

## **TRADEMARK AND VALUE ADDITION IN STARTUPS: SUGGESTIONS WITH RESPECT TO INDIA**

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### **ABSTRACT**

Although avoided by several organizations throughout the initial stages as a further expanse, logos are extremely vital for any organization because it becomes necessary for them to possess a separate face within the market once the needle starts to purpose towards the profit mark. Specifically, for virtual businesses who don't own a brick and mortar workplace, the whole price resides within the look and feel of their online presence (ie. website), and name of the corporate, creating logos extraordinarily necessary for such businesses. In this research paper, a study is made on the importance of trademark in every field. The value addition done by trademark is highlighted with the issues faced. The study on the suggestions to the various issues of trademark is highlighted. Moreover, the research paper deals with few known case laws and examples in the field of value addition done by trademark.

### **RESEARCH QUESTION**

WHETHER TRADEMARK CAN PLAY A MAJOR ROLE IN THE REVENUE GENERATION?

### **INTRODUCTION**

#### **What is a trademark?**

Trademarks are words, names, symbols, slogans, smells, sounds, or devices utilized by maker's product or suppliers of services to spot their goods and services. Trademarks embrace the bitten apple emblem for computers, the word "Google" for internet searching, the roar of the MGM lion for films, and a unique bottle design for soft drinks. Trademarks will endure forever so long as they're incessantly used.

#### **CONSEQUENCES OF NOT HAVING A GOOD TRADEMARK**

Although trademarks were once neglected by technology firms, Intel has verified that trademarks will be very valuable. The company's "Intel Inside" campaign has exaggerated its ability to sell its semiconductors to makers through demands by customers for Intel microprocessors in their personal computers. Trademarks may be a valuable plus, however, startups don't choose their trademarks fastidiously and adopt trademarks that are troublesome to shield. For instance, Microsoft adopted "Windows" because of the trademark for its software.

The word "windows" is a vital feature of the method the graphic interface operates. Thus, getting any registration protection for this mark needed a few years of use and nice expense incurred in advertising and promoting it to demonstrate that it had non inheritable distinctiveness. A trademark that becomes "generic" is not any longer protectable and might be employed by anyone. Google is beginning to have this genericide drawback as additional people use "google" as a typical term for internet searching, whether or not or not supported the Google search engine.

#### **Suggestions**

If Google isn't ready to correct this drawback, "google" might be a part of "escalator" and "thermos" as trademarks that became "generic" and ceased to be protectable. the value of adjusting a trademark may be terribly expensive: additionally, to the value of proceedings and any settlement damages, firms should incur prices to alter promoting collateral, to not mention lost investment and goodwill during a whole that's being replaced and therefore the investment in clearing and building brand behind a brand new mark descriptive as a result of it describes.

## TRADEMARK STRATEGY AND BRANDING

When choosing a trademark as a part of your branding, initial trademark for the corporate name (trade name) is important. The subsequent are samples of coherently chosen trade names, trademarks, and domain names: Challenges in choosing a name- Entrepreneurs face a practical drawback once selecting a name because trademark law makes it easier to safeguard distinctive names than general names. These marketing-friendly names are additional general than they're distinctive. Thus once choosing a name, a corporation faces competition needs of law and marketing.

This can reduce wasted effort, and maximize the prospect of developing a branding strategy that's successful and lawfully protectable.

### Suggestions

- While selecting a trademark don't select a trademark that is: once to use ® and ™ The ® image indicates trademark registration, and may solely be used with a registered trademark.
- The ™ image will be used with each unregistered and registered logo. Whole should not become a generic term like escalator or nylon.

## VALUE ADDITION BY TRADEMARKS IN STARTUPS: SUGGESTIONS

Select a mark that may be used as a brand, name and is on the market for defense as a registered trademark.

- choose brands and slogans for trademark protection if they're to be used for the future.
- select a mark that's distinctive from any existing trademark or whole.
- the name or surname of a person.
- Clearly or deceptively descriptive of the wares or services being offered.
- The name in any language of the wares or services.
- specifically prohibited by the trademarks Act.
- always use a trademark as an adjective. Once relating a product, forever follow the trademark with a generic term. Example: That device could be a BlackBerry smartphone.
- confirm to use the trademark systematically and provides notice that it's getting used as a trademark. Example: That device is a BlackBerry Pearl™ smartphone.
- Enforcement and policing the usage of marks keep in mind that if the mark becomes generic, you'll lose trademark protection.
- putting a balance between implementing abusive use of your marks and minor violations, because the prices and negative substance related to litigation or demand letters might not be even.

## SUGGESTIONS THROUGH CASE STUDY OF IPL IN INDIA

### INTELLECTUAL PROPERTY LEAGUE: THE IMPORTANCE OF IP IN THE INDIAN PREMIER LEAGUE

#### Trademark protection:

With a view to giving top priority to brand management and complete protection, franchises like the Deccan Chargers have applied for trademarks to support the manufacture and sale of diverse merchandise. Besides applying for trademarks in vesture, footwear, and sporting articles, the Deccan Chargers franchise has conjointly filed applications in respect of consumable products, such as meat, tobacco products, tea, coffee, mineral, and aerated water, still as games and playthings. The Controller General of Patents, Designs, and Trade Marks' registry shows trademark applications, from another well-known franchise, the city Knight Riders, in hand by Bollywood actor Shah Rukh Khan, in respect of financial services, insurance, websites, and telecommunications, entertainment, and beauty care products. Similarly, the Mumbai Indians franchise has filed trademark applications for 'cosmetics, musical instruments, and photographic and cinema equipment, among others.

#### Brand value

If we glance at the complete price of the eight groups of the IPL, the city Knight Riders has been ranked as the most priced with a complete value of US\$42.1 million, followed by the Mumbai Indians (US\$41.6 million), Rajasthan Royals (US\$39.5 million), Madras Super Kings (US\$39.4 million), Delhi Daredevils

(US\$39.2 million), Royal Challengers urban center (US\$37.4 million), Kings XI Punjab (US\$36.3 million), and also the Hyderabad Deccan Chargers (US\$34.8 million). The brand price of the franchise increases if its trademarks are well protected. Since the protection of a trademark is territorial in nature, it's suggested that the franchises register their trademarks not simply domestically in India but also in those countries where they expect their products to sell or wherever they need a large following. Given the worth of the franchises, there's a real concern that folks could begin exploiting franchise logos for products and services during a deceptive manner, so capitalizing on the brand price of a franchise with that they're not associated. In contrast to megabrands like Coca Cola and Nike, which took years to stamp their category within the international market, IPL has had a meteoric rise in nearly no time, which suggests that the expansion of its complete, which of its franchises, has been therefore sudden that there has been little time to insulate it from abuse.

### **Suggestions:**

- **Cybersquatting**

In the information technology age, domain names play a very vital role. They're the virtual addresses of corporations, people, etc. except for enabling users to find websites on the net in a simple manner; domain names are generally termed 'trademarks in cyberspace'. The Indian courts are of the view that domain names ought to be protected underneath the laws of passing off since they're not restricted territorially and as a result might not be adequately protected by national laws like the Trade Marks Act. It's a general observe followed by corporations to register all possible domain extensions, be it a top-level domain extension like .com or country code level domains like .in; .co.in; .my (Malaysia). Franchises like the Kolkata Knight Riders and therefore the Deccan Chargers have registered their domain names underneath various high-level domains and country-code level domains, though the .in and the .co.in of Deccan Chargers are already within the hands of cybersquatters. Failure to register domain names under numerous top-level or country-code-level domains would create a serious threat to the franchise within the future. The reason being, that when the IPL becomes additional popular, additional folks would visit the websites of the franchises. Currently, if a domain name is registered with a cybersquatter, he might either sell the name to the franchise at an exorbitant value or he might use the name for activities with that the franchise isn't related to (for example mercantilism pretend merchandise, pornography), which could be prejudicial to the name of the franchise and dilute the trademark of the franchise. The presence of sports franchises/leagues on the web has emotional from an afterthought to an important revenue supply. They earn loads of revenue by the manner of advertisements once folks visit the websites. 'Cybersquatters and typosquatters get a share of this revenue by stealing traffic and misdirecting guests destined for legitimate websites. By exploitation domain names that contain others' trademarks or misspellings therefrom, cybersquatters will capture internet surfers who are destined for a legitimate web site.

The definition of cybersquatting was summarized in *Manish Vij v Indra Chugh*, wherever the court commands it to be 'an act of getting dishonest registration with intent to sell the name to the lawful owner of the name at a premium'.

- **Fansites**

Another problem which the franchises and therefore the IPL may face is that the growing range of fan sites of the various teams. Fan Clubs like supply a platform for cricketing buffs to contribute their thoughts within the type of blogs, polls, and also the sharing of photos and videos. These fan sites supply an insight into what the fans are thinking about their favorite players and their groups. Franchises ought to keep an eye on the activities that manifest themselves within the fan sites. Fan behavior is crucial to the complete and there will be instances where some content denotes on the website of such fan clubs might be detrimental to the brand. Therefore, it's imperative for the fan sites to be monitored on a regular basis.

- **Varieties of marks**

There are primarily 2 varieties of marks. A trademark refers to a legally protected mark that identifies the product of a firm and distinguishes them from those of their counterparts within the same trade. Illustrative examples are Coca-Cola drinks, Valentino suits, Levi's jeans, Aston Martin cars, Microsoft workplace

software, and Kellogg's cereals. In distinction, a service mark, like HSBC, Barclays, vacation Inns, Promised Land, and McDonald's identifies a firm and its services. A mark will someday represent the identity of each product and a firm – so each Coca-Cola and McDonald's are the corporate pictures and conjointly the product identities. Moreover, these 2 main types of marks, collective marks, and certification marks are 2 alternative marks, that are similar in their use, however, disagree in limitations on the eligibility of their use: A collective mark is exclusive to a company, whose members use the mark on their product or services.

An example is green Cross International, a company that devoted intellectual property Theories to environmental protection. In distinction, certification marks are additional 'open-plan' giving wider opportunities to be used by each structure member and 'outsiders' that follow the organization's standards. For instance, Open source Initiatives (OSI) enable the dissemination of software and connected data to any firm that agrees to follow the relevant commonplace.

#### • **Keep future business goals in mind**

Trademark strategy ought to acknowledge that your whole can develop and probably expand over time. Once filing a trademark application, it's vital to contemplate not solely the product or services that your business presently offers however additionally those who you'll moderately foresee providing within the future. Trademark application should list the particular goods or services that people are seeking protection. Once trademark application is filed with a particular list of products and services, it can't later amend the appliance to feature goods or services that are broader than those enclosed within the original application.

#### **SUGGESTIONS: UNREGISTERED TRADEMARKS**

An unregistered mark is one that's not registered below the Trade Mark Act and its use is described by a corporation by mistreatment the adjacent to the brand.

The Indian Trademark Act says,

“A trademark shall not be registered if, or to the extent that, its use in India is vulnerable to be prevented -

(a) by virtue of any law specifically the law of passing off protective an unregistered trademark utilized in the course of trade”

If a corporation doesn't register its mark as a trademark, it's probable that a 3rd party may register an identical mark. An attainable proceeding will turn out between the 2 corporations involving the utilization of the mark within the future too.

Example

A classic example of this can be the recently terminated Trademark quarrel among the Haldiram family – whereby the sons of Rameshwar Lal tried to line up patronizes Karol Bagh in Delhi, threatening the business of Haldiram (India) Pvt. Ltd., Indian capital originally entitled to the rights of mistreatment the name for business all told the territories except west Bengal.

The latter filed an application against the previous claiming that not simply in Delhi, they legally registered their name in Kolkata for an equivalent back in 1980. When an extended battle between the parties, the IPAB in 2013 ordered the mark (owned by Haldiram, Kolkata) to be off. Different outstanding cases embrace “DM diversion v Baby Gift House and ors.”, “Millet Oftho Industries & Ors v. Allergan opposition.”, “The Coca-Cola Company vs. Bisleri International Pvt. Ltd” and “Cadila Health Care v Cadila Pharmaceutical Ltd” all of that elucidate however trademark protection goes an extended means in protective a company's individuality and name.

In principle, an unregistered trademark is protected by common law, i.e. by usage while not registration. Yet, the common law trademark's limitation is that it will solely be utilized in the geographical region wherever the business is found. Also, a passing-off action arises once an unregistered trademark is seen as deceptive to the public by the proprietor of the same trademark in relevance to the products and services of the trademark owner.

#### **SUGGESTIONS: ENTREPRENEURS AND STARTUPS**

A registered trademark provides exclusive rights to the registered owner - the rights to use the mark on one's product or services, or on advertisements of products or services. Registered trademarks ought to be

distinctive in terms of color, trade dress, and words so as to avoid confusion and legal hassles. A recent case study highlights this –

**Larsen and Toubro Ltd. Vs Lachmi Narain Trades** in 2008, saw the appellant file lawsuit against Lachmi Narain Trades for mistreatment the trademark ‘LNT/ELENTE’. The appellant used the trademark ‘LandT’ for promoting its product and services. As per the appellant’s contentions, the respondent’s use of the abbreviation ‘LNT’ was incorrect, because it capitalized on the appellant’s goodwill. when hearing arguments on the appliance, the court set that Lachmi Narain Trades was to be restrained from mistreatment the word ‘LNT/ELENTE’ however allowed to use ‘Lachmi Narain Trades’ as full for its trade growth.

## CASE LAWS

- Samsung trademarks the “Z Slide” moniker with the European Intellectual Property Office Tech giant Samsung might be lining up another smartphone in its Z series, with the invention of a trademark filing for the “Z Slide” appellation apparently for a tool still below development. The trademark listing from the European intellectual property office (EUIPO) indicated that the device bearing the desired name was under category nine (mobile communications device, probably a smartphone).

Before now, Samsung had additionally trademarked the Z Roll long display device from the world IP office (WIPO). Whereas the Z Roll can have an extendable display that expands horizontally, the Z Slide can keep company with a vertically increasing show, which may mean that the device might be a smartphone.

There has been a rise in analysis and development of long show smartphones by various OEMs, and Samsung has remained at the forefront of analysis on that line. simply last week, the show arm of Samsung highlighted a number of the work-in-progress displays slated for incorporation into Samsung’s future smartphones. These enclosed the S-Foldable panel, which is the possible component for the Z Slide, once operational.

The 7.2-inch S-Foldable show can support multiple fold patterns, which can be a boon for device skillfulness. The Z Slide might be a rollable version of the Z Flip, which can deploy some innovative technology within the mechanism that might drive the operation of the retractile show. it absolutely was earlier reportable that a chain-link system might be wont to maintain the performance and durability of the versatile show.

As per potential rollout data and value, it's unlikely that the device is disclosed this year, probably someday in 2022. Samsung is ready to launch some of the foldable devices in the third quarter of 2021. It's once these devices are free that we'll expect the launch of the Z Roll or Z Slide.

- Use of Red Horse Mark in Trademark Suit by Red Bull

The Delhi high court has restrained Bakewell Biscuits from exploiting the “Red Horse” mark or the other similar mark concerning any product as well as candy and confectionery things.

The suit was filed by Red Bull in relevance to the trademark infringement by Bakewell Biscuits for employing a mark the same as its previous and a well-known registered mark.

Red bull self-satisfied that the style, color combination, font, and even the 2 horses in charging position with a yellow background are greatly identical and the same as the Red Bull marks.

A single-judge bench of Justice Sanjeev Narula opined that Red bull has established a clear case in its favor. After the court was advised that the Red bull trademark is recorded within the lists of well-known marks maintained by the Trade Mark written record, the court opined, “The balance of convenience additionally lies in favor of the plaintiff and irreparable loss would be caused to the plaintiff, just in case the ex-parte interim injunction isn't granted.

The court has listed the matter for any hearing on September

## CONCLUSION

Trademark plays a role to any organization as what a title plays to the book. If the title of the book is not interesting the sales will be difficult, similarly if the trademark is not utilized properly then it will affect organization’s reputation and business.

The above discussion we can conclude that Trademark is a vital part for the revenue generation in any organization and if ignored can lead to huge losses. The suggestions given above are pertinent to note as they are the solutions given to the issue or mistakes which is often made by organization in the mainly course of incorporation or during expansion

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