

Know All About Trademark ~

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A trademark is one of the elements of Intellectual Property Right and is represented by the symbol TM or ® or mark is a distinctive sign or indicator of some kind which is used by an individual, business organization or other legal entity to identify uniquely the source of its products and/or services to consumers, and to distinguish its products or services from those of other entities.

A trademark can be composed of logos, images, words, short phrases, colours or even a compound of all of these. The most commonly used are words and pictures however, other distinguishable marks may also be used if they are capable of graphical representation.



A trademark is not always a brand but the brand is always is a trademark. Sometimes there is a confusion between trademark and brand. The brand name can be simply a symbol or logo but the trademark is a distinguishing sign or indicator in a business organization as it has a wider implication than brands.

Trade mark Law in India-

The Indian law of trademarks is enshrined the new Trade Marks Act, 1999 came into force with effect from September 15, 2003. The old Trade and Merchandise Marks Act, 1958 was repealed at the same time. The new Trademarks Act of 1999 is in line with the WTO recommendations and is in conformity with the TRIPS Agreement to which India is a signatory

Registration of Trademark:

As per section 18 (1) of the Trade mark Act, 1999, any person claiming to be the proprietor of a trademark used or proposed to be used by him may apply in writing in prescribed manner for registration.

TYPES OF TRADEMARKS

A trademark may be divided into the following categories:

1. **Word marks:** They may be words, letters or numerals. Eg APPLE
2. **Device marks:** These marks consist of exclusive representation of a word, letter or numerical. Eg: The way in which AMAZON is written or EBAY is written.
3. **Figurative marks / logos:** They consist of a figure or a logo. Eg: The YELLOW M of Mc Donlads or the SWOOSH sign of Nike.
4. **Service Marks:** A service mark basically differentiates the services (and not goods) of one person from that of another. Eg: The name UNITED AIRLINES, the FLY THE FRIENDLY SKIES tagline, and the logo of a world map are service marks. This is because United provides a service: airline flights around the world.

Types of trademarks



5. **Certification Marks:** Certification marks are used to define standards. They assure the consumers that the product meets certain prescribed standards. Eg: ISI mark and FSSAI mark.
6. **Collective Trademarks:** These marks are linked with a group of people and not one single product or service. These trademarks are primarily owned by an organization, institutes or any association. They can be used by members of the organization to represent them as one the part.

For Example - A chartered accountant can use the "CA" device as he is a registered member of the Institute of Chartered Accountants.



Steps for registration of trademark-

1. Search for the name, device, logo, and mark intended to be applied as trademark.
2. Apply for registration of trademark
3. Examination of application by the registry.
4. Replying to the official objections and if required, ask for hearing.
5. Advertisement of trademark in official gazette/trademark journal for the purpose of opposition filed by the public within 3 months from the date of publication.
6. If no opposition is received, a certificate of registration is issued in favour of applicant. The validity period of registration certificate is for ten years and after that the same can be renewed subject to the payment of renewal fees.

Trademark is designated by-

- TM (TM is used for an unregistered trademark.it is used to promote or brand goods).
- R (letter R is surrounded by a circle and used for registered trademark)

The usage of the trademark by unauthorized means or illegal means by producing it in trading is known as trademark piracy. If there is an infringement of trademark, the owner of the registered trademark can take legal action and for an unregistered trademark.