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## TRADEMARK INFRINGEMENT – A RECURRING PROBLEM AROUND THE NATION

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### Abstract

*There are many companies across the world which are famous for their products and services and all the products or services provided by them are uniquely recognizable and can be remembered because of the unique marks used by these companies so that consumers or users of such products or services can easily recognise and differentiate them among the other products and services. There are various definitions for the term trademark being provided by the various organizations and legislations. Trademark infringement being an intellectual property issue has currently become a recurring global problem and various countries have made their own legislations to deal with the problem of trademark infringement. However even after that various cases of trademark infringement has been taking place and domestically and internationally too. Therefore this article aims to define trademark and its infringement and also about the laws relating to trademarks and also mentions the famous cases of such infringement.*

**Keywords** - Trademark, Trademark infringement, international, global, punishment, penalty, intellectual property etc.

### Introduction

Humans have a tendency to remember things by the way of seeing images of those things and by using this tendency as a tool many business organizations or companies make the public remember the products of such business organizations. This technique in turn helps companies in selling of their products and it also helps the public in remembering the product by way of remembering the image related or attached to such product. For example the image of a child which is printed on packets of Parle-G biscuits. The image which is used by the companies so that the public or people can remember the products of such companies is called Trademarks. The Trademarks are of various types such as images, words, phrases etc. These trademarks are basically used by the companies or business organizations as their unique

identification marks so that they can be easily seen or identified among other companies in the market. However for a trademark to become recognizable & identifiable it takes a lot of time and effort however there are still a large number of cases where these trademarks are copied and used by other people or organizations for making some easy profit. This is done because if some recognized trademarks is copied and another trademark is made which is very similar to it will result in causing confusion among the people. Thus making it important to protect trademarks from such crimes as they form a very important part of Intellectual property all around the globe.

### Meaning of Trademark and Trademark Infringement

Trademark can be easily understood as an identification mark used by the companies to make themselves and their products

differentiable and easily recognizable among the competitors in the market and such identification marks are unique to each company i.e., each company has their own unique identification mark or a trademark.

According to United States Patent and Trademark Office “ a trademark can be any word, phrase, design or combination or a mixture of any of them which in turn helps in making the goods or services recognizable. ” It has also stated that for identification of goods a trademark is used and for identification of services a service mark is used.

In India Trademark Act 1999 provides for a definition of trademark. According to this act “a trademark can be understood as a mark which is graphically represented so that the goods & services provided by a person can be easily distinguished from other such goods or services provided by the other persons. A trademark may even include size, shape, packaging and even colour of the goods. ”

Another definition is provided by World Intellectual Property Organization which states as follows – “ A trademark means a sign which is capable of making goods and services of one enterprise distinguishable from the goods and services of the other enterprise.”

Overall a Trademark can be understood as a sign, mark, size, shape etc., which makes a good or service distinguishable or identifiable in a market.

But as already stated it sometimes happens that for the sake of making profit in an easy manner some people or some organizations uses the trademarks of famous companies which makes the consumer confused and as a result many consumers end up purchasing or using the wrong product or service rather than the original product or service . This unethical and wrongful use of trademark of others is termed as infringement of trademark or trademark infringement. However not every time trademarks are infringed intentionally as sometimes infringement of trademark occurs

either by mistake or in a case where a domestic firm which is doing business in the country having a trademark which is similar to a trademark of an international firm which has also started doing business in the same country and thus leading to occurrence of unintentional trademark infringement.

Trademark infringement can be defined as using a trademark or a service mark in such a manner that it results into confusion, mistakes, deception among the users or consumers of such goods or services regarding the original source or producer of such good or services. In other words it can be defined as use of trademark by a person or organization even though such person or organization is not having an authorised access to use such trademarks of the other company as his own.

According to Trademarks Act 1999 there are two types of infringements of trademarks. These types are stated as follows:

- Direct Infringement of Trademark
- Indirect Infringement of Trademark

**Direct Trademark Infringement** – It occurs when a registered trademark is being used by an unauthorized person and such person is using an identical mark or a deceptively similar mark which may easily cause confusion to the common consumer. Section 29 of the Trademark Act 1999 deals with such an infringement only when the trademark infringed is a registered trademark according to the above stated act. However if indirect infringement has taken place in case of an unregistered trademark than the common law of passing off which is a tort law is used for handling such cases.

**Indirect Trademark Infringement** – In indirect infringement the actual culprit of infringement commits infringement of a trademark through someone else's help in order to relieve himself from any legal liability which might be incurred as a consequence of such infringement. There is no specific provision stated in the Trademarks Act 1999 to deal with indirect infringement of

trademark. In such a case principle of vicarious liability is applied under which the Principal infringer and the person who abets such infringement are held liable for infringement of trademark. Also the principal of contributory negligence is applied under which a person is held liable for an infringement when he/she materially contributes in direct infringement or when he/she knows about the infringement has occurred but does not inform or tell about it to the appropriate authority.

Here are some illustrations to depict about infringement of trademark –

1. Adidas is a company which has registered the name Adidas and sells shoes and other footwear however another producer started to sell shoes and footwear under the name Abibas which not only led to loss in sale but also loss in goodwill and reputation. Thus Abibas will be liable for infringement of trademark.
2. Microsoft is a software company and it makes Operating systems. It has got the name Microsoft registered. There is another company which has started its business under the name Mecrosoft. Now company Mecrosoft has clearly committed infringement of trademark as the name used by it to operate is almost identical to Microsoft which is a registered trademark.
3. Google is a software giant which has launched its browser called Chrome and has got the name "Chrome" registered. There is another software company which is rival of Google and it has also launched its browser and has named that browser "Crome". This is a clear infringement of trademark as "Crome" is deceptively similar to "Chrome" which makes it clear that such infringement is done with the clear intention of causing loss to Google.
4. Samsung is a mobile manufacturer which uses the name "SAMSUNG" as its

logo and it can be clearly seen on the back of the mobile it manufactures. There is another mobile manufacturer which has produced mobile phones with the logo "SUMSUNG" thus leading to loss in sale of Samsung. The logo "SUMSUNG" is clearly a direct trademark infringement.

### Laws Relating to Trademark Infringement

In India all the trademarks are registered and governed under the Trademarks Act of 1999. This Act provides for the remedies and punishment related to the infringement of trademarks in the territory of India.

Chapter XII of the Trademarks Act states everything about the penalties and punishments which are to be provided in case of trademark infringement. Some of the provisions of this chapter are stated as follows –

1. **Section 114** – This Section talks about the offences committed by the companies. According to this section if any infringement is committed by a company than the person who is responsible for handling of that company and for the conduct of its business would be held responsible along with the company for such trademark infringement committed by that company.
2. **Section 120** – This section states that any person who abets the commission of an offence of trademark infringement to take place outside of India than such person who is responsible for such abetment would be tried and he would be punished for the act which he abetted as if he would himself have committed such act.
3. **Section 103** – It provides for penalty in the case where false trademarks, trade description etc. It mentions that if false trademarks or trade description are applied then in such a case the person who committed such an act will be punished with imprisonment which may

extend from six months to three years along with a fine which may extend from Fifty thousand Rupees to Two Lakh Rupees. In some special circumstances or because of some adequate reasons the punishment of imprisonment of even less than six months can be given or fine of even less than Fifty Thousand Rupees can be imposed.

4. **Section 105** – It provides that if a person is convicted again under section 103 or section 104 of this Act then in case of such subsequent conviction that person will be punished with an imprisonment which shall not be less than one year and may extend to three years and a fine which may not be less than one lakh rupees and may even extend to two lakh rupees. In case of some special circumstances the punishment given under this section might be reduced i.e., imprisonment of less than one year might be given or fine of less than one lakh rupees might be imposed on the infringer.

#### Famous Cases Relating to Trademark Infringement

1. **Yahoo! Inc. v. Akash Arora & Anr**

In this case the company Yahoo! Inc. filed a case against defendant Akash Arora for infringing their trademark “Yahoo!” as Akash Arora started using a domain name “Yahoo India” which was very similar to the domain name used by Yahoo Inc. The court held Akash Arora liable for trademark infringement and was restricted from using the domain “Yahoo India” as he was using a deceptively similar trademark and he was also held liable for cyber squatting as he was providing services similar to those which were already being provided by Yahoo Inc.

2. **Starbucks Corporation v. Sardarbuksh Coffee & Co**

This case was decided by the Delhi High Court which made the decision after

itself stepping into the shoes of an ordinary consumer and held that Sardar Buksh Coffee & Co is liable for trademark infringement as it is using a logo which is deceptively similar to Starbucks and thus it can easily cause confusion to any man of ordinary prudence.

3. **Daimler Benz Aktiengesellschaft & Anr. V. Hybo Hindustan**

This case was filed by Mercedes Benz which is a known name across the public and automobile manufacturers. It is recognizable by its “Three Star Ring” logo. However another company in India used a logo in which a human being pointing at three sides in a ring was there. This was the cause of concern for Mercedes and for dealing with the same Mercedes filed a suit against that company. The Court held in favor of Mercedes Benz and held the defendant Benz which was selling garments liable for infringement of trademark of Mercedes Benz.

#### Conclusion

Trademarks are used by the companies to make them identifiable among their competitors and which is also their right and the same is also required to be protected as a part of intellectual property rights. For this legislation such as Trademark Act, 1999 are made which not only protects domestically registered trademarks but also protects internationally registered trademarks in India. However still there are cases of infringement of trademarks which are happening across the Indian territory and thus awareness regarding trademarks and other intellectual property and their uses is required to be spread across the general public and also general public needs to be educated regarding intellectual property rights and penalties relating to their infringement.

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