

The impact of Trade marks in present scenario and International Laws relating to Trade Marks

Dr. Amit Gopinathan

Abstract:

A trade mark is a visual symbol or sign in the form of a word, a device or a label and a means of identification which enables traders to make their goods or services readily distinguishable from similar goods or services supplied by others.

The sign may consist of one or more distinctive words, letters, numbers, drawings or pictures, emblems, colours or combination of colours, or the form or other special presentation of containers or packages for the product. The sign may consist also of combination of any of the said elements.

Trade mark may have relation with a logo or a brand name. Logo talks of a company; brand name identifies products. A logo is a visual depiction of a company and gives identity to it.

To recognize and comprehend the image of a company, it is necessary to have a logo or a symbol. Logo is a graphic representation of the personality of the organization representing its thoughts, philosophy and belief.

The term 'brand' means a label or ticket. Brand gives an identity to a product, enhances its recognition by a symbol identity and distinguishes its personality by building a characteristics halo around it. Goodwill is associated with the brand name. A brand is not a product, not a service, but an experience. The reason people prefer to buy brands is because of the perceived reliability, trustworthiness or image the brand is associated with.

Trade Mark law: when a person gets his trade mark registered under law, he acquires valuable rights by reason of such registration. Registration of his trade mark gives him the exclusive right to the use of the trademark in connection with the goods in respect of which it is registered and if there is any invasion of this right by any other person using

a mark which is the same or deceptively similar to his trade mark, he can protect his trade mark by an action for infringement in which he can obtain injunction, damages, or an account of profit made by the other person.

The object of trade mark law is to deal with the precise nature of the rights which a person can acquire in respect of trademarks, the mode of acquisition of such rights, the method of transfer of those rights to others, the precise nature of infringement of such rights, and the remedies available in respect thereof.

INTERNATIONAL LAW OF TRADE MARKS

TRIPS Agreement of the WTO:--

Section 2 of Part II of the TRIPS Agreement is concerned with the 'Trade Marks' WTO Member countries are obliged to grant full protection to the registered trade marks.

Protectable subject matter of Trade Marks

Any sign, 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 trade mark.

Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks.

Where signs are not inherently capable of distinguishing the relevant goods or services, members may make registrability depend on distinctiveness acquired through use.

Members may require, as a condition of registration that signs be visually perceptible.

Member can make registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention, 1967.

Members may make registrability depend on use. However, actual use of a trade mark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trade mark. Member shall publish each trade

mark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration.

Members may afford an opportunity for the registration of a trade mark to be opposed (Art 15)

Case Law:--

The U.S. raised a dispute against the EC (DS No174) in respect of the lack of protection of trade marks and geographical indications for agricultural products and foodstuffs in the European Communities. The U.S. contends that EC Regulation 2081/92, as amended does not provide national treatment with respect to geographical indications and does not provide sufficient protection to pre-existing trade marks that are similar or identical to a geographical indication.

The EC also raised similar dispute against the U.S.(DS No 176). This request is in respect of section 211 of the U.S. Omnibus Appropriation Act.

The EC alleges the Section 211, which was signed into law on 21st October 1998, has the consequence of making impermissible the registration or renewal in the U.S. of a trade mark, if it was previously abandoned by a trade mark owner whose business and assets have been confiscated under Cuban law.

The EC further alleges that this law provides that no U.S. Court shall recognize or enforce any assertion such rights. The EC and its member states contend that Section 211 U.S. Omnibus Appropriations Act is not in conformity with U.S. obligations under the TRIPS Agreement, especially Article 2 in conjunction with the Articles 3,4,15 to 21,41,42 and 62.

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