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## INTERPRETATION OF TRADEMARK WITH DECEPTIVE SIMILARITY IN INDIA

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### ABSTRACT

In the area of present era of globalisation and the fast trading speed, it is extremely important for any business to develop its identity on the minds of the consumers of shoppers. Trademark thus plays a crucial role in creating this brand and contributes to revenue generation. However, when a company name furthers the chance of successful venture, and it becomes incredibly subject to exploitation or infringement. It must be remembered. However one infringement approach is through the development of a "disappointingly similar" trademark to the current one, in order to confuse consumers and leverage the already developed goodwill of the trademark. This not only jeopardizes the reputation, but rather the monetary disruption of its pattern with respect of the name. This paper examines the concept of the disappointing similarity of design patents in India and highlights the court's position in understanding the meaning of disappointing similitude even beyond basic context of the phrase in law for justice..

### 1. Introduction

The right to intellectual property enables people to assert ownership of the product as well as the artistic nature of their creativity. Trademark is also one of the intellectual property fields that is made to protect the client's trademark. A mark is thus defined as 'a mark competent of graphefying and inclined, including shapes, packaging and different color, except the product, brand name, heading, label tickets, name, signature, phrase, letter, numbers, product

shapes, packaging and indeed the color, to distinguish between products and services of a single person and then of others. The central function of a trademark is to define in the first place the commercial source or source of the products and/or services so that it would signify the product or function as a trademark, specifically called, of the company. The objective of protecting an award-winning mark will be to conserve the reputation of the dealer and, around the same time, raise public awareness but rather consumers that even the quality of goods and services or goods they strive is reliable. In other terms, trademarks are used as a source of products or services in a specific business. Certain exclusive rights in the course of just an action to violate a trademark, applied to a registered mark, whereas unregistered privileges of a mark that infringe in accordance with common law. By practice, the misuse of a trade mark will only result if the root of the trade mark is vulnerable to misunderstanding. There is really no doubt of the possibility of misunderstanding in the absence of similarities of goods and services. Not enough for one mark specifically to cause the latter mark to be remembered. There are cases where the markings are almost similar but not identical. In those cases, the applicant must establish that the mark is sufficiently identical to cause confusion in the mind of the purchaser and would therefore be misleading. In order to confirm the "confusion" the two brands must be closely similar, in good enough condition to disappoint buyers because the single biggest judge of parallels is the consumer who is deceived to differentiate between the two brands and therefore not comparing brand brands.

## **2. Discussion**

### **1. Origin of trademark:**

The roots of markings can be traced to the early of sale. Mark heritage is as old as culture and religion history. Scientists have found artifacts retrieved from sites such as ancient Egypt with various icons graved on them for sacred and irreligious purposes. Over time , various methods were developed for identifying and defining. "Proprietary signs" have been modified to items (in the form of a name or symbol) to enable one person to distinguish between his or her own objects. The craftsmen used their images, characteristics or plain inscriptions to mark objects they had made. Although these marks certainly helped to distinguish goods, it is hard to say that in the modern sense of the word, these marks were trademarks with distinctness. In Ancient Rome or elsewhere in the Mediterranean, the symbols for products were identical to current intellectual property rights.

The first British trademark law, called the "Baker's Marking Act," was established in the thirteenth century who forced bakers to identify the bread they were selling for identifying. Any bread that was unfit for sale was removed and indeed the baker in question was fined for significant damages. The first reference to the infringement was made in the case of **Southern v. Howe** in the 15th century , Where a textile maker used the symbol of a superior fabric maker.

In Europe during the XVI and 17th centuries (especially in Germany and France), central nervous system (cns of trade mark law began to emerge, and

courts became beginning to preserve the marks at both the behest of traders and immediately protection was provided by the regulation of disappointment, since courts held that if another trader were able to make use of the same mark, these would lead to public fraud. Only a little later, the courts of the Chancellor has used case to defend the merchant by his reputation that had earned respect and popularity.

The use of trademarks for ads was dramatically increased at the end of the 19. century mostly with onset of industrialization and the modern trade mark had come into being. At that time trademark rules were set out in the judicial system of England judgments, in which a trademark recognizes the right to own property. Through the Trade Mark Registration Act of 1875 through England, the Common Law rules regulating trade-laws were eventually codified.

## **2. History of trademark law in India:**

The first proposal to enforce a trademark law in India was presented to the then Government of Bombay by the Bombay Mill Owner's Association in 1877. The method was not successful because a Bill was put in force in the legislative assembly in 1879. Generally, in the Indian Penal Code of 1860 (where a mark is to be falsified and counterfeited) and the trade marks Act of 1877 (which established prohibitions on either the user of marks by an injunction) Constitutional sanctions were being wanted in the regulatory mark law.

India, however, stole the British Mark Act from 1938 and drafted the Trademark Act of 1940, creating for about the first term a mechanism to allow permanent injunction and legal protection to take place in India. The legislation remains in place until 1958, once the Trade and Consumer Marks Act was repealed. In conform with the TRIPS obligations of the government, the new trademarks law – the Trade Marks Act, 1999 – was adopted and passed.. Under the Trade Mark Act, 1999, the new legislation made major reforms that incorporated not only the established minimum requirements of security but also the current jurisprudence. India has also ratified numerous international treaties such as the 'Paris Convention' since December 1998; the 'Trade Related Treaty on the Rights of Intellectual Property' since January 1995; the 'Nice Agreement' on the International Classification of Goods and Services for the Registration of Marks (7th Edition).

## **3. Deceptive similarity in India:**

One may claim that an erroneous marker is a mark that can lead to confusion in the mind of a buyer. Section 2(h) of the Trade Mark Act, 1999 explains disappointingly similar that 'A mark is deceptively similar to another symbol if something is so opposite to that other symbol that it is likely to cause confusion or misunderstanding.' 'A mark may be disappointingly unique if it is laid side-by-side, although the main concept left by both may being the same.'"

The text of this section is close to the language of this section as well. 2(d) the 1958 law of abrogation. Throughout the various parts of the present Act, the Deceptively Related and its derivatives will be used and form multiple motives

and requirements that may refer to trademark law, for example. Whereas the aim and effect are similar, S.11, S.16(1) S.29, S.30, S.34, S.75, S.102. The Act says, but does not provide specifics to only be agreed on what would be "disappointingly close.

With regard to –Deceptive Mark, the main aspect seems to be that the public at large are uncertain about the product 's roots and average intelligence. The most significant test is to find an approximate similarity. It's not necessary to prove intent. This is acceptable, if a judge rules that "this finding is misleading or deceptive" and is based partially on evidence and partly on appeals of the judge, there might be dissatisfaction with respect to "disappointments with the merchandise;" "disappointments the with references;"

#### **4. Supreme court rulings:**

Over the years, the courts have set criteria and jurisprudences for the judgment on the deceptive similarity of symbols. In assessing the misleading parallels and plausibility of misinterpretation between these marks which have evolved with precedents over time, the outcomes for a courtroom or tribunal apply to different issues.

In **Montblanc Simplo-GMBH v New Delhi Stationery Mart** , The Delhi High Court held that "since the two marks are used for the same items, this court must determine if the adoption of the defendants will possibly lead to confusion in the public mind." It is not necessary to prove true confusion or damage, if there is a possibility of confusion.

Another case is, **SBL Ltd. V. Himalaya Drug Co** , In that same case , two statistical elements have been established: a) the name, emblem and any other distinctive property used by the claimant has acquired a reputation within a particular class of people. The Dalhi Court referred to the Halsburys Act of England on the creation of a "Probabilities for Misunderstanding of Delhi" b) The members of this same class confusion is focused on using an identical or equally similar name, mark or other element to the name or company of the accused from or connected to the same source.

In **Delhi Lakme ltd vs. Subhash Trading**, It was reported that there is now a remarkable correlation between the two worded terms, but also that the two mots are identical phonetically, too. There is every conceivable deception and misunderstanding in mind of the prospective buying person of the complaint. the complainant advertised the cosmetics under approved trade mark – "Lakme The Defender used the trade mark—"LikeMe" for the same class of items.

In **Corn Product Refining Co. v. Shangrila Food Products Ltd.** It has been argued that while comparing two marks, three things must be taken into account: "Mark should be seen as a whole;" "Average Intelligence;" "Imperfect recollection".

In **Amritdhara Pharmacy v. Satyadeo Gupta** The Supreme Court acknowledged that the "ordinary consumer" had anything to do with its general structure, phonetic similitude and indeed the essence including its drug he had legally acquired, heard about, understood from or desired to purchase. By

recording "Lakshmannhara" based on a "honest concurrent use" the words "Amritdhara" were identical or confusingly similar."

In **Cadila Health Care Ltd v. Cadila Pharmaceutical Ltd** The judgment of the Supreme Court in this case is considered to be one of the landmark judgments in the field of intellectual property disputes relating to the pharmaceutical sector. In that case, the Court laid down certain guidelines which should be followed when deciding on issues of misleading similarity between the two trademarks of pharmaceutical products.

### 5. Analysis:

It is important to remember that the Trademark Act per se does not go into the deceptive similarity principle information. The Act establishes none of the requirements that can be considered necessary in order to determine the wide and wide nature of the phrase's misleading similarity. This vacuum has been cleared by judicial decisions in the abovementioned and various other case-laws. The Indian higher courts have dealt extensively with the matter in a variety of landmark judgments and have laid down numerous principles upon which the idea of misleading resemblance now rests. The principle of phonetic and visual similarity, the rule of law in its entirety, the rule of disinterference, the test of likelihood and confusion, goodwill and recognizable reputation are some of the important criteria which have been affirmed by the courts in order to provide a clear understanding of the concept of misleading similarity which, in turn, helps to resolve intellectual property disputes in a better way.

### 3. Conclusion

By evaluating the cases mentioned above, the researcher may conclude that the court has taken into account the problems that may arise on the grounds of a rigid approach to the nature of deceptive similarity and that the Supreme Court, That has always served a very active role in defending the right including its people but business interests and is regarded as guardian with civil dignity. There are, however, many practical problems, such as the lack of established ground rules and provisions on deceptive similarity, which give rise to a different interpretation of the meaning of deceptive similarity that needs to be addressed. So it's necessary for the legislature to take action to make trademark registration compulsory. Identification confers exclusive and absolute privileges on the licensed proprietor of a trade mark.

### References

- DAVID KITCHIN, DAVID LLEWELYN, JAMES MELLOR, RICHARD MEADE, THOMAS MOODY-STUART & DAVID KEELINF, „Kerly" s Law of Trade Marks and Trade Names" , 14th ed., Sweet and Maxwell, London,p.456.
- 2008 INDLaw Del 815
- 2010 INDLAW DEL 83
- Baywatch Production Co Inc v The Home Video Channel (1997) FSR 22.
- 79 Eng. Rep 1244 (1618)

<http://www.bananaip.com/ip-news-center/history-and-evolution-of-trademark/>,  
last accessed on 24th September 2019.  
<https://poseidon01.ssrn.com/delivery.php>, last accessed on 24th September.  
H.C Dixon & Sons Ltd. v. Geo Rihardson & Co. Ltd 50 RPC 36, p 374.  
Vikram Stores v. S.N. Perfumery Works, 2008 AIHC 494 (Guj)  
(2008) 38 PTC 59 (Del), p. 68-69  
AIR 1998 Del 126.  
1996 PTC (16)567  
AIR 1960 SC 142.  
AIR 1963 SC 449.  
(2001) 5 S.C.C. 73.