law, namely in Sections 2(1)(zb) and 2(1)(m) of the Trade Marks Act, 1999. Not all shapes, however, are acceptable. According to Section 9(3), the shape should not:

- Emerge from the product's nature,
- Be required to achieve a technical effect, or
- Be of significant value addition to the product.

These provisions guarantee that functional or generic product shapes do not become monopolised under trademark law.

Indian courts have given fairly uniform rulings when it comes to shape trademarks. For instance, in *Lilly ICOS LLC v. Maiden Pharmaceuticals (2009)*, the Delhi High Court issued an injunction against the defendant for imitating the almond shape of the plaintiff's product.¹⁶

In another instance, *Gorbatschow Wodka KG v. John Distilleries (2011)*, the Bombay High Court passed a ruling in favour of safeguarding the unique bottle shape of the vodka brand.¹⁷

Even before the 1999 Act, shape marks were recognised. In *MRF Ltd. v. Metro Tyres Ltd. (1990)*, the tread pattern of tyres was protected by the Delhi High Court¹⁸, finding that imitation may lead to confusion among consumers. *The Zippo Manufacturing Co. v. Anil Moolchandani (2011)*¹⁹ case also recognised trademark protection for the unique shape of Zippo lighters.

Ltd. v. Kiddiland & Ors., (2016) 68 PTC 308 (Del); *Deere & Co. v. S. Harcharan Singh & Ors.*, (2015) 63 PTC 433 (Del)

¹⁴ *Britannia Indus. Ltd. v. ITC Ltd.*, (2017) 70 PTC 66 (Del)

¹⁵ *Christian Louboutin Sas v. Abu Baker & Ors.*, (2018) 250 DLT 475 (Del).

¹⁶ *Lilly ICOS LLC & Anr. v. Maiden Pharmaceuticals Ltd.*, 2009 (39) PTC 666 (Del)

¹⁷ *Gorbatschow Wodka KG v. John Distilleries Ltd.*, 2011 (47) PTC 100 (Bom)

¹⁸ *MRF Ltd. v. Metro Tyres Ltd.*, 1990 PTC 101 (Del)

¹⁹ *Zippo Mfg. Co. v. Anil Moolchandani & Ors.*, 2011 SCC Online Del 4380

D. Other Non-Conventional Marks: Smell, Taste, Touch, and Motion

Indian law presently does not specifically include or exclude trademarks such as smell, taste, touch, or movement marks. These marks are not in Section 2(1)(zb) of the Act or the Rules of 2017 and are thus very uncertain to register. A significant challenge in registering such marks is the graphical representation provision of Rule 26(1),²⁰ which is not suitable for sensory sensations such as smell or taste.

CONCLUSION

The idea of Non-Conventional trademarks represents a significant departure from the way we think about brand identity today. In today's global market, where competition is keen and the business landscape is changing rapidly, companies are no longer just depending on conventional logos, names, or symbols to be recognised. Rather, they are turning to distinctive brand identifiers such as jingles, colours, shapes, smells, and even textures to differentiate themselves and become memorable.

This transformation has forced trademark laws to expand beyond their conventional limits. In India, while the Trade Marks Act, 1999 does cover sound, shape, and combination of colours marks in its definition, the protection afforded to these Non-Conventional marks is far from effective. For instance, while sound marks like Yahoo's yodel or ICICI's jingle have been recognised, marks based on smell or touch are yet to be accepted in practice. The strict requirement for graphical representation and the lack of legal clarity often act as roadblocks.

Compared to the United States and the European Union, India has a long way to go in terms of catching up. The jurisdictions have been more receptive to accepting and registering novel forms of trademarks, albeit with challenges in terms of clarity, subjectivity, and technical feasibility as well.

It challenges us to be innovative in our thinking on intellectual property and the way the law should respond to contemporary commercial realities. In the future, India requires more specific guidelines, elastic rules of representation, and consistency on the judicial front to uphold innovation in branding. Non-conventional trademarks are the way forward, and our laws need to adjust if they are to be relevant at all.

²⁰ Trade Marks Rules, 2017, Gazette of India, pt. II, sec. 3(i), Rule 26(1).

RECOMMENDATIONS

- 1. Extend the Trademark's Legal Definition**
Section 2(1)(zb) of the Trade Marks Act, 1999 already restricts registration of certain Non-Conventional marks like taste, smell, and motion, as it greatly focuses on visual representation. Those marks that are "capable of being represented in a clear and precise manner," which the European Union did after the Sieckmann ruling, should also be allowed under the new definition. This would ensure that India remains on the cutting edge of developments across the globe.
- 2. Reduce Demand for Graphic Representation**
All trademarks have to be visually represented, as per Section 26(1) of the Trade Marks Rules, 2017. This would be beneficial for text and logos, but it acts as a limitation when registering motion or smell marks. India needs to reform its rules to encompass other modes of representation, e.g., voice recordings, video files, or chemical formulae.
- 3. Set more specific standards and guidelines**
A fresh and revised Manual of Practice with specific guidelines and illustrations for registering Non-Conventional trademarks should be released by the Indian Trade Marks Registry. Legal specialists, proprietors of brands, and students would all gain from understanding what is required and how to meet representational requirements.
- 4. Establish a Database of Non-Conventional Marks Which Are Registered**
A public database that contains data relating to registered unusual trademarks needs to be maintained regularly to promote openness and learning. This would help students in studying trends regarding intellectual property protection and guide future applications.
- 5. Encourage Consistency in the Judiciary**
While adjudicating trademarks relating to colour and shape, Indian courts have not been consistent. It would provide predictability and help scholars and practitioners in assessing legal risk if the judiciary were to embrace a more cohesive and consistent approach, possibly through guidelines or interpretive circulars.
- 6. Take note of International Treaties and Cooperation**
India should venture into greater interaction with global trademark systems like the Madrid Protocol and bring its practices at par with WIPO standards for Non-Conventional marks. This would make cross-border protection easier and help Indian startups expand abroad.

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