

LAW RELATING TO TRADE MARKS AND IT'S INFRINGEMENT

-ADV. SUMIT MAHESHWARI¹

ABSTRACT:

“In the era, full of competition many local firms and Multinational Companies entering in India. In such a cases infringement of Trademark becomes a big threat and protection of Trademark becomes the major issue. This paper mainly focuses on the infringement of the trademark and the case studies of some trademark infringement incidences in India.”

KEYWORDS: Intellectual property, Trademarks, Infringement

INTRODUCTION:-

Trademarks come into practice with Trade Marks Act 1940, followed by the Trade and the Merchandise Act 1958 and then finally come with the Trade Marks Act 1999. A trade mark is a visual symbol in the form of a word, a device, or a label applied to articles of commerce. Like many other assets of the organization brands and its logos are also important because it can also be exploited in the number of ways. In short life of the organization itself revolves around the trademark of its product and services. Trademarks are the mainly the goodwill of the organization. Registering a trademark gives a trademark holder an exclusive right to use the mark for the goods and services.

SIGNIFICANCE OF THE STUDY:-

A trademark is an intangible asset and its impact on the market is immense. Once the brand/trademark becomes famous or well known to the general public it generates profit to that trader. The Trade mark/ Service mark can be assigned and licensed to the prospective user for

¹ Proffessor, Department of law, navsamvat law college

good consideration. The quality and the brand value play the important role in the promotion of goods and business services. The valuation of the brand significantly creates the status to the trader in the market.

FUNDAMENTAL CONCEPTS:-

The functions of a trademark are purely commercial in nature. There are certain exclusive rights attach to a registered mark which can be enforced by way of an action for trademark infringement. It should be noted that trademark is arise out of the use or maintain exclusive rights over that sign in relation to certain products or service.

COUNTERFIETING AND PIRACY:-

As in the rapidly growing world and expanding market other countries counterfeiting and piracy of branded goods is an issue in the Indian Market. The counterfeit goods include mainly the consumer goods like electronics and clothing to pharmaceuticals and cosmetics. While it may also a risk to consumer. The Trademark Act 1999 empowers authorities to take action to prevent infringement, including counterfeit goods. Other important laws include:-

- **The Drugs and Cosmetics Act**, Which makes the sale of-misbranded and spurious drugs and cosmetics a criminal offence
- **The Prevention of Food Adulteration Act**, which regulates food safety and provides harsh penalties for misbranded food products including life imprisonment for such cases
- **The Patents Act of 2005**, which protects the right of owners of patented products, such as technology and pharmaceutical products. However unlike the other laws cited, it provides no criminal penalties, only allowing for civil damages.
- **The Copyright Act, 1957** which protect the exclusive right of a person under the fields of literary, artistic work, dramatic etc.
- **Trade Mark INFRINGEMENT CASES:-**
- **FEVICOL VS TREVICOL:-**

Fevicol is mainly the product of the Pidilite Company. Pidilite had spent huge amount of the funds on the publicity and the advertisement of his product. Fevicol has captured the market

since 1960 and during the same year it has registered his trademark. The company trevicol come in the market with the same product. Pidilite Company has filed a suit against the owner for that company.

GLUCOVITA vs. GLUVITA:-

Shangrila food products limited is a company had applied for the registration of the “GLUVITA” for biscuits manufactured by them. Corn products who had been already using their mark named “GLUCOVITA” for their glucose with vitamins, opposed the application of Shangrila food products.

It was observed that the two marks were identical it creates confusion and deception to the general public due to similarity of the name. The “GLUCOVITA” company had acquired reputation among the general public. Finally, it was concluded that “GLUVITA” cannot be registered.

FINDINGS AND SUGGESTIONS :-

- Traditionally, the trademark were considered as an important tool for the source identification and granted a legal recognition by the Trade Marks Act, 1999.
- A trademark is mainly a tool which visualizes the images, emotional connections of people, and positive as well as negative association to the brand and brand name. Every businessman who has spent a considerable amount of money on making his mark popular will try to secure it from unfair and unscrupulous competitors.
- The trademark protection is important not only from the point of view o business but also from the point of view of customer from fraud and to mislead
- As per the recent study, the reports of trademarks the number of applications filed during the year 2016-2017 has decreased from 283060 to 278170. But the registration of trademark has shown increase by 284.5% in that year.

CONCLUSION :-

Today in the age of Globalization, there has been a great trade among the countries and it become quite difficult for the people get the new name for their company. Globalization has many advantages but it has come with certain disadvantage also which leads to the unfair trade

practices among the buyers and between the countries. Where there is a law protecting the trademark, there are methods to get ways and means to infringe the trademark as well.

People are very much aware these days. They know what is right and what is wrong. The people should get their product trademarked or copyrighted if they are entering in the global market. Trademark is important because it provides full liberty to the buyer and right available to him that their product is secured and sue others for

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