

## A Comparative Study of Trademark in U.S.A, U.K & India

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### ABSTRACT

Among the most grooming and mushrooming Economic escalation trade practices has become almost vital part not only to the confined territory but its beyond. Trade practices in the world carries its Trademark (TM) for recognition and establish the core brand value in the world of markets. If it could anyway violate or infringed by the disguised parties it might become difficult to trace out. So therefore, world had certain striction since Henry III to the present modern world. Worlds through convention and treaties landed to broader schemes and guidelines under such conventions just to protect those practices. In this research paper basically encompasses over the different convention and treaties under the IPR regime especially minute focus on Trademarks and its elaborate dimension not only in US and Europe but also in India.

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## 1. INTRODUCTION

*"The ideal trademark is one that is pushed to its utmost limits in terms of abstraction and ambiguity, yet is still readable. Trademarks are usually metaphors of one kind or another. And are, in a certain sense, thinking made visible".* -Saul Bass

*"An image is not simply a trademark a design, a slogan or an easily remembered picture. It is a studiously crafted personality profile of an individual, intuition, corporation, product or service".*  
-Daniel. J. Boorstin

In present scenario the world is heading towards economic awareness and tries to get linked with the other entities of growing and booming Centre of leading economic as well. The world market has enlarged with greater impact of globalization, privatization and liberalization. Which has already established a well settle platform for all emerging and grooming economics of the best to facilitate and assistance with broader dimension to the inshore entities as well as the offshore entities of the economic atmosphere of the world.

Trade, market, business keep growing and expanding its vast areas. Along with encroaching and flourishing industry giving birth to new players to trade. Trade could be considered as the ancient and mostly a primitive practice as human civilization started growing grains.

Although agricultural practices had a greater impact to share and exchange their commodities through Barter System. It is but obvious to say that the world when emerged much and human civilization explored much ahead in their exchanging commodities that very practice gave new pace and emergence of the concept of Trade, which is common in today's life. The Human civilization grown in the fastest way to meet the aspirations and need of the people of other continent and this is how it marked the existence of establishing business practices and trade practices. Human Civilization has a peculiar art of exploring things much ahead just to smoothen the comfort in the society. This could be the most vital phenomenon to establish a warmth relationship between the distinct culture and societies. Trading practices had created more welcoming attitude with an appropriate and subtle way to encroach and approach the traders of the distinguished society. Since time immemorial most of the European Nations had emerged

themselves a sailors and traders. It also replaced benefits and losses too. When European started sailing far into the deep and explore many continents and established their trading shore and developed the market. It also simultaneously opened the eyes of the other nations and how this whole concept of Trading Competition evolved and later it developed more approaches and congested competition in trade practices and more difficulties arose to distinguish the words, names, symbols, devices, logo, signs, designs, marks which serves as to identify the goods and services. Trademark is basically a Trading mark which signifies the particular name, words, symbols, design etc. which can be safeguarded and could be protected from other traders. For this every manufacturer or producers, goods & services have their particular trademarks according which they are protected from any type of violation and infringement issues. It gives the right to the entities to claim over their trademark if it is violated.

Trademarks in present world has become more identifiable and more recognizable in its color, symbol, sign, Logo, Lego, Brand's name, marks. Wherever we go whether in malls, streets, shopping centers, or in any public places everywhere there may be certain banner, placards, billboards, signboards, pamphlets, catalogues. In the present global village where the manufacturers, producers whether associated with the goods or services may be some or other way part and parcel of this trademarks. We are very much aware of the online brands sitting on our own comforts level even in mobile phones, laptops, computers or other gadgets all collectively has some brand name and they are almost carrying its particular color, design, marks, symbol such as apple's half bitten Logo that very depicts the brands related to 'the apple company of the *Steve jobs*, moreover in sports section i.e. *swoosh* sign or logo of *Nike* shoes or product associated .*Puma* ,*Reebok*, *Adidas*, (all day I dream about sports) *Fila* Is also a sports brand Logo depicts i.e. "*finally, I left Adidas*". *Amazon* having arrow sign which reflects a to z services, where in *Hyundai* logo which showing two delegates shaking their hands and *Starbuck* mermaid symbol. So, therefore we have huge pile of brands, logos, symbols, designs, Lego, colors etc. Now the question arises how these trends become practice and how it started?

## 2. TRADEMARKS MIRRORS IN THE WORLD ESPECIALLY THROUGH US, UK AND INDIAN PROSPECTIVE

We can trace out its historical significance just by tuning to time immemorial, where we could easily find out existence and legislation. In England during the reign of *Henry III* also (known as *Henry of Winchester*) was the king of England. Under his regime first laws passed related to trademarks in the year 1266. It was introduced basically to distinguish the breads of distinct sellers. The emergence of the modern marks came into existence in the late 19th centuries. The first *comprehensive trademarks system* introduced in the *France* during the year 1857 [1]. During these years India was fighting over its objectives and stepping ahead to lead the struggle for independence and in the same year United States had its landmark decision in the case of *Dred Scott v Sandford*. *U.S Supreme court held that the constitution of U.S was not meant to include American citizenship for black people* [2]. When trademarks came into practices in England since Bakers marking over their breads & loaves during *Henry III* but in the year 1875 in Great Britain it was enacted as a law for trademarks registration which gave the protection to the trademark's holder as monopolistic rights over their trademarks. Furthermore, in the later year certain amendments came into light to enhance the perfection to suitability of the traders' aspirations. In these years like 1883, 1905 & 1919 Act were amended and finally it was overshadowed by the act of 1938 known as trademarks act 1938. In the year 1994 finally landed as a modern regime of the trademarks Act in the United Kingdom. Some or other way it completely influenced the Americans view over there legislation of trademarks. Although they had been facing more or less same line and length problems in the U.S over the trademarks in the trade practices. In the year 1870's a law enacted named as *Federal Trademark Act of 1870*.

It was the first legislation were made by U.S federal government to protect the trademarks, later it was held by the supreme court of U.S as an unconstitutional, because of conflict with patents laws. Although, it was repealed and after amendments and new law was passed and established instead of previous one in the very year of 1881. Moreover this Trademarks laws again amended in the year 1905. In the year 1946 "*Lahman Act*" came into existence. U.S was the first country who adopted the registration of service marks. During 1870's the federal Trademarks Act were basically used for design marks in the business related to paints, oil especially linseed oil and in chemical industries like zinc oxide associated to Newburg Ohio. In America first registered trademark was a mark where "an eagle was holding ink-pot in its beak".

Whereas in Australia it was a mark of "pine tree" which was in later years used by the pharmaceuticals. Although in India it does not mark any exact existence and considered as to be difficult to track and trace out the exact registered marks. In fact, India was under the direct control of British government and colonialism and imperialism was practiced under their shadow. Trading mechanism was completely under the grips and clutched under the British government. The Trademark was granted during

the early ears of 1942. There was an office in Kolkata for Trademarks. It was the mark of 'Black & White' whisky Co. which as a picture of two dogs front facing gestures were there. Their color was Black and White, one was black dog and another was white dog. It was the popular Company named as "*James Buchanan & Company Ltd.*", The owner was a British origin and associated with the whisky manufacture. Although we have researched that in U. K it all started with the laws of Henry III and during his reign and regime provided to those of the Bakers (who were associated with bread making and loaves). During 1875 in England there need started a Trademark's Act and the first successful Trademark registration was with the Beer called *Bass Red Triangle*. Basically, it designed with geometrical triangle shape filled with red color in it popular known to that era as '*Red Triangle*', which almost lasted to 135 years and still valid till January 2022 [3].

The Trademark Laws in India is since 1940. It was further replaced with Trade and Merchandise Act of 1958. Later with conformity of Trade related intellectual property rights (TRIPS) commitment new act came into picture in the year 1999 called as Trademarks Act 1999, but enacted in the following year of 2003. The Act of 1999 still prevailing to safeguard and protect the trademarks monopoly to the holder as the duration assigned.

Trademarks Laws in India protected under the provisions of the Trademark Act of 1999. Pertaining to Trademarks rights are protected in U. S under the Trademark Act given protection of the rights under Lanham Act of 1946. In U.K it is under 1994 Trademark Act [4].

In India there a difference between the property marks and Trademarks. According to the *Indian Penal Code of 1908 under Section 479*, [5] property mark is used for the movable property belonging to an individual. Property marks are used by the individual denotes the properties in the goods but not as Trademarks. Basically, it is used by the person who doesn't trade in goods [6]. *Trademarks is used by trades in the course of trade.*

In India during the reign of Britisher there was the Trademarks Act of 1938 of England was in practice in India, significant and major development took place after the onset of Trademarks Act of 1940 in the business sectors as well as in trading mechanism which gave new impetus to follow. Furthermore, there established an enquiry committee check and balances within the Trademarks Act of 1940. It was basically advisory in function. Wherein the government of India appointed the justice of Madras High court Justice N. Rajagopala Iyengar to probe into the reports of enquiry committee. Furthermore, recommendation was given by Justice N. Rajagopala for an appointment of officer on special duty (Dr. Venkateswaran) to draft a bill called as Trade and Merchandise Marks Bill (TMM) which further become as the TMM Act of 1958. Due to global aspirations it was further amended as the Trademarks Act of 1999 and still in practice. This gives salient features in the Trademarks Act of 1999 which most significantly provides the stage for registration and protection to TM holder and stop and curbs the fraudulent use of particular registered marks.

According to trademarks laws in as per the Act of 1999 more likely it has changed the definition of old Act of Trade and Merchandise Marks Bill (TMM 1958). In the Trademark Act of 1999 instead the 'service' in its definition. Where businessman and traders could be able to apply for registration of Trademarks as well as services into it. In the provided act of 1999 Trademarks could easily be maintained in the computers. It has also for the first time given some provisions and grounds of refusals. Therefore, it has been given better protection in the well-recognized Trade Marks i.e., "*Well known Trademarks*" under these well-established or recognized marks, it could only be refused for registration if it has fallen under the resemblance and identical or similar with the well-known trademarks. The *Trademarks Act 1999* provided the registration of "*collective Marks*". The collective marks are treated as the separate category which is basically being owned by the associated individuals.

*Trademarks Act of 1999* having single application for the distinct categories of good and services. The certificate of registration provided by the trademark's registrar. There was no jurisdiction of High Court under the '*Section 3 of TMM Act 1958*'. According to the Trademarks Act 1999 having provisions instead of High Court, there is Appellate Board for fast disposal of cases of appeals and alteration which are pending before High Court. This "*Appellate Board*" under the *Act of 1999* falls under the *Chapter XI*. Now the question arises about penalties and punishment. Almost in the form of fines and imprisonment in the application of false Trademarks.

### 3. INTERNATIONAL GUIDELINES AND TREATIES FOR TRADEMARKS

Trademark's significance in the present global village being escalating not only to register one's own brand value but also to provide protection against any infringement and violation within domestic as well as in international trademark. The rapid exclusion of technology it's widened its dimension and parameters in the world. Multiple facets are being taken as much efforts to protect them globally. The growth of conventions and international treaties can be considered as the outcome of this. These administration through conventions and treaties been cooperated and coordinated to some extent to provide protection and

safeguards to each member. These instruments of international regime are administered by the United Nations; such as World Intellectual Property Organization (WIPO).

Trademarks related conventions and treaties in the world are such as Paris Convention of 1883, Madrid Agreement is related to the concerning of the international registration of marks 1979. Nice Agreement of 1957, Vienna Agreement and TRIPS Agreement 1994.

According to WIPO many Nations are signatory to its treaties. Moreover, the Singapore Treaty based on Law of Trademarks mechanism to protect globally.

#### 4. PARIS CONVENTION: CRADLE OF INTERNATIONAL TRADEMARK REGIME

Paris Convention is the global instrument emerged for industrial property. It encompasses under the broader umbrella i.e., Trademarks, Patents, Geographical Indication (GI), Industrial Properties.

Paris Convention considered as corner stone and oldest regime and established along with eleven nations and become treaty on 20<sup>th</sup> March 1883 and enacted from 1884. Later become 14 in number after joining of Great Britain, Ecuador and Tunis. Paris Convention has been amended six times. Although, it is considered as systematic regime; categorized into National treatment, administrative framework, common rules and Rights of priority. National Treatment falls under the *Articles 2 & 3* of the conventions just to provide protection to the Industrial properties of any nation. *Administrative Framework* was based on “*Single administrative Entity*”, through which Industrial property protected. Common rules mostly cover all the substantive laws of the convention. “Right of Priority” concerned with the provision of “*Article 4 of Paris Convention*”. It provides the provision for Industrial properties rights in other members nations to the applicant within the period of 6 or 12 months for protection of rights.

#### 5. MADRID AGREEMENT FOR REGISTRATION OF MARKS (1891)

This system gives broader dimensions to the protection of marks within the member or signatory nation and streamlined the process to protect the trademarks.

*Madrid System relatively more flexible and compatible with the domestic legislation of certain countries which had not been able to accede to the agreement. The protocol is cost effective system for international registration of Trademarks.*

Basically, Madrid System gives the platform for protection of marks through registration among the contracting members. Registration and protocol under Madrid System provides the signatory members.

Madrid agreement was established as to give protection to trademarks in elaborate manner along with comprehensive dealing allowed to make a single and less expensive for international trademark registration and to eliminate the requirement and its need for filing. Although Madrid Protocol in India came into existence in July 2013.

#### 6. PROCEDURE FOR REGISTRATION TO INTERNATIONAL APPLICATION

Basically, the international regime as per *Article 2(2)* requires prior permission from the origin place couldn't be entertained directly by International Bureau. Although also requires under *Article 3(2)* the application must hold no such disputes or contradiction to the mark.

#### Nice Agreement -1957

Nice Agreement is concern to the goods and services for registration of marks. These had a diplomatic conference in the year 1957 in France. It was classified from total number 45 of which 34 assigned and allotted for goods and rest 11 were allotted for service and decided for updation after every 5 years. Presently 83 Nation are party to it. Nice Agreement regime is control and administrated under the World Property Intellectual Organization (WIPO).

#### Vienna Agreement For Figurative Element-1973

Vienna Agreement also can be classified under *29 categories, 1667 sections and 144 divisions* for figurative element. The total number of states are signatory to Vienna Agreement is 25.

#### Trips-Trade Related Intellectual Property Rights

TRIPS was one of the most significant steps under Uruguay Round of GATT (1986) started. TRIPS

Agreement finally landed up in Marrakesh in Morocco, 1994 and become the part of World Trade Organization (WTO) in the year 1995. TRIPS covers all segment of IPR and provides bare minimum standard for IPR protection. TRIPS only the first among all to provide criminal and administrative healing parameters and for disputes settlements.

## 7. SCOPE

According to the preamble of TRIPS i.e., for promotion and protection of IPR regime which are in accordance with the rationale of WTO. TRIPS are at the world platform considered to be the comprehensive in nature to protect the IPR. It almost contains 73 articles into the seven parts. Furthermore, categorized into the most significant way on the following grounds: first the agreements hold the minimum standards of protection, secondly it provides its stretches to domestic as well as remedial procedures, thirdly, during conflicts between the members of WTO and TRIPS and their agreement are subject matter of WTO's conflict settlement and procedures.

The most vital and crucial aspect of National Treatment under TRIPS is the rule of non-discriminating component of whole mechanism just to protection of IPR not only in single state but with same protection with other nations too.

According to the Most Favored Nations (MFN) concept that almost protects IPR regime with origin state as well as with members foreign relation also. Paris Convention gives the first extensive order of protection to the MFN, where in it gets broader benefits such as advantages, immunity, favor, privileges. According to the TRIPS provisions under the articles from 15 to 21 provides the protection for trademark. Under the TRIPS provision it encompasses both the goods and services. It has broader stretches to prevent the third parties from practices of similar or identical parameters of Trademarks.

## 8. SINGAPORE TREATY (2006)

The WIPO member had adopted the trademarks laws and provision under the Singapore Treaty of 2006, which is elaborate branched out leaf of Trademark law treaty of 1994. The Singapore Treaty majorly contributes for the modern approach of Trademarks under the non-traditional regulation Non-conventional or non-traditional marks such as 3D (three dimensional) marks, non-visible trademarks such as sound marks i.e., also known as Aural TM and Scent TM which also termed as the Olfactory TM (smell marks).

## 9. CONCLUSION

Since time immemorial it is evident to trace all the significant approach of possible dimension. Europe and US have more widened approach towards the IPR regime. Most of favored and non-signatory members now becoming more aware and vigilant to the diversified and more protective legislations to set out Trademarks along with the other IPR's regimes. Throughout approach since olden days till modern dimensions of the word through Economic harmonization been seen as most global interaction of goods and services through Trade and Commerce. In view of above statement, its most vital atmosphere to establish a base through which the infringement and violation could be stopped and protected too.

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