

TRADEMARK AS A VEHICLE OF SOCIAL DIVIDE

Palak Agrawal*

A trademark is a mark used in relation to the goods for the purpose of indicating a connection between the goods and some person having the right as the proprietor to use the mark. In India, the laws relating to trademarks are dealt in with the Trademarks Act, 1999. Apart from the Act, the international treaties and protocols like the Madrid protocol, the bilateral treaties, the judgments of the court, common practices in offices, the decisions given by the Intellectual Property Board, and some excellent books written by some eminent jurists are also used to govern the laws and actions for the trademarks in India.

A trademark has been defined as follows under the Trademark Act, 1999:

Section 2 (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; and— (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.”¹*

The trademark can be registered by the proprietor for the period of 10 years, which can again be extended for a further period of 10 years on payment of the renewal fees. To register a trademark, some essentials need to be fulfilled, i.e, furnishing of some documents and proofs like the name and address of the applicant, Country where the firm is incorporated, the

* Student @ Amity Law School, Amity University UP, Noida, Email: palakagrawal921998@gmail.com

¹ The Trademark Act, 1999, No. 47, Acts of Parliament (India)

description and the representation of the trademark, list of merchandise which is to be dealt under that name, fees, priority claim.²

In India, the proprietor of the product or services can obtain the trademark for his goods and services, which would make his goods distinguishable from the others in the same line. Not only the names are subject to the trademark, but also holograms, 3D marks, sound effects, designs of the logo, packaging, taglines with the logos, numbers, and letters can be used as a sign for trademark, and can be registered effectively. For eg, the brand “NIKE” uses the tick logo, and also uses a tagline saying “*Just do it*”; Mc Donald’s uses the sign “M” as a logo, and the tagline says “*I’m loving it*”; BMW uses “*The ultimate driving machine*” as its tagline with a logo consisting of blue and white coloured triangles in a circle; and in all these case both the tagline and the logos have been registered as the trademarks for the company.

A trademark has multidimensional uses in the domain of business. The Trademark allows the customer to find the exact product in the market, without getting deceived by similar logos or brand names. It clearly distinguishes a product from the rest, and makes them identifiable to the consumers. Moreover, it provides an assurance to the consumers that they will get the exact quality of the product, as has been guaranteed. The markets are full of various similar kind of products and services, which can lead to confusion to the buyers, thus the trademark helps in getting rid of such kind of confusion. The trademarks have often been used to advertise the products. The most important role of the trademark is that the product or the service has its own face value, and the same are purchased by the consumers only because of the face value and the trust imposed by the consumers in the market. The companies keep their prices high as compared to the amount invested on the merchandise, and the products are still getting sold only because of the brand value. For eg, “*Gucci, Chanel, Michael Kors, Louis Vuitton, Salvatore ferragamo, Prada, Dior, Hermes, etc.*”

However, the downside of these trademarks is that they create social inequality. People who are unable to buy the real high end brands and opt for fake copies are ridiculed and looked down upon. The youth today feel pressurised to buy unnecessarily expensive brands to make a mark and fit in the social circle, ignoring the basic fact that these products are overpriced and their customer services are below average. Rather than wasting exorbitant amount of money on these brands, people can opt for low cost, sustainable local products which come

² Trademark in India, Madaan, Available at: <http://madaan.com/trademarks.html>

with better services. But no, the same is being as a tool to decide the social and economic status of the person and whether or not he can get up with the similar kind of society. Moreover, there is a common belief amongst the younger generation of the society that the product which is more on the expensive side is guaranteeing better quality goods. There are some products whose value is not as worthy as is being charged by the companies under the “brand name”. For eg, a normal watch which could be sold for Rs. 1000 or Rs. 1500 depending upon the value, can be sold for Rs. 25000 under the brand “Armani Exchange” or “Michael Kors”, and the same watch can be sold for Rs. 3 Lakhs under the brand name “Rolex”. A plain T -shirt if bought from a local market for Rs. 100, the same can be sold for Rs. 500 under the brand “Lifestyle” and the same can be sold for Rs. 3500 under the brand “Superdry”. This is how the brand value has captured the entire market and has created a sense of inequality amongst the society. If a person wears a local T Shirt, he might be judged based on his economical capabilities, and he might face some or the other kind of differentiation amongst his peer group, and he might also become a subject for mockery. On the other hand if a person from the same group is wearing a branded t-shirt, even though it is of poor quality, he might be seen as somebody who is rich, and he might be given all the attention of the group. This is the typical mind-set of the people who actually judge people according to the brands. There can be incidents where a person is wearing “PAMA” or “POMA” instead of “PUMA”, or “ADIBAS”, “ABIDAS” instead of “ADIDAS”, such a person can also be humiliated by his peer group.

There are fake copies of the brands available in the market, and the consumers of such fake copies are increasing, only in order to live up to the expectations of their peer group, and in fear of not losing their importance in the group. However, a person who is well versed with the brands might always tend to understand and differentiate between the real and fake merchandise. The entire Intellectual Property business is based upon the economics of the money, and thus the trademark which has the brand value attached to the merchandise, has a crucial role attached to it. With this, we can come to the conclusion that the “*trademark*” is now being used more as a means of socio-economic divide, apart from all the other uses which it serves. Although using the trademark of another brand name is illegal in itself, and the person might be held guilty of “*tarnishment*”, we still see much fake copy merchandise circulating in the market. In India, in case there is infringement of the trademark i.e. a third person is making an unauthorised use of the trademark that is registered by the proprietor, there are two remedies that can be availed by the proprietor. The fake products are present in

the market, and the proprietors of such fake brands or the second copy of the original products are doing great business nowadays. The only reason behind this that the youth and the middle-aged are more concerned with looking expensive and classy ,and are ready to compromise the quality by buying the fake merchandise. All they want to do is to maintain their social status, and for that, it is quintessential to follow the major brands in order to become the talk of the town. People who cannot afford such high-end brands, or even those people that it is an unnecessary expenditure for a one day affair, fall harder for such fake merchandise, and are willing to buy the same for very low prices. The shops and the vendors in the local markets such as Pallika Bazar, Chor Bazar, Sarojini Nagar, Lajpat Nagar market in Delhi have often been seen selling fake copy of the products, mostly the T-shirts, jeans and makeup products. In 2005, the vendors in the Sarojini Nagar Market were caught selling the fake and cheap copies of the leading brands of cosmetics MAC, Huda Beauty, Lakme, Nars, and the same has impacted the skin and the eyes of many customers who bought such products.³ The Delhi Police, with the “*Hindustan lever*” raided the market and many vendors were caught red-handed selling such fake products and ruining the brand value of the products. Not only the shops in the local markets have adopted such kind of ill-practices, but many reputed online websites have also adopted the same practices, and are supplying the products which are high-end at a very low cost by displaying such merchandise on discount. For instance, Flipkart, the leading online retail store, was sued by the American company named “*skechers*” known for its high-quality footwear for men, women and kids, as flipkart was selling fake copies of the same.⁴ Almost 15,000 products were alleged to be fake by the brand, and it was requested by them to the court to counterfeit the same as they are playing fraud on their customers who trust the brand and buy their products. Not only sketchers, but other leading brand such as “*Tommy Hilfiger, Calvin Klein and Superdry*” have also reported such kind of incident, as the retailers on “*Flipkart, Snapdeal and Amazon.in*” were selling fake copies of their brands and the merchandise has been successfully confiscated by the court in the warehouses of these online websites.⁵

³ Amita Ghose, *Dirty Cheap – and fake – cosmetics sell in Sarojini Nagar despite raids, give you swollen eyes, rashes*, The Times of India, Available at: <https://timesofindia.indiatimes.com/city/delhi/Dirt-cheap-and-fake-cosmetics-sell-in-Sarojini-Nagar-despite-raids-give-you-swollen-eyes-rashes/articleshow/48178632.cms> (Accessed on: 01.10.2020, 13:33 PM),

⁴ Business Today, *Skechers takes flipkart to court over counterfeit shoes*, Business Today, Available at: <https://www.businesstoday.in/current/corporate/skechers-flipkart-court-counterfeit-shoes-fake-copy/story/266859.html> (Accessed on: 29.09.2020, 17:52 PM)

⁵ Akshay Sawai, *Making moolah with fakes: amazon, flipkart & snapdeal waging a war against counterfeit*

The first remedy is taking legal action against the infringement of the trademark, or an action for the passing off. In case of legal action against the unauthorised used is concerned, compensation is awarded to the owner, and the court may grant injunction to the aggrieved party. It is an undeniable fact that the social status of a person is judged based on the kind of merchandise he has put on, and what luxury brands can he afford, and thus, the trademark has become a means to judge the people based on their capability and ultimately resulting in the not so required “*Social Divide*” amongst the people. Even though the basic product features remains the same, but the brand attached to it makes it look fancy, and is a kind of an ornament to the product and in a way a “*Badge of honour*” is attached to the same.

CONCLUSION

A trademark is a mark used in relation to the goods for the purpose of indicating a connection between the goods and some person having the rights as the proprietor to use the mark. In India, the laws relating to trademarks are dealt in with the Trademarks Act, 1999. The trademark can be registered by the proprietor for the period of 10 years, which can again be extended for a further period of 10 years on payment of the renewal fees. To register a trademark, some essentials need to be fulfilled, i.e., furnishing of some documents and proofs like the name and address of the applicant. Country where the firm is incorporated, the description and the representation of the trademark, list of merchandise which is to be dealt under the name, fees, priority claim.

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