

IN-DEPTH

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In-Depth: Trademarks (formerly The Trademarks Law Review) provides an annual review of trademark law in major jurisdictions worldwide. It summarises the key legal provisions and reviews recent developments and trends from the courts, while also analysing areas of expected legal activity and legislative change going forward.

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Introduction

The growing economy in India has driven a huge surge in intellectual property filings over the past five years.^[1] The trademarks regime in India has undergone several changes over the years in order to simplify procedure and provide greater certainty for the enforcement of trademark rights. India's trademark regime is governed primarily by the Trade Marks Act, 1999 (TM Act) and the Trade Marks Rules, 2017 (TM Rules). Under the legal framework, a wide range of marks – including words, devices, symbols, numerals, shapes, colours, and even sound and motion marks – are eligible for protection, provided that they are distinctive and capable of graphical representation. Although the Indian trademark system adopts a "first-to-use" principle in determining trademark ownership, statutory registration grants stronger rights, and is advisable for greater certainty and ease of enforcement. The Trade Marks Registry, operating under the Office of the Controller General of Patents, Designs and Trade Marks, is the authority for receiving, processing, scrutinising and granting trademark registrations in India.

Year in review

The TM Act, in the past year, has undergone several amendments that came into force on 1 August 2024. Section 106 of the TM Act, which provided for penalties in relation to the removal of goods with improper markings, has been omitted. Similarly, Sections 108 and 109 of the TM Act, which provided penalties for improperly describing a place of business as connected with the Trade Marks Registry and for falsification of entries in the Trade Marks Register, respectively, have been removed altogether. Section 107 of the TM Act, which provided the penalty for falsely representing a trademark as registered, has been decriminalised by removing the punishment of imprisonment and replacing it with a monetary penalty of 0.5% of the total sales or turnover in business or gross receipts in the profession, as computed in the audited accounts of the infringer, or a sum equal to 500,000 rupees, whichever is less.

A recent amendment to the TM Act is the introduction of adjudicating officers and an Appellate Authority who may be authorised by the Trade Marks Registrar to inquire into and impose penalties under the provisions of the TM Act. For this purpose, the TM Act now includes sections 112A and 112B. Any person aggrieved by an order passed by the adjudicating officer may prefer an appeal to the Appellate Authority within 60 days. To ensure timely adjudication of such appeals, a statutory mandate to dispose of the appeal within 60 days has also been incorporated. Furthermore, to ensure compliance with the orders passed by these authorities, any failure to comply with an order within 90 days attracts a fine of 100,000 rupees or imprisonment for up to one year, or both.

Complementing the above amendments, the Trade Marks (Holding Inquiry and Appeals) Rules, 2024 were also brought into force on 16 August 2024. These rules provide for the method of filing a complaint electronically to the adjudicating officer regarding any violation under section 107 of the TM Act and the connected adjudication procedure.

Indian courts have also played a crucial role in shaping trademark laws, particularly regarding well-known trademarks and rectification/cancellation petitions. These judicial

rulings have not only clarified existing legal principles but also set new precedents, addressing complex issues arising from digital commerce. The judiciary's proactive approach reflects India's growing commitment to strengthening its intellectual property ecosystem, aligning it more closely with global best practices while addressing unique domestic challenges. The period from 2024 to 2025 has witnessed several judgments relating to trademark law where, notably, the Indian courts have strengthened the "safe-distance rule", laid emphasis on heightened scrutiny for deceptive similarity of trademarks used in relation to sensitive sectors such as pharmaceuticals and food, and clarified the liability of online platforms in trademark infringement. Courts have also awarded substantial damages to plaintiffs in cases of trademark infringement, with notable instances including the Delhi High Court judgment of February 2025 in *Lifestyle Equities CV v Amazon Technologies, Inc.*,^[2] awarding approximately US\$38 million, and the judgment of March 2025 in *Johnson & Johnson v Pritamdas Arora*,^[3] awarding approximately US\$400,000. These financial penalties are substantial, and indicate a deliberate attempt by the judiciary to move beyond solely injunctive relief. This approach aims to ensure compliance, prevent recidivism and foster greater respect for intellectual property rights within India. Such developments signal to both domestic and international brand owners that India's intellectual property enforcement methods are maturing and becoming more reliable, which can encourage further investment in the country.

Legal framework

Legislation

India is a signatory to key international treaties such as the Paris Convention for the Protection of Industrial Property, the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks and the Madrid Protocol. Over the years, Indian trademark laws have undergone several changes to align with these international commitments in order to consequently ensure a level of harmonisation with laws and practices in other major jurisdictions.

Authorities

The Indian trademark regime involves statutory authorities, tribunals and courts. The principal authority is the Trade Marks Registry, which functions through five branches located in Mumbai, Delhi, Kolkata, Chennai and Ahmedabad. The Trade Marks Registry is responsible for receiving, examining and processing trade mark applications, including those designated under the Madrid Protocol. The Registry also conducts hearings for prosecution, opposition and rectification/cancellation proceedings, as required.

While the TM Act originally provided for the Intellectual Property Appellate Board (IPAB) to hear appeals from decisions of the Trade Marks Registry, the same was abolished by the Tribunals Reforms Act, 2021 with effect from 4 April 2021. All such appeals now lie with the respective high courts of the country. Several high courts, including those of Delhi, Madras,

Calcutta and Himachal Pradesh have created specialised benches or divisions known as “intellectual property divisions” to adjudicate these appeals. The Supreme Court of India remains the apex judicial authority for resolving significant questions of law in trademark matters, which may be taken up by way of appeals.

Other government authorities further supplement the trademark regime in India, including:

- the Ministry of Corporate Affairs is responsible for the rectification of infringing company names under section 16 of the Companies Act, 2013;
- the National Internet Exchange of India processes disputes under the .IN Domain Name Dispute Resolution Policy; and
- the Commissioner of Customs may seize infringing imported products.

Substantive law

Broadly, the TM Act defines a “mark” under section 2 (m) as a “device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof”. For a mark to qualify as a trademark for protection under the TM Act, it needs to meet three broad requirements, which are set out under section 2(1)(zb) of the TM Act. The first is that the mark must be capable of graphical representation. Second, the mark must not be devoid of distinctiveness and should be capable of distinguishing the goods or services, or both, of one proprietor from another. Last, the mark must be used or proposed to be used on goods or services, or both, to indicate a connection in the course of trade between the goods or services, or both, and the proprietor.

Section 9 of the TM Act provides for absolute bars to registration of a trademark in India that explicitly excludes marks that are descriptive in relation to kind, quality, quantity, intended purpose, values, geographical origin or the time of production or other characteristics of the goods or services. Furthermore, a mark would be unregistrable if it is likely to deceive the public or cause confusion, comprises matters likely to hurt the religious susceptibilities of any class or section in India, comprises scandalous or obscene matters, or if it is a mark that is prohibited from being used under the Emblems and Names (Prevention of Improper Use) Act, 1950.

India also recognises the concept of a “well-known trade mark”. A well-known trade mark, as defined under section 2(1)(zg) of the TM Act, is a mark that is widely recognised by a substantial segment of the public who uses the relevant goods or services. The public must recognise the mark to such an extent that its use in relation to other goods or services would likely be understood as indicating a connection in the course of trade or rendering of services with the person who uses the mark for the original goods or services. Both the Trade Marks Registry and the courts in India can declare a mark as well-known based on cogent evidence. These marks transcend protection beyond the goods or services, or both, in relation to which they are used, as a result of the instant consumer connection of such a mark with a particular proprietor. The relevant factors to ascertain whether a mark is well-known include:

- knowledge of the mark among the relevant members of the public;
- the duration, extent and territories in which the mark is used;

- duration and geographical extent of trademark applications and registrations secured for the mark reflecting its use and recognition; and
- prior successful enforcement of rights in the mark against third parties.

A list of marks recognised as well-known is maintained by the Trade Marks Registry on its online portal.^[4] The fact that a mark is well-known is also a relevant consideration for the courts in deciding matters of trademark infringement and passing off.

Registration of marks

The Trade Marks Registry in India through its branches accepts applications for trademark registration in India. The trademark application process in India was simplified and revamped by the Trade Marks (Amendment) Act, 2010. As discussed above, the mark needs to be capable of graphical representation, and the goods or services on which the mark is used or proposed to be used are required to be specified and classified as per the Nice Classification. If the mark is in a language other than Hindi or English, a translation of the mark in English as well as transliteration of the mark must be provided. The application is also required to be filed along with a statement of use or intention to use, as appropriate. If the use claimed is prior to the filing of the application, a user affidavit is to be filed by the applicant deposing to the date of first use of the goods or services specified, along with supporting documentary evidence. Such documents may be in the nature of invoices, promotional materials and other documents exhibiting commercial use of the trademark applied for.

Once the application is filed, it is scrutinised by the Trade Marks Registry to check whether the mark is absolutely prohibited from registration as per section 9 of the TM Act, as well as on the relative grounds under section 11 of the TM Act. Objections, if any, are issued by the Registrar of Trade Marks through an examination report, which is ordinarily issued within one to three months. Once the report is issued, the applicant is called upon to file its reply to the examination report within one month. In the event that the Registrar is not satisfied with the reply, a show cause hearing may be scheduled by the Registrar. If the applicant overcomes the objections, the mark is advertised in the official trademarks journal to invite third-party oppositions. If the mark is unopposed or if the opposition is decided in the applicant's favour, the mark then proceeds to registration and a registration certificate is issued by the Registry electronically. The registration of the mark dates back to the filing date of the application. The term of trademark registration in India is 10 years and the same may be renewed *ad infinitum* on payment of the requisite government fees, which is currently 9,000 rupees per class, after every 10 years. In case the mark is not renewed, it may be removed from the Register of Trade Marks. However, the Registry issues a notice as per Form O-3/RG-3 to the registrant one to three months prior to the date of expiry of the registration. Courts in India have held that the issuance of such notice is mandatory, and that the registration may be restored in cases of non-compliance.^[5]

The TM Act also provides for a grace period to renew the registration, subject to payment of the renewal fee along with a surcharge. If the renewal is not filed within this grace period, which is one year in total from the date of expiry, the applicant would not be able to restore the mark.

Inherent registrability

As stated above, section 9 of the TM Act prevents registration of marks that lack distinctiveness. Section 9(1)(a) of the TM Act bars registration of a mark that lacks distinctive character and is not capable of identifying the source or origin of goods or services of one proprietor with those of another. Section 9(1)(b) of the TM Act prohibits the registration of marks that exclusively describe the kind, quality, quantity, intended purpose, values, geographical origin or time of the production of goods or services. Section 9(1)(c) of the TM Act prevents monopolising customary words in trade and business. Thus, descriptive, generic, customary and common terms are *prima facie* unregistrable. Of course, the applicant may demonstrate to the Registrar that the mark has acquired distinctiveness through use, consumer association and market recognition prior to making the application, and the TM Act explicitly recognises this in the proviso to section 9(1).

Prior rights

Section 11 of the TM Act lays down the relative grounds of refusal of a trade mark. This provision seeks to protect the reputation of prior and established trademarks and prevents new trademarks from wrongfully usurping such a reputation. When a mark is identical or similar to an earlier trademark and used for identical or similar goods, it would be considered a relative ground for refusal of registration. However, the new registration would be refused only if there exists a likelihood of confusion in the public, which includes a likelihood of association with the prior trademark. Likelihood of confusion typically depends on the similarity of the marks as a whole, the nature of the goods and the class of purchasers who may purchase these goods.

Section 11(2) of the TM Act protects marks that are well-known trademarks within India. A new mark that is identical or similar to the earlier well-known mark, even if proposed to be registered in respect of dissimilar goods or services, shall not be registered if the use of the later mark would take unfair advantage of the mark or be detrimental to the distinctive character or repute of the earlier trademark. Section 11(3) of the TM Act prohibits registration of a trademark whose use in India is liable to be prevented by any law and in particular the law of passing off, or by virtue of the law of copyright. In effect, section 11(3) of the TM Act prevents misuse of unregistered earlier trademarks, and prevents registration of marks that infringe copyright.

Objections under section 11(3) may be refuted by amending the trademark application to remove conflicting goods or services. Consent from the owner of the earlier trademark, as provided under section 11 (4) of the TM Act, can also assist in refuting an objection under this section.

Inter partes (opposition) proceedings

Any person objecting to a mark published in the trademarks journal may file an opposition within the non-extendable statutory deadline of four months from the date of the publication. Thereafter, the applicant is called upon to file a counterstatement to the opposition within the non-extendable statutory deadline of two months from the date of service of the notice of opposition by the Trade Marks Registry. In the event that the counterstatement is not filed, the application for the mark shall be deemed to have been

abandoned by the applicant. However, if the applicant files their counterstatement, the opponent is then called upon to lead evidence on affidavit in support of the opposition within two months of service of the counterstatement by the Trade Marks Registry. The affidavit typically affirms the contents of the notice of opposition with cogent documentary evidence and counters the contentions made in the counterstatement. Once the evidence affidavit in support of the opposition is served upon the applicant, they have two months to file the evidence affidavit in support of the application, which similarly rebuts the grounds made in the notice of opposition with supporting documentary evidence. After the pleadings are complete, a hearing is scheduled where both parties present their cases before a hearing officer. The Trade Marks Registrar then decides (by passing an order) whether to accept or refuse the application for registration of the trademark.

The statutory deadline should be strictly adhered to when filing the evidence affidavits, as a belated filing will lead to the application or opposition being deemed as abandoned. This has also been clarified in a recent ruling of the Delhi High Court^[6] where it was held that the time period for filing evidence under the TM Rules is mandatory in nature and that the Trade Marks Registrar does not have discretionary power to extend the time periods. In the event that the parties do not wish to file their evidence, they also have the option of intimating the Registrar of their desire to not adduce any evidence but instead rely on the facts stated in their respective pleadings within the same time period of two months, as prescribed under the TM Rules

Removal and cancellation proceedings

The TM Act also provides for the removal and cancellation of a registered trademark on the grounds of non-use or on broad grounds such as wrongful registration and failure to observe a condition. A rectification/cancellation petition of this nature may be filed before the branch of the Trade Marks Registry where the mark was registered or before a relevant high court having jurisdiction.

Section 47 of the TM Act specifically addresses the removal of trademarks from the register on grounds of non-use. The two primary grounds for the removal of a mark under this section are first, when the mark has been registered by the proprietor without any *bona fide* intention to use the mark, and when there has been no *bona fide* use of the mark in respect of the goods or services applied for thereof up to three months before the date the petition for rectification/cancellation is filed. Second, the mark is liable to be removed when there has been no *bona fide* use of the mark for which the goods or services have been applied, for a continuous period of five years from the date of registration of the mark, up to three months before filing of the rectification petition. In effect, the Act provides a *bona fide* proprietor five years to commence actual use of the mark in the market, failing which it is presumed that the mark had been registered without any intention to use it at all. However, the TM Act also provides protection to a trademark from removal if the owner of the mark can show that non-use of the mark was due to special circumstances in the trade, including restrictions on the use of the trademark in India imposed by any law or regulation. Only an "aggrieved person" may file the rectification petition and courts in India have held that to constitute an aggrieved person, the petitioner must demonstrate how the continuance of the mark on the register causes a harm or injury to it or its business.

Section 57 of the TM Act provides for several grounds for rectification, including a contravention or failure to observe registration conditions by the registered proprietor, an

absence or omission of required entries (eg, disclaimers, limitations, conditions) on the Register of Trade Marks, where it is demonstrated that the registration has been obtained through misrepresentation or without sufficient legal basis. Only a person aggrieved may file such a rectification petition, and the petition must clearly state the nature of the petitioner's interest, the facts upon which it bases its case and the relief that it seeks.

The dissolution of the IPAB in 2021 has created jurisdictional complexities for rectification/cancellation proceedings. While the Delhi High Court in *Dr Reddys Laboratories Ltd v Fast Cure Pharma*^[7] held that a rectification petition may be filed not only with a high court that has territorial jurisdiction over the relevant Trade Marks Registry, but also at a high court that has jurisdiction of any place where the "dynamic effect" of the registration is felt, this issue of jurisdiction has been referred to a larger bench of the Delhi High Court in the case of *The Hershey Company v Dilip Kumar Bacha*^[8] and is currently pending adjudication.

Appeals

Under section 91 of the TM Act, any person aggrieved by an order of the Registrar of Trade Marks, including trademark refusal, opposition and rectification, may appeal to a high court that has territorial jurisdiction over the relevant Trade Marks Registry, within three months of the impugned order. Appeals from rectification petitions filed before a high court can be pursued before the appellate division of the relevant high court.

An applicant may alternatively file a petition before the Registrar of Trade Marks to review its own decision within one month of the date of passing of the decision, which may be extended for another month at the discretion of the Registrar of Trade Marks.

Civil litigation

Forums and jurisdiction

The TM Act stipulates that lawsuits for trademark infringement or passing off are to be instituted in the district court within the local limits of whose jurisdiction, at the time of the institution of the suit, the person instituting the suit, actually and voluntarily resides or carries on business or personally works for gain.

The Commercial Courts Act, 2015 revamped the process of commercial civil litigation in India, wherein lawsuits arising from disputes pertaining to intellectual property rights, including trademarks, of a specified value of Rupees Three Lakhs Only (approximately \$3,200) or more has been qualified as commercial disputes and are to be heard exclusively by the commercial courts established under the Commercial Courts Act, 2015. The Commercial Courts Act, 2015 has introduced specialised commercial courts, mandatory pre-litigation mediation and streamlined procedures, significantly enhancing the efficiency of trademark dispute resolution. Under the Commercial Courts Act, 2015, a lawsuit for trademark infringement, passing off and other ancillary reliefs may also be filed with the commercial division of a high court, provided that the same falls within the territorial and pecuniary jurisdiction of that high court. For example, in Delhi, the minimum pecuniary

threshold for invoking the jurisdiction of the Delhi High Court is Rupees Two Crore (approximately \$230,000).

Jurisdiction to try a trademark dispute may also lie with a civil court where the defendant ordinarily resides, carries on business or works for profit, or where the cause of action wholly or in part arises, as per section 20 of the Code of Civil Procedure, 1908. This is especially useful in cases where the defendant offers for sale, advertises or promotes the infringing goods or services online. However, courts in India have clarified that, in such cases, relying on the defendant's online presence in a particular territory, requires not only that the defendant's interactive website is accessible in the territory where the lawsuit is instituted, but it should also be ideally shown that the defendant target customers within that territory

Pre-institution mediation

The Commercial Courts Act, 2015 provides for mandatory pre-institution mediation in commercial disputes and thus also applies to trade mark litigation. Pre-institution mediation is carried out according to the Commercial Courts (Pre-Institution Mediation and Settlement) Rules 2018 and any relevant rules laid down by the respective high courts. Pre-institution mediation has to be completed within three months, a term that may be extended by two months with the consent of both parties. Courts in India have emphasised compliance with such mediation, warning that lawsuits filed without it may be dismissed. The sole exception to the provision is where the lawsuit contemplates urgent relief.

The guiding principle for determining exemption from pre-institution mediation was provided in a recent judgment of the Supreme Court in *Yamini Manohar v TKD Keerthi*,^[9] which directed commercial courts to scrutinise the plaint, documents and facts to ascertain whether urgent ad interim relief is actually contemplated. As a matter of practice, in blatant cases of trademark infringement (for example, in counterfeiting matters) courts usually dispense with the requirement of pre-institution mediation where the lawsuit is filed along with applications for ad interim injunction as well as for the appointment of a court commissioner for the purpose of seizing infringing goods

Causes of action

The Indian trademarks regime provides for several distinct causes of action to protect the interests of rights owners and to ensure fair competition. These causes of action include infringement, passing off, reverse passing off, unfair competition, infringement of company names and domain names.

Section 29 of the TM Act details the specific instances recognised as an infringement of a registered trademark. In the event that the impugned mark is identical to the registered trademark and used in respect of identical goods or services, the likelihood of confusion is presumed, and infringement is declared automatically. Section 29(4) covers the misuse of a trademark that is well-known in India and where the misuse of the registered mark, even in relation to dissimilar goods or services, would dilute its distinctiveness and reputation. Section 29(6) elaborates on what constitutes "use" for the purposes of infringement and includes use of the impugned mark on packaging, the import and export of goods bearing the impugned mark, and use on business papers and advertisements.

Where the marks and goods or services are not identical, “likelihood of confusion” is a key element of determination by the courts. The class of consumers, as well as the trade circles in which the goods or services circulate and the degree of similarity in the competing marks, among other factors, are relevant to determine the likelihood of confusion.

Passing off is a common law action protecting unregistered trademarks against misrepresentation. It occurs when one party misrepresents its goods or services as those of another, causing damage to the latter’s goodwill. Section 27(2) of the TM Act preserves the right to sue for passing off despite the lack of trademark registration. The test to establish passing off, often called the “classical trinity” requires proving:

- the plaintiff’s goods or services have established goodwill;
- a misrepresentation by the defendant causing confusion among the public; and
- actual or probable damage caused to the plaintiff’s business.

Notably, intention to deceive need not be proven; even innocent misrepresentation leading to confusion suffices.

Courts in India have also recently recognised the concept of reverse passing off, which occurs when a party procures products from the rights owner, removes or conceals the rights owner’s mark, and then misrepresents to the public the goods as originating from itself, essentially selling the plaintiff’s product under the defendant’s name. The Delhi High Court in *Western Digital Technologies Inc v Geonix International Pvt Ltd*^[10] recognised this cause of action and granted an *ex parte ad interim* injunction to Western Digital against the defendant, which was refurbishing and rebranding “WD” hard disk drives under its own marks. Reverse passing off requires the plaintiff to demonstrate to the court that the defendant has falsely attributed the origin of its products, deceiving customers into believing that the product originates from the defendant, causing injury to the plaintiff.

Infringement by use of a trademark, whether wholly or in part, as a trade, corporate or business name is also covered under section 29(5) of the TM Act. However, infringement is declared only in cases where the business concern is dealing in goods or services in respect of which the trademark is registered.

Similarly, misuse of a trademark as part of a domain name also provides a cause of action under Indian trademark law. Courts in India have recognised that domain names function as unique identifiers of businesses on the internet and thus function akin to trademarks, and any misuse of domain names is similar to passing off the business of one as that of another. In addition to civil litigation before the courts, a separate course of action against “.in” or “.Bharat” infringing domain names is also provided under the .IN Domain Name Dispute Resolution Policy that can be pursued before the National Internet Exchange of India, which administers domain name disputes.

Conduct of proceedings

A civil action for infringement or passing off of a trademark in India is governed by a composite procedural matrix involving the TM Act, the Code of Civil Procedure (as amended by the Commercial Courts Act, 2015), and the rules and practice directions issued by the high courts.

A civil action is initiated by the filing of a plaint, which must articulate the plaintiff's title to the mark, establish the principles of trademark infringement, passing off or other cause of action, plead relevant facts, establish territorial and pecuniary jurisdiction and specify the remedies sought. The plaint is filed along with an interim application seeking ad interim injunction, and, depending on the facts involved, may include other interim applications such as application seeking exemption from pre-institution mediation, application seeking appointment of court commissioners, etc. In the event that an *ex parte* ad interim interim injunction is requested, the court hears it without notice to the defendant and issues appropriate orders. Thereafter, summons are drawn and served on the defendant, who is then called upon to file its written statement and reply to the applications filed along with the suit.

Pre-trial discovery is permitted in Indian civil litigation and is liberally allowed in trademark matters, provided that it satisfies the "necessity test" (ie, where disclosure is essential to a fair trial).^[11] Documentary discovery, inspection and the production of samples of infringing goods frequently accompany interrogatories, enabling the plaintiff to quantify loss and establish *mala fides*. Another facet of civil litigation in trademark disputes is the filing of affidavits of admission or denial of documents by both the parties as mandated under Order XI Rule 4 of the Code of Civil Procedure, 1908. It is pertinent to note that the denials to documents must be specific and pertain to the correctness of the contents, existence, execution, issuance or receipt and custody of a document. After pleadings close, issues are framed by the court to clarify the major points of dispute.

Thereafter, trial commences with examination-in-chief by affidavit followed by cross-examination and re-examination in the sequence mandated by section 143 of the Bhartiya Sakshya Adhiniyam, 2023. Throughout, the Commercial Courts Act imposes strict case-management timelines. As a means to further reduce delays in adjudication of commercial disputes, Order XIII-A of the Code of Civil Procedure, 1908 allows the court to pass a summary judgment against a party in cases where the party has no real prospect of succeeding in its claim and there is no compelling reason as to why the claim may not be decided summarily without recording oral evidence.

Remedies

Civil Courts in India are vested with the power to grant several remedies, including injunctions, delivery up, damages and accounts of profits. Injunctive reliefs include temporary injunctions, which are granted during the pending of proceedings to prevent ongoing damage arising from the purported trademark misuse. In cases of urgency, the Code of Civil Procedure, 1908 allows the granting of injunctions *ex parte* (ie, without notice to the defendant). For the court to grant an interim injunction, the applicant must satisfy the court with the following trinity principles:

- prima facie case;
- balance of convenience in its favour; and
- irreparable harm that would result to the applicant, due to the defendant's misuse, which cannot be compensated monetarily.

A trademark rights holder would also usually request a perpetual injunction against the offending party (ie, the defendant), restraining it from infringing or passing off, or both, the

trademark permanently. However, this remedy will only be granted once the lawsuit has been determined finally on merits.

Courts in India may also pass *Anton Piller* orders, ordering an *ex parte* search and seizure of the infringing goods at the offending party's premises by appointment of court commissioners. However, these orders are granted where:

- an extremely strong prima facie case is established against the offending party;
- the serious nature of actual or potential damage to the applicant is established; and
- there is a high possibility that the evidence will be destroyed if the offending party were to become aware of the order.

The court commissioners may be appointed by the court to not only search and seize the infringing goods, but also inspect and seize books of account, promotional materials, dyes, casting and other equipment used to carry out the infringement.

John Doe orders, or *Ashok Kumar* orders as they are known in India, have also been awarded by courts in cases where precise identification of the offending party is not available. This is particularly useful in cases where the infringement or passing off takes place on the internet, where it may be difficult to ascertain the exact particulars of the offenders. A notable recent case that involved a *John Doe* order is *Birkenstock GmbH v Ashok Kumar(s) / John Doe(s)*,^[12] wherein the Delhi High Court issued an *ex parte* ad interim injunction to protect Birkenstock from trademark misuse by unknown third parties.

Recently, courts in India have also granted dynamic injunctions in trademark matters to curb misuse of trademarks on e-commerce platforms that pose issues such as anonymity, real-time infringement and wider geographical scope, leading to a larger volume of infringements. Essentially, these injunctions enable the rights holder to directly notify intermediaries regarding future infringing listings, which must be taken down swiftly. The rights holder no longer needs to approach the court again for such future infringements, which not only enables proactive enforcement but also decreases the burden on courts. Recently, the Delhi High Court in the matter of *Reliance Industries Limited v Pawan Kumar Gupta*^[13] issued a dynamic injunction against the misuse of Reliance's trademarks on infringing goods. E-commerce platforms were directed to remove the infringing product listings, as well as any future listings identified by Reliance. The e-commerce platforms were also directed to disclose the identities and contact information of the offending sellers to Reliance for further action.

Civil Courts may also award damages in the form of compensatory damages, punitive or exemplary damages, nominal damages, and award actual legal costs incurred in the proceedings. Compensatory damages act as reimbursement for quantifiable losses to the rights holder, including misdirection of sales, loss of profits, erosion of goodwill and loss of reputation. The Delhi High Court in *Kabushiki Kaisha Toshiba v Toshiba Appliances*^[14] mandated the presentation of substantive evidence that would justify the quantum claimed as compensatory damages. Such evidence would include a reasonable estimate of the claimed amount, foundational facts of the case justifying the amount claimed and account statements. Speculative extrapolation of profits and sales data of the infringer to justify damages was expressly disallowed by the court in this case. In cases of infringement that is deliberate coupled with a wilful contempt of court, the court may award aggravated damages to include both compensatory damages and additional damages,

along with injunction and costs. These damages would include punitive or exemplary damages to deter potential infringers. On the contrary, in cases where the infringer is able to demonstrate that the infringement was innocent and not calculated to deceive, the court may award nominal damages that affix legal liability on the infringer without placing a heavy monetary burden. The award of these damages render an equitable remedy as nominal damages act as an acknowledgement of the rights of the plaintiff while recognising the absence of *mala fide* on the part of the infringer.

Other enforcement proceedings

Criminal remedies

Criminal enforcement under the TM Act provides for stringent penalties, including imprisonment and fines. These offences are cognisable, enabling police of the rank of deputy superintendent or equivalent, to arrest without warrant and conduct searches and seizures. These remedies may be pursued in addition to the civil remedies against infringers.

Of particular importance to rights holders is section 102 of the TM Act, which defines the acts of falsification and falsely applying trademarks on goods or services, including unauthorised use and modification of the trademark, and application of the mark on any packaging. Section 103 of the TM Act punishes the falsification of, or falsely applying, trademarks on goods or services or falsifying the trade description on goods or services, or even persons possessing, disposing of, or making, any die, block or other instrument used for falsifying a trademark. Any person found guilty is liable to imprisonment for a term that may extend up to three years and to pay a fine of up to approximately US\$2,200. Criminal complaints may be initiated directly with the police or through a magistrate. The burden of proof in criminal cases is higher, requiring evidence beyond reasonable doubt.

Customs enforcement

Customs enforcement serves as a critical barrier against the importation of counterfeit and infringing goods. The regime is primarily governed by the Customs Act, 1962, the TM Act and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Customs authorities are empowered to suspend the clearance of goods suspected of infringing intellectual property rights, either upon application by the rights holder or *suo moto*. The process requires the trademark proprietor to file a formal notice with the Commissioner of Customs, supported by evidence of rights and product details. Once the trademark is registered, the proprietor must execute bonds and provide security to cover potential liabilities and costs associated with the detention and destruction of infringing goods. The bond may be consignment-specific, or centralised or running for ongoing enforcement. If the amount of the bond is less than the seized goods, a supplementary bond covering the cost must be executed by the rights holder.

Customs officials may seize the infringing goods based on their prima facie opinion, and may ultimately destroy the goods under official supervision, with the rights holder bearing

associated costs. The framework incorporates strict timelines for both rights holders and importers to ensure procedural fairness and prevent undue delays.

Rectification of company names

Indian law also provides for the rectification of company names that are identical or nearly resemble registered trademarks. Section 16 of the Companies Act, 2013 empowers the central government (delegated to regional directors) to direct a company to change its name in cases where a registered trademark proprietor applies for rectification of an infringing company name within three years of the company's incorporation or name change. These rectification petitions typically include the trademark rights holder presenting its case through written submissions (ie, a formal application/petition along with corroborating evidence), the defendant company presenting its case through a reply to such application/petition along with corroborating evidence in defence of its case, and finally the regional director holding oral hearings to decide the case. Once the regional director passes an order for rectifying a company name, the same must be complied with within three months of receiving such direction, failing which the regional director may unilaterally strike off the infringing company name.

Outlook and conclusions

India's trademark regime has evolved significantly, reflecting both international commitments and domestic legislative development. The transition to digital processes introduced by the Trade Marks Rules, 2017 has made registration more accessible, while courts remain proactive in protecting the rights of trademark owners. Continuous developments, including changes driven by new business models and online commerce, will likely lead to further refinement of trademark law in the country. Civil litigation remains the preferred legal recourse for enforcing trade mark rights in India, which has seen a continuous upward trend over the years, particularly due to more nuanced court proceedings with specialised intellectual property benches in certain high courts (such as Delhi High Court and High Court of Judicature at Bombay) and increasing awareness for the protection of intellectual property rights. Timely registration, careful monitoring of the market and prompt enforcement are crucial to secure and defend valuable brand assets in the jurisdiction. Although the statutory framework and judicial approach are already well developed, ongoing legal reforms and attentiveness to global changes are expected to shape the trajectory of trade mark law and practice in India.

Endnotes

- 1 <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146928>. [^ Back to section](#)
- 2 Case No. CS(COMM) 443/2020. The judgment has currently been stayed by the Division Bench of the Delhi High Court. [^ Back to section](#)
- 3 2025 SCC Online Del 1504. [^ Back to section](#)

- 4 <https://ipindia.gov.in/storage/uploads/docs-operator/069e5a0f-b49b-4e5c-bd75-accc213ba822.pdf>. [^ Back to section](#)
- 5 *Jitendra Goyal v Registrar of Trade Marks*, SB Civil Writ Petition No. 11453/2023 before the Rajasthan High Court dated 1 July 2025. [^ Back to section](#)
- 6 *Sun Pharma Laboratories v Dabur India Ltd* (CA(COMM.IPD-TM) 146/2022 order dated 8 February 2024). [^ Back to section](#)
- 7 C.O. (COMM.IPD-TM) 8/2023 order dated 4 September 2023. [^ Back to section](#)
- 8 C.O. (COMM.IPD-TM) 179/2023 order dated 9 February 2024. [^ Back to section](#)
- 9 2023 SCC OnLine SC 1382. [^ Back to section](#)
- 10 CS(COMM) 168/2024 order dated 26 February 2024. [^ Back to section](#)
- 11 *Tara Batra v Punam A Kumar* (2021 SCC OnLine Del 4331). [^ Back to section](#)
- 12 CS (COMM) 531 of 2025 order dated 26 May 2025. [^ Back to section](#)
- 13 2025 SCC OnLine Del 4903, order dated 10 July 2025. [^ Back to section](#)
- 14 CS(OS) 55/2006 & I.A. 784/2023, order dated 16 August 2024. [^ Back to section](#)



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