

Chapter 5

Trade marks

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Trade mark

- **A Trade Mark:-** is a registered design or name used to identify a manufacturer's goods and services.
- **It** is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company.
- Its origin dates back to ancient times when craftsmen reproduced their signatures, or “marks”, on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today's system of trademark registration and protection.
- The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

Cont..

e. g., LUX, Godrej, TVS ,Telco, 555, APPLE

□ forms of TM (Visual):- *Trade Mark can be :-*

- *sign , words, letters, numbers,*
- *drawings, pictures, emblem,*
- *colors or combination of colors,*
- *shape of goods,*
- *graphic representation or packaging or*
- *any combination of the above*

as applied to an article or a product.

Registration of Trade Mark

- ❖ Trade Marks are registered by national trade mark registries and are valid in that country
- ❖ Registration is made after examination and publication
- ❖ Period of registration is for 10 years but can be renewed indefinitely.

kinds of Trademarks

- ❖ **Service Marks:-** is the marks which promote services and events. Include banking, education, finance, insurance, real estate ,entertainment, repairs, transport, conveying news and information, advertising etc.
- ❖ **Certification marks:-** is a symbol, name or device used by an organization to assure for products and services provided by others. It is certified by the Owner as having characteristics like geographical origin, ingredient , product quality and service accuracy. e.g. AGMARK,WOOLMARK CERTIFICATION MARK cannot be used as a trade mark.

kinds of Trademarks cont'd..

- **COLLECTIVE MARK:-** is a Mark that distinguishes the goods or services of members of association from marks of other undertakings. generally used to show membership in a union, association or other organization.

Who owns collective Mark ?

- *Association of persons*

- It could be manufacturers, producers, suppliers, traders or other profession bodies like institute of chartered accountants, test cricketers association etc.

Cont...

- **Trade dress:-** In addition to a label, logo or other identifying symbol, a product may come to be known by its distinctive packaging for example, Kodak film and a service by its distinctive shape and Coca-Cola bottle.
- ❖ **Right to use TM** in relation to goods or services as registered are ***protected*** (If TM consists of several part, protection is for TM as a whole)
- ❖ State emblem, Official hallmarks, Emblems of Intergovernmental Organizations cannot be used as TM.

❑ WELLKNOWN MARKS

❖ *Coca Cola* for soft d



❖ Toblerone (Triangular- shaped chocolates)



❑ Trade Names:-Another category of objects of industrial property is “commercial names and designations.”

➤ A commercial name or trade name :- is the name or designation which identifies the enterprise.

Trade Names

- In most countries, trade names may be registered with a government authority.

However, under Article 8 of the Paris Convention for the Protection of Industrial Property:-

- a trade name must be protected without the obligation of filing or registration, whether or not it forms part of a trademark.

Cont...

- Protection generally means that the trade name of one enterprise may not be used by another enterprise either as a trade name or as a trademark or service mark and that a name or designation similar to the trade name, if likely to mislead the public, may not be used by another enterprise.

Trademark Symbols

"TM" and ®: What do they mean?

- Many people like to put a "TM" (or "SM" for service mark) next to their mark to let the world know that they are claiming ownership of it.
- The "R" in a circle (®) is a different matter. This notice may not be put on a mark unless it has been registered with the U.S. Patent and Trademark Office and it should accompany a mark after registration is complete. Failure to put the notice on a registered trademark can greatly reduce the possibility of recovering significant damages if it later becomes necessary to file a lawsuit against an infringer.

Basic Trade Mark Law

- **The law** states that a trade mark may be any symbol, 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 colors as well as any combination of such signs, shall be eligible for registration as trademarks.
- Most countries require that trademarks for which protection is desired be registered with a government authority.

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- The protection that laws give to a trademark consists essentially of making it illegal for any entity other than the owner of the trademark to use the trademark or a sign similar to it, at least in connection with goods for which the trademark was registered or with goods similar to such goods without the authorization of the owner.
- Trademark law governs disputes between business owners over the names, logos, and other devices they use to identify their goods and services in the marketplace.

Trade Mark Acts

- The Trade Marks Act helps the producer protect the trade mark.
- Registering a trade mark is an important first step for everyone towards safeguarding a Trade mark and combating imitations.
- Application for registration of a trade mark can be done directly at the Institute or at the place of a trade mark specialist authorised as a representative.

Trademark, Patents and Copyrights

❑ **How does Trademark differ from Copyrights?**

- **Copyright:-** protects original works of expression, such as novels, fine and graphic arts, music, audio records, photography, software, video, cinema and choreography by preventing people from copying or commercially exploiting them without the copyright owner's permission.
- But the copyright laws specifically do not protect names, titles or short phrases. That's where **trademark law comes in**.
- **Trademark:-** protects distinctive words, phrases, logos, symbols, slogans and any other devices used to identify and distinguish products or services in the marketplace.

Trademark, Patents and Copyrights

❑ How does Trademark differ from Patent?

❖ Patents allow the creator of certain kinds of inventions that contain new ideas to keep others from making commercial use of those ideas without the creator's permission.

❖ Generally, patent and trademark laws do not overlap. When it comes to a product design, however, it may be possible to obtain a patent on a design aspect of the device while invoking trademark law to protect the design as a product identifier.

Cont...

- ❖ For example, an auto manufacturer might receive a design patent for the stylistic fins that are part of a car's rear fenders. Then, if the fins were intended to be and actually are used to distinguish the particular model car in the marketplace, trademark law may kick in to protect the appearance of the fins.

How is a trademark registered?

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 colors, forms or three-dimensional features. It must also contain a list of the 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.

Benefits of tm registration

- ✚ To exclusively identify the commercial sources or origin of products services..
- ✚ it provides actual public notice. By registering the mark with a central filing agency, the mark is available for public scrutiny. This benefits both the owner, who seeks exclusive use of a mark, and a potential filer who seeks to ensure that his or her mark does not conflict with a mark already in use.
- ✚ Registration of a mark might be used as evidence in the event an infringement action is pursued by the registrant
- ✚ Tm is a symbol that indicates, who is responsible for the goods in the market.
- ✚ Tm helps do distinguish between the goods competing traders
- ✚ Tm helps customer to buy goods of a certain quality(eg. Color, size weight, taste)