

Background

Trading has become a societal trend in today's period, with service providers attempting to develop a market for what they give and customers attempting to improve their lives by utilising the finest services available on the market. This rationale might occasionally impact customers' decisions to use items from certain brands. In such cases, it is vital for brands to assert the originality of their products by obtaining a mark that allows their brands to be clearly distinguished from others.

Trademark registration offers legal security for business owners and service providers by imprinting the identity of their trademarks through a legal procedure that aids them in keeping a distinct identity in perpetuity.

There is always a need for large expenditures and resources when establishing new goods and processes, brand names, content, and so on. As a result, the persons or companies who create them must hold exclusive rights to their production. Individuality is provided through intellectual property systems and regulations.

Trademark registration can be obtained for the brand name and logo in the class in which it falls. There are 45 trademark classes classified into several groups. Individuals or businesses must designate their class by categorising their goods or services.

Certain types of intellectual property, such as trademarks, give rise to the right to control the moment the work is created and registered. Though registration is not required, it does provide various benefits and advantages, such as serving as *prima facie* proof of ownership, making it easier to enforce IP rights in court. Otherwise, the registered owner will have to go through a lengthy process to prove that the IP belongs to him in the event that it is used unlawfully.

If a trademark is registered, it allows the registered owner to recoup their investment by prohibiting others from utilising the work without permission.

Meaning and Concept of Trademark

Trademarks are distinctive descriptions in the form of symbols, idioms, words, signs, colours, series of markings, or a combination of the two. Marks are used by businesses to establish a brand using recognised logos and symbols. Following trademark registration, the owners acquire the following rights:



- **Preventive Rights:**

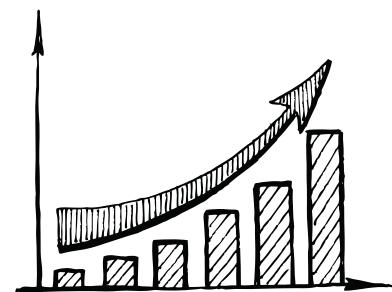
These rights assist businesses in protecting their originality by obtaining legal protection for their brands.

- **Legal Rights:**

These Rights become effective in the event of infringement by allowing rivals to take legal action in the event of identity theft or any other conduct that violates the rights of trademark holders. A legal entity's (individual or company) sign or emblem serves as their intellectual property. Simply put, these markings assist the general public in determining the uniqueness of the items and determining whose company or brand they belong to.

The Significance of Trademark Registration

In an era of competitive enterprises where ideas conflict owing to resemblance, it is critical to build one's own distinct character. When it comes to business, Marketing and Entrepreneurship are now major trends, with each individual or company attempting to establish a user interface via active engagement in the trade of products and services. In such cases, having a mark or symbol that "distinguishes the identity of the items from other similarly accessible products for the intended set of consumers or the public in general" aids in the simple identification of the Brands.



There are further benefits, such as

- A Trademark Registration establishes the authenticity of the goods or service's source.
- A Registered Trademark guarantees the excellent quality of the goods and services you obtain.
- A registered trademark helps to promote both goods and services

The Complications of Registration

If a trademark is legally registered, it provides the registered possessor the exclusive right to use the trademark in connection to the items and services for which the trademark is registered, as well as the right to seek remedy for trademark infringement.

Rights associated with Trademark

Various rights have been associated with the Trademark, let us discuss them in details for better understanding. Some of trademark rights are as:

- **The Authority to Assign**

According to Section 37 of the Act, the registered agent must be competent to transfer the trademark and produce proper receipts for any such assignment. This right, however, is subject to the Act's limits as well as any unconditional rights listed in the register in the other person.

- **Correctional Right to Register**

The registered man of affairs includes the right to make an application with the registrar requesting that the register be corrected due to errors in the registered man of affairs' particulars and other registered trademark attributes.

- **The Right of ability to change**

The registered owner of a trademark should get authorization from the registrar to use or display the trademark in any way that does not jeopardise the owner's integrity. The Registrar may refuse the leave or grant it on the terms and conditions that he deems appropriate.

- **Right to Exclusive Use**

If a trademark is legally registered, the registered owner gains the right to use the trademark in relation to the things or services for which the trademark is registered.

- **In the case of a violation, the right to statutory remedy**

Only if the registered owner of a trademark has legal recourse if the brand is infringed upon in line with the Trade Marks Act, 1999. By suing the alleged infringer, the owner may get an injunction as well as damages or an account of profits.

• Rights Available to Unregistered Trademarks

Unregistered symbols with prior use may be protected under common law in India, which is a first-to-use country. The Trade Marks Act, 1999 provides common law protection for unregistered insignia.

Even though Section 27 of the Trade Marks Act, 1999 does not provide for action for violation of unregistered insignia, the common law crime of 'passing off' would protect it. The unlicensed use of an unregistered trademark is a violation of Section 27(2) of the Trade Marks Act of 1999. Passing off is a common-law offence that is frequently used to safeguard the goodwill and name associated with unregistered insignia.

The concept of passing off is founded on the premise that a person may not pass off their goods or services as those of another. To win a passing-off action, the owner of an unregistered trademark must be able to demonstrate that its unregistered trademark has increased the value or repute of the product, service, or company with which it is linked. The owner must also show that there is a confusing similarity between its unregistered trademark and the trademark in question, which will surely confuse the general public.



Trademark Renewal

There is always a need for large expenditures and resources when establishing new goods and processes, brand names, content, and so on. As a result, the expectation is that the persons or groups generating them must have exclusive rights to their invention. Individuality is provided through intellectual property systems and regulations.

Certain types of intellectual property, such as trademarks, give rise to the right to control the moment the work is created and registered. Though registration is not required, it does provide various benefits and advantages, such as serving as *prima facie* proof of ownership, making it easier to enforce IP rights in court. Otherwise, the registered owner will have to go through a lengthy process to prove that the IP belongs to him in the event that it is used unlawfully. It must be renewed every ten years.

A advance notification is issued to the Registered Office regarding the renewal of the trademark since corporations sometimes neglect to renew their trademarks, thus the Registrar informs them about the same before 6 months of expiration. If no action is taken, the Registrar will publish a notification that the trademark will be deleted from the Trade Mark Journal.

Trademark Objection

When a trademark examiner, the general public, or a third party objects to the registration of a certain trademark, this is referred to as a trademark objection. A trademark examiner from the government might object to a trademark registration application by requesting valid justifications concerning the mark. There might be two distinct causes for such an objection-

- Incorrect or incomplete application information
- Existence of a comparable trademark

Furthermore, any third party or member of the public may register a trademark objection in the public interest

- When the mark appears in the Trademark Journal
- When a trademark is used before it is registered.

Such an objection shall be lodged within four months, with the basis for the objections clearly stated.

When a trademark objection is filed, the application status is changed to 'Opposed.' In the event of a registered trademark, the Indian Trademark Registry will designate it as 'Objected.' The applicant/trademark user will be provided with a notice alerting him of the objection and the grounds for opposition.



Reply of Trademark Objection

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Certain types of intellectual property, such as trademarks, give rise to the right to control the moment the work is created and registered. Though registration is not required, it does provide various benefits and advantages, such as serving as *prima facie* proof of ownership, making it easier to enforce IP rights in court.

Otherwise, the registered owner will have to go through a lengthy process to prove that the IP belongs to him in the event that it is used unlawfully.



If a trademark application does not fulfil the trademark office's legal standards, the trademark office may file an objection. However, there might be many additional reasons for trademark objections, such as resemblance between the logo or term used and any existing one, or owing to religious concerns. If such an objection is received from the department/Registrar, a response must be provided within a month, i.e. within 30 days. Whenever an objection is raised, the Trademark department sends a legal objection letter, and if no actions are done to justify and differentiate the uniqueness of the phrase or mark applied, the Registrar has complete authority to abandon the application.

Opposition to a Trademark

Trademark opposition is a scenario in which a trademark application has been accepted by the registrar on the basis of uniqueness and is published in the trademark journal for third-party objection. The public has four months to express their opposition. The Opposition must be relied on within two months of the day the Opposition was filed. If somebody objects to the mentioned mark, an opposition process must be filed. Following that, both sides are involved in reaching a conclusion. The decision on whether the mark will be registered or abandoned will be based on the responses and hearings.

Furthermore, there are no restrictions on registering an opposition if someone considers that the published mark is causing public confusion, an opposition can be filed for the same while the onus of defending falls with the trademark registrant.

The Need for Trademark Opposition

Effective solution for the Trademark Owner:- Filing of trademark opposition boosts the registered trademark owners' chances of protection in order to stop any other mark that might hinder/dilute their brand identity or may cause any possible misunderstanding in the minds of the customers.

Grounds on which opposition can be Filed

Opposition may be filed on the following grounds:

- If the trademark is similar or identical to a previously or currently registered trademark.
- If the brand lacks any distinguishing features or is just descriptive.
- The trademark is likely to mislead or confuse the public.
- If the mark is common in the present language or in established business procedures.
- If the mark is illegal or forbidden under the Emblem and Names Act of 1950.
- The mark contains material that is likely to offend religious sensibilities of any class or group of individuals.

Procedure for Trademark Registration

In India, you may register a trademark for a logo, symbol, phrase, and more. It gives the owner many unique rights. However, registering a trademark is a drawn-out process that requires the following procedures;

• Trademark Search

Before beginning the registration procedure, the Trademark specialists check to see if the proposed mark or identity is the same as a submission that has already been registered with the certifying authority (Trademark Registry). The first step in ensuring that the intended mark does not overlap with an existing one is to perform this. If you submit an application without ensuring that no other company has a similar or identical mark, the application may be refused.

• Registering a trademark

If the mark is found once the search is complete, an application is sent in the required format with the registration costs listed. The following information must be included in the application for trademark registration that is submitted to the trademark registrar:

- 1. The intended mark or logo,**
- 2. The owner's name and address,**
- 3. The trademark's class,**
- 4. Date that the trademark was first used,**
- 5. Describe the goods, services, or products**

- **Allotment of Trademark Application Number**

After the application is successfully submitted to the Registrar, the Applicant is given a Trademark Application Allotment Number. After receiving the allotted number, the trademark owner can add the trademark sign next to the logo.

- **Vienna Classification (Scanning)**

The 1973 Vienna Agreement created the Vienna Classification, an international classification of the figurative components of trademarks. The Trademark is subject to this codification.

The trademark application's status now reads "Sent for Vienna Codification" following the award of an allotment number. This demonstrates that the work is still being done because merely receiving a Trademark Application Number does not guarantee that the registration procedure has been completed.

The "Vienna Classification" will be assigned to the trademark by the Trademark Registrar once the application is filed, and it will be based on the figurative aspects of marks.

- **Analysis of a Trademark**

Once the Vienna Codification is finished, a Trademark Officer will examine the application as part of the trademark registration procedure. After analysing the application, the trademark officer will decide whether to approve it or object, and they will report their decision.

The trademark officer permits publishing in the trademark journal after accepting the trademark registration application. Additionally, when the trademark officer objects to the trademark registration application, they send the applicant a "Show Cause Notice" and ask them to respond to the objections.

If the applicant fails to provide the Trademark Officer with sufficient grounds, the application is refused, and the applicant may then appeal the Trademark Officer's decision before the Intellectual Property Appellate Board (IPAR).

- **Trademark Publication in a Journal**

The prospected Trademark is sent to the Trademark Journal for publication when the Trademark Registrar accepts the trademark registration. These weekly publications publish all the trademarks that the Trademark Registrar accepts.

The proposed trademarks will be published in order to provide the public a chance to oppose. Within a period of 12 weeks, the mark is registered if no objections are lodged (After waiting for objection within 90 days of publication).

The trademark officer will arrange a hearing for the applicant and the opposing party to present grounds for the rejection or registration of the trademark if it receives additional objection.

- **The registration of a Trademark**

After passing through all of the aforementioned steps without encountering any opposition or objection, the trademark registration application is eligible to receive;

1. Trademark Manuscript and
2. Trademark Certificate

Once the trademark registration certificate has been granted, the ® sign may be used next to the logo or trademark. The positioning of this sign and the creation of the trademark certificate demonstrate the owner's sole authority to use the trademark.

Recent News/ Amendments/ Circulars/ Orders

The following are the recent changes that took place in India regarding in Trademark Laws:

- **Dated: 1st August 2022**

The 75th anniversary of India's independence is almost around the corner. The Government of India has created the 'Azadi Ka Amrit Mahotsav' to celebrate this historic anniversary. In this regard, this office is launching a special push for the resolution of IP issues, in which we encourage parties to resolve pending opposition and correction cases. We also encourage parties who have previously reached an amicable settlement to submit to the Trademarks Registry (TMR) for formal dispute resolution prior to registration. If you sent the communication earlier and no final orders could be obtained, you may re-register the matter with TMR using the link provided below during the 'Azadi Ka Amrit Mahotsav.'

- **Reference-**

Special drive for disposal of pending opposition and rectification cases of Trade Marks

- **Dated: 28th March 2022**

Any person who wishes to file an opposition against any trademark published from Journal No. 1928 dated 18/11/2019 to Journal No. 2036 dated 24/01/2022 (both inclusive, irrespective of status of the application whether it be registered/opposed/accepted & advertised/advertised before acceptance) may submit the required documentation in accordance with the directive of the Hon'ble High Court of Delhi via Order dated 21/03/2022 in the matter of W.P. (C)-IPD 4/2022

- **Reference-**

In accordance with The Hon'ble High Court ruling of 21/03/2022, a public notice for taking opposition on record with relation to petitions was published in Journal No. 1928-2036

Takeaway

The long-term security of a company's identity is provided through trademark registration. The integrity of a brand's company and the confidence of the public are unquestionably guaranteed by the quality of the goods or products it offers, but rival brands and those with similar names, marks, or logos nevertheless run the risk of diluting its reputation. The registration of trademarks protects the distinctiveness of businesses and aids in establishing their notoriety

Both from a commercial aspect and to safeguard customers from fraud and dishonesty, the Trademark must be secure. Products and services that are not registered are susceptible to the passing-off action. Passing off has a far wider reach than trademark violation. The burden of evidence is higher for unregistered marks since it is harder to establish goodwill and reputation than it is for registered marks, even if the passing off claim procedure and remedies are the same for both.

