

A father is undoubtedly the head of the family. He occupies a major role in a family if he owns his children, but where he disowns his wife and children, the child should be made entitled for maintenance but the identity, the name or the caste of the child has to be left to the option of mother. It would be much justifiable if the mother's name and caste is given.

If a child's caste is decided basing on the biological father it is difficult to trace out the biological father in case of Rape victim's children and it is even more difficult in case of orphan children. It is therefore suggested that in case of Rape victim's, there is no other option except to take the name and caste of the mother. In case of orphans, there should

be a caste fixed to them giving them some special privileges for their upliftment. The law has to amended with reference to this.

It is also suggested that in all the application forms relating to education, employment or for any other purposes, the child should not only be recognised by his father but due recognition should be given to the mother.

Lastly it is suggested that there should be a casteless society. No doubt person should be given the identity of the father and the mother equally. But at the same time he should establish an identity of his own and be recognised basing on his skills, efficiency and talent irrespective of the caste, creed, colour, sex and religion.

THE TRADEMARKS LAW IN INDIA WITH SPECIAL REFERENCE TO DOMAIN NAME AND THEIR LEGAL IMPLICATIONS

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Introduction to Trademarks :

Trademarks, are property; just like computers cars & patents, they can be bought, sold & handled in various other legal transactions. Like any other property, they can be damaged or destroyed if misused by an owner & abuse of someone else's trademark can lead to threats, lawsuits, reprimand (blame) of an employee & other problems.

There's also a huge set of potentials, lurking inside them, people who know how to use them in creative ways, can sometimes figure out how to make money from them (including, sometimes, lots & lots of money).

Nearly any supplier of any product or service has competition. Most people shop around until they find a brand they are satisfied

with, then they stay with that brand. This is with a view to identifying the manufacture, brand & quality of the goods or services produced by a particular maker or company. For eg., although "generic groceries (with plain black & white labels) are cheaper than brand named groceries, the vast majority of purchasers buy more expensive branded items.

Consider another example : The recipe for Coco-Cola is a trade secret. If a computer makes a soft drink so similar that most people can't tell them apart, that's fair competition, in its advertising, the competitor can even talk about how similar the two taste. But the competing company cannot call the imitative soft drink "Coca-Cola" or "Coke", since those are registered trademarks owned by the Coca-cola company. Regardless

of what the similar drink is called, most people will still prefer Coca-Cola. It would take a huge & enormously expensive marketing effort to get people to even try the new brand. And, even if they try it, most people would decide that they still prefer coke ... even if they can't tell the difference in blind tests. For better or worse, we're all creatures of habit; we want what we're comfortable with. As clearly demonstrated by the "New coke" marketing flip-flop, coke's most valuable assets are its trademarks rather than its recipes¹.

Since there is so much of importance to the trademarks in the modern commercial world any professional in any company that uses them should know how to work with them, how to protect them & how to recognize when they offer opportunities to grab & secure a higher market share.

Meaning of Trademark :

A trademark is any name, symbol or device used by a manufacturer or merchant to identify its goods and distinguish them from the goods manufactured or sold by others. Trademark can take the form of

1. Words
2. Letters
3. Slogans
4. Distinctive symbols
5. Container configuration
6. Packaging
7. Device
8. Colour combination²
9. Label & Ticket

Almost everything we use, from the coffee we drink to the mattress we sleep on is bought by brand name which is another way of saying trademark. Trademarks are words or signs that identify products to customers.

Service marks are similar but they're used to identify service rather than goods. Dry

cleaners, Banking CO's, Insurance Co's are examples of CO's that use service marks more than trademarks.

Purpose of a Trademark : A Trademark serves two purposes

1. It protects business reputation & goodwill
2. It protects the consumers from deception.

A Trademark acts as a badge of origin.

Registration of a Trademarks :

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration, including any colours, forms or three-dimensional features. The application must also contain a list of goods or services to which the sign would apply. The sign must fulfill certain conditions in order to be protected as a trademark or other type of mark. It must be distinctive, so that consumers can distinguish it as identifying a particular product, as well as from other trademarks identifying other products. It must neither mislead nor deceive customers or violate public order or morality³.

Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through search and examination by the national office, or by the opposition of third parties who claim similar or identical rights.

Term of Registration and Renewal :

Under Sec. 25 (1) of the trademarks Act 1999 the duration or validity period of registration of a trademark is 10 years. This period may be renewed from time to time in accordance with the provisions of this Section. Sub-section (2) provides that the

registered proprietor of a trademark is entitled to seek renewal of registration of trademark in the prescribed period and subject to payment of prescribed fee for a period of 10 years from the date of expiration of original registration or of the last renewal of registration as the case may be. The Act also provides for registration of trademark in case an application is made after 6 months but within one year from the date of expiration of last registration.

Infringement of a Trademark :

Trademark infringement is the unauthorised use of Trademark. A Trademark once registered becomes a property of a particular person. He establishes ownership over that mark, anyone else who uses the mark for a similar product or service is infringing the rights of the trademark owner. Under Section 29 of the Trademark Act 1999, plaintiff in a suit on the basis of infringement has to prove not only that this trademark is infringed by a person who is not a registered proprietor of the mark or a registered user thereof but the said person is using a mark in the course of his trade. Which is identical with or deceptively similar to the trademark of the plaintiff, in such manner as to render the use of the mark likely to be mistaken as the registered trademark.

However no person shall be entitled to institute any proceeding to prevent or to recover damages for, the infringement of an unregistered trademark⁴.

A brief comment on the new Trade Mark Act 1999 :

The New Indian Trade Act 1999, which was brought in to force in Sep. 2003, makes the Indian Law at par with international standards, the new Trade Mark act has broadened the definition of mark to include any sign capable of distinguishing the goods or services of a person in respect of which it

is registered from the goods or services of another person and may include any sign capable of being represented graphically, including aspects of packaging, shapes and colors.

- Service marks have been recognised
- The distinction between Parts A and B of the Register have been abolished to create a single Register.
- A single application may cover several classes of goods and/or services.
- Special provisions have been introduced to register and protect well known trademarks.
- Collective marks may be registered.
- Defensive marks are no longer registerable.
- The term of a registration has been enhanced from 7 to 10 years, and be renewable for additional 10-year period.
- The procedure for registration of Registered Users has been simplified and the Registrar is vested with powers to grant, vary and refuse registration of Registered Users.
- The definition of infringement has been broadened to include action against the unauthorized use of a confusingly similar mark, not only in respect of the goods and services covered by the registration, as is presently the case, but also in respect of goods and services not covered in the registration which are so similar that a likelihood of deception or confusion exists. An action for infringement is also available against the unauthorized use of a mark in relation to dissimilar goods, if such mark is similar to a registered mark that is well-known in India and the interest of the registrant is likely to be affected adversely.

- Use of another's trademark as a trade name or part of a trade name is prohibited.
- Provision is made for the assignment of unregistered trademarks with or without the goodwill of the business concerned.
- An Appellate Board is to be established to expedite appeals and applications for rectification which are currently submitted to the High Court.
- Increased penalties, including longer prison terms and larger fines, are prescribed for offences relating to trademarks.

DOMAIN NAME - TRADE MARKS :

Domain Name :

The computers which are linked to the Internet will be allocated a unique Identification Number known as an IP Number (also known as IP Address) by means of string of digits. A user with the knowledge of another IP number will be in a position to establish contact with another computer by using such IP number. However, it became difficult for the human beings to remember and recall the IP address which consists of string of digits. This gave a way to the development of Domain Name System. Domain Name is nothing but a proxy or an alias for the IP number and accordingly there need not be any logical relation between Domain Name and IP Address.

Categories of Domain Names :

The domain names which consists of a number of elements can be bifurcated into different segments by the intervening periods known as dots. A domain name can be classified into Top level domain name (TLD) and Second level domain name (SLD)) *etc.*

For instance, the Indian Overseas Bank has the following address :

“http://www.iob.com”

The initial http:// is a generic indicator that the information held at this location has been created www.format.iob.com indicates the name of the bank where the information is held. In the case ‘com’ is top level domain and iob is the second level domain.

Top level domains can be Generic and Geographic. Generic kind of top level domains can be ‘edu’ for education institutions, ‘org’ for organisations, ‘com’ for commercial users, ‘net’ for Network service providers, ‘gov’ for government *etc.*

Geographic kind of top level domains are country specific. The Indian TLD is ‘in’ and UK TLD is ‘uk’.

Secondary level domain which are available for registration in India are ‘nic’ for Governments network, “net” for Internet Service providers ‘co’ for Companies ‘gov’ for government offices ‘ac’ for academic community *etc.*

Registration of a domain Name:

While the allocation of IP numbers has not generated any controversies, the allocation of domain names became extremely controversial.

Any person may get the right to use a domain name by registering the same with the administrator of that domain. These administrations have been accorded recognition by the ICANN (the Internet Corporation for Assigned Names and Numbers) which is incharge of Domain Names. However the applications for registration of domain names will be made on a first come, first served basis by the respective organisations which exist in various countries. In Indian National Centre for software technology, Mumbai will exercise control in the allocation of domain names.

Domain Names vs. Trade Mark Rights :

In India and abroad. The allocation of domain names came into conflict with the names which are protected by trade marks.

It may be worthwhile to briefly examine the cases and issues settled them by the law lords in India and abroad.

Legal Senerio on Domain Names in India:

1. Yahoo! Inc. vs. Akash Arora and another, 1999 PTC (19) 210 (Delhi).

Issues in brief : In this case, the defendants were attempting to use the domain name 'yahoo india.com' for Internet related services. Yahoo!Inc which was the owner of them Trade mark "yahoo!" as well as the domain name 'Yahoo.com' contended that after adopting the deceptively similar domain name 'Yahoo india.com', the defendants had copied the format, contents, layout, colour scheme and source code of the plaintiffs prior created regional section on India at the plaintiffs website, and sought injunctive relief while defendants contented that the provisions of the Indian Trademark Act are not applicable to the use of a domain name on the Internet.

Decision : The case was heard by Delhi High Court and court rejected the contention of the defendant. The Court held that though service marks are not recognised in India, services rendered are to be recognised for action of passing off. The Court stated that, even though the word 'Yahoo' was a dictionary word, it had achieved distinctiveness and the same was associated with the plaintiff company and thereby entitled to the possible protection.

Accordingly the Court granted an injunction restraining the defendants from dealing in service or goods on the Internet or otherwise under the trademark/domain name 'Yahooindia.com' or any other trademark/domain name which is identical

to or deceptively similar to the plaintiffs trade mark.'yahoo'.

2. Re: Acqua Minerals Ltd.

Issues in brief : In this case Acqua Minerals Ltd. manufacturer of 'Bisleri' brand of mineral water had registered domain name 'bislerimineralwater.com' whereas an IT Company registered a domain name 'bisleri.com' for their website. The plaintiff company filed a suit and sought an injunction use or transfer of the domain name 'bisleri.com' by the defendants. The plaintiffs contended that Bisleri is well established brand name and defendant's registration of domain name was bad faith registration and adopting the practice of Cyber Squatting.

Decision : The case was heard by Delhi High Court and the Court passed the injunction order in favour of plaintiffs i.e Acqua Minerals Ltd.

3. Titan Industries Ltd. vs. Prashant Koorapati

Issues in brief : In this case, the plaintiff is the manufacturer of watches and is using the trade name 'tanishq' for their up market gold coated watches. The company had applied for the trade mark 'tanishq' in India and the same is pending whereas the defendant attempted to imitate the name 'tanishq' and the plaintiff filed a suit for injunction.

Decision : The case was heard by the Delhi High Court. The court acceded to the prayer of the plaintiff and restrained the defendant from registering a name or operating any business, and making, selling, offering for sale, advertising and in any manner dealing in any goods under the name or containing the said mark as an essential or dominant feature on the Internet or otherwise. It may be noted that the relief is based on the doctrine of passing of through the application for registration of trade mark is pending.

4. Playboy Enterprises Inc vs. Calvin Designer Label, (985. F. Supp. 1220) (N.D.Cal. 1997)

Issues in brief : In this case, the playboy Enterprises Inc owned the federally registered trademarks for PLAYBOY and PLAYMATE and Calvin Designer used these marks as part of the domain names 'playboy xxx.com' and 'playmate live.com' directly on their web pages and as meta tags on their web pages playboy Enterprises used for trademark infringement, dilution and unfair competition.

Decision : The Court ordered Calvin Designer to cease all use of the infringing domain names as well as all use of playboy's trademarks in meta tags on their web pages.

CONCLUSION : The goal of any trademark, service mark or trademark is to give companies, and their customers, a way to establish, cultivate, and profit from brand loyalty. If you put out the best product in its class, people will come to know it, remember it, and ask for it by name. That name should either be, or include, a trademark making it

easy for buyers to name your brand is a great way to sell more of your product, and that's what trademark are for.

The newtrade mark Act 1999 seems to be working well. It is keeping in pace with advanced technology. A number of cases involving interest domain names have been taken note of and decided under this act.

END NOTES :

1. Article by Patrik D. Kelly, Patent Attorney, St. Louis.
2. Justice J.D. Kapoor restrained Anchor from using Colgate Colour combination of Red & White (Hindustan times).
3. Sec. 23 of Trade Mark Act 1999.
4. Sec. 27 of Trade Mark Act 1999.

REFERENCE :

1. Article by Patrik D. Kelly
2. Universal's Intellectual Property Laws
3. Law of Intellectual Property - Dr. S.R. Myneni
4. Commercial Law Publishers (India) Pvt. Ltd., Delhi - The Trade Market Act, 1999.
5. Law relating to Information Technology - T.V.R. Satya Prasad.

LAY OFF AND RETRENCHMENT

— Tools of atrocity in the hands of modern employers

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Under the traditional system of employment which was in place for centuries together the employer had an upper-hand in his relations with the employees. In several matters, the employer could dictate his terms to the employees because of which the employees had very few rights and remedy

available to them against the employers. The relationship between the employer and employees was so delicate that the employer could terminate the service of the employee at will, and have such conditions accepted by the employee as were more advantageous to the employer and less advantageous to the