

Commercial's

LAW OF TRADE MARKS IN INDIA

ASHWANI KR. BANSAL



Commercial Law Publishers (India) Pvt. Ltd.

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IN INDIA

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2001

COMMERCIAL LAW PUBLISHERS (I) PVT. LTD.

WITH THE BLESSINGS OF MATA VAISHNO DEVI

Published by

R.A. GARG

For

COMMERCIAL LAW PUBLISHERS (INDIA) PVT. LTD.

151, RAJINDRA MARKET

OPP. TIS HAZARI COURTS, DELHI - 110 054

PHONES : 2947862, 3971689, 3956490

FAX : 011-2947863

e-mail ; commercialhouse@yahoo.co.in

Website : www.lawbooksshop.com

EDITION : 2001

PRICE : Rs. 645.00

ISBN : 81-87228-42-3

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Printed at

TAJ PRESS, NEW DELHI

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Part I

**INTRODUCTION
AND
FUNDAMENTALS**

PREFACE

All major market players world over rely on trade marks. Many of the enterprise decisions are made keeping in view the impact they would have on public perception of their trade marks. Managerial and commercial practices in relation to trade marks have become identified. The law may act either as an obstruction or a facility in relation to a managerial decision. There is also accompanying role of trade marks in transfer of technology and licensing. Increasingly, the trade mark law has been the subject matter of international conventions and treaties like the Paris Convention, 1883 and WTO-TRIPs whereby the law of trade marks has been internationalized.

Traditionally, the law relating to trade marks in India has been addressed and studied as part of an adversarial process between two contending parties. Trade mark disputes arise between parties in relation to ownership, registration or in case of unauthorised use of the trade mark in respect of goods or services by some person. A new line of cases came up before the courts when proprietors of trade marks sought to restrain its use on all other goods or services instead of the traditional concept of trade mark enjoying rights and goodwill only in relation to those goods on which it is used. All such disputes are handled as a matter of routine by courts and lawyers, wherein dispute is resolved by a verdict in favour of one or the other party.

Trade marks have a definite role in development and growth of any enterprise, and in turn, of the economy of nation. Reputed trade marks make or mar an economy. An economy dominated by foreign trade marks (FTMs) might sometimes be stated to be at the mercy of foreign owners of trade marks who might also own certain other components of production capacity or facility like the patent or design of the product as well the ownership of the undertaking. A successful trade mark ensures higher level of sales and production, thus more employment, better wages and better purchasing power for workers and more profits for shareholders and managers. This facilitates expansion of business activity horizontally in other nations, and by way of vertical integration, i.e. the undertaking may be able to produce and sell integrating forward or backward and in turn more success. The present work attempts a synergy of the disciplines of law and business in this respect.

Trade marks may be seen as the source of information about the products. The emphasis on the right to information or concepts like transparency in relation to products are satisfied to a large extent by trade marks and not by the detailed brochures of the products. Trade marks impart important information about products to customers. Their purchase decisions are made with the help of trade marks. Anybody may try an estimation about i) how much time a person may save in his/her shopping activities because of the presence of a system of trade marks, ii) what kind of method a person shall employ in

purchasing goods if there were no trade marks, and iii) if there can be an audit of experiences with trade marks. A person might decide against buying a product with a certain trade mark because he did not like the quality. If he tries some other mark which satisfies his needs, it appears he has been helped by the presence of trade marks.

Advertising of trade marks provides employment in the entertainment and the cultural industries. The entire information industry is sustained by advertising of trade marks. The newest phenomenon of Internet depends to a large extent on advertising of trade marks; it has to be stated that it is not the goods which get advertised but the trade marks. Trade marks have political significance too. They help the integration of the population emotionally. People using the same trade marked products in Cochin, Hyderabad, Gowhati, Calcutta, Patna and Srinagar have a tendency to relate to each other. Sometimes trade marks segment the society into classes and conversely a segmented society may converge on a particular brand. The consumption patterns of individual brand names may help understand a lot of socio-economic issues. On the other hand, an extensive advertising of brand names dictated by the production pattern followed in the developed world or MNCs change the consumption habits of the developing societies as well.

Trade marks exerting a pull on goods or services thereby creating a demand in the market result in an increased production for the enterprise, giving it better profitability. If the pull on goods or services is experienced from abroad, it would lead to increased exports by the enterprise. The merits of increased exports are too well known to be mentioned. It is necessary for an economy to build its reputed marks, for enterprises may experience a demand for their goods in the market rather than concentrating on the efforts in pushing the goods. The competition here is with established trade marks of foreign countries. It is for the industry, the decision-makers in the Government, as well as for the population to respond to the demands of the time.

This book seeks to combine the above aspects of trade mark law so as to make managers and commercial men and women understand legal aspects of the issues and also make lawyers familiar with commercial and business practices as prevalent in trade and industry.

This book, in 24 chapters, seeks to explain the law in relation to the multifaceted phenomenon of trade marks. Part I deals with Intellectual Property in general, Business Fundamentals of trade marks, Role in economic development, the legal fundamentals of trade marks, their business and legal perspective. Various kinds of trade mark rights have been collected for the first time in chapter 4. Part II deals with all aspects of Registration. Part III deals with assignment, licensing, technology transfer and restrictive practices, exhaustion of rights and parallel goods, and foreign trade marks. Part IV deals with protection of trade marks by Registration environment and under copyright law, Infringement and passing off, Injunctions and Offences, and miscellaneous

important provisions. Part V deals with Indian trade mark law in international scenario discussing the Paris Convention, TRIPs, International Registration under Madrid system and the European Community Trade Mark.

This book is an outcome of a work which started as an enquiry into the activities of MNCs in the year 1975. It was observed that MNCs excel in possession and utilization of Intellectual Property and together with managerial power and capital they offer a package. In an effort to understand the whole gamut it was thought to unpack the MNCs. In the year 1990 a study on broadcast and Parsar Bharati Corporation helped understand issues in advertising and trade marks. Most dominant of the assets of MNCs is trade marks which was selected for enquiry. The study on the Law and Role of Foreign Trade Marks in India was completed for which Ph.D. was conferred in the year 1992. The law relating to FTMs underwent drastic change and all the regulations were abandoned in early 1992 in pursuance of Structural Adjustment Programme 1991 and the influence of preparation of WTO-TRIPs text (Dunkel Draft, Decemebr 1991). WTO-TRIPs in itself means assertion of powerful MNCs and developed countries and instead of prohibition till 1992 now FTMs enjoy privileged status as well-known trade marks. This work informs the present law of Trade Marks Act, 1999 tracing the development of law in all its related environment including case law upto early December 2000.

I take this opportunity to point out that Dr. G.G. Gyatso and the blessings of God have been a constant source of inspiration and without their assurance and assistance this book would not have been possible. I happily extend my thanks to those who helped this multi-phased endeavour. It may nigh be impossible to acknowledge all of them individually. First, the book on 1958 Act was completed. The Trade Marks Act, 1999 was passed on 30th December, 1999 and the book was adapted to the new law in which Amit Bajaj, Sonal Jain and other students extended active help. My colleagues Ashok Bansal, Nanak Chand and Subhanjali Chopra have been a constant help. My colleague Uma Gupta extended active help in final reading and presentation. Many others made useful suggestions and contributions which are thankfully acknowledged. I am thankful to Sh R.A. Garg of the Commercial Law Publishers (I) (P) Ltd. for the speed and care with which he has brought out the book.

I hope the book proves useful in giving comprehensive view of the law and management of trade marks in India and an insight into the strategies for foreign operations; and to foreign trade mark owners about operations in India.

Delhi
February 1, 2001

Ashwani Kumar Bansal

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