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INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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# **TRADEMARK LAW AND THE FMCG/FOOD INDUSTRY** **IN INDIA: LEGAL FRAMEWORKS, JUDICIAL** **RESPONSES, AND STRATEGIC IMPERATIVES**

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## **Abstract**

The protection of intellectual property rights, particularly trademarks, has emerged as one of the most critical legal imperatives in India's rapidly expanding Fast Moving Consumer Goods (FMCG) and food sector. This research paper undertakes a comprehensive analytical examination of the intersection between trademark law and the food and beverage industry in India, situating the inquiry within both the national legislative framework—principally the Trade Marks Act, 1999—and the overarching international intellectual property regime constituted by TRIPS, the Paris Convention, and the Madrid Protocol.

The paper maps the evolution of Indian trademark law from pre-independence common law through successive statutory enactments to the current regime. It analyses the pivotal role of the Indian judiciary in interpreting, adapting, and expanding trademark protection in the food sector—addressing issues of genericization, deceptive similarity, trade dress, geographical indications, and passing off. Landmark judgments including *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (2001), *Cadbury India Ltd. v. Neeraj Food Products* (2007), and *ITC Ltd. v. Britannia Industries Ltd.* (2016) are critically assessed. The paper further identifies structural deficiencies in the current legal framework and proposes doctrinal and institutional reforms to strengthen trademark protection. Data visualisations, comparative tables, and a curated case matrix supplement the theoretical analysis to enhance scholarly utility.

**Keywords:** *Trademark, FMCG, Food Industry, Trade Marks Act 1999, Passing Off, Infringement, Trade Dress, Geographical Indications, TRIPS, Judicial Interpretation.*

## **1. Introduction**

Intellectual property represents the most commercially significant category of property in a knowledge-driven economy. Among the various forms of intellectual property rights (IPR), trademarks occupy a uniquely central position in the FMCG and food and beverage sector, where consumer perception, brand equity, and product authenticity are decisive competitive variables. A trademark—whether a word, logo, colour, packaging configuration, or a combination thereof—functions simultaneously as a source identifier, a quality guarantee, and an instrument of commercial reputation.

India's food industry is one of the largest in the world, constituting approximately 13% of the country's total exports and employing over 1.85 crore persons (IBEF, 2023). The sector's rapid growth, driven by urbanisation, rising disposable incomes, and shifting consumer preferences, has intensified both legitimate competition and incidents of counterfeiting, imitation, and brand dilution. The legal framework governing trademark protection in this sector is thus of immense practical consequence, not merely for businesses but for consumer welfare at large.

The Indian trademark regime underwent a significant transformation with the enactment of the Trade Marks Act, 1999 (hereinafter 'the Act'), which replaced the Trade and Merchandise Marks Act, 1958. The 1999 Act, which came into force in 2003, harmonised India's domestic legislation with its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Paris Convention, and the Madrid Protocol. The Act extended trademark protection to services, recognised non-conventional marks, and instituted civil and criminal remedies for enforcement.

Despite this legislative modernisation, the food industry presents recurrent and distinctive challenges: genericization of brand names, trade dress imitation, geographical indication disputes, cybersquatting, and cross-border infringement. The judiciary has often been called upon to fill legislative lacunae through purposive interpretation, and its jurisprudential contributions have been substantial. This paper systematically analyses these dimensions, integrating doctrinal analysis, judicial precedent, and data-driven insights to offer a holistic scholarly account.

## **2. Research Design and Methodology**

### **2.1 Statement of the Research Problem**

The central research problem is whether the existing Indian trademark law—as enacted, interpreted, and enforced—provides adequate and effective protection to food industry brands

against the multifarious forms of infringement and passing off that characterise a globalised, digitally mediated marketplace. Specifically, the paper examines whether legislative gaps relating to domain names, trade dress, non-conventional marks, genericization, and ambush marketing are adequately addressed by judicial creativity or whether structural reforms are warranted.

## 2.2 Research Objectives

- To trace the historical evolution of trademark law in India in the context of the food sector.
- To critically analyse the legislative framework under the Trade Marks Act, 1999 as applicable to food brands.
- To examine landmark judicial decisions shaping trademark protection in the FMCG and food industry.
- To identify key challenges—genericization, trade dress, GIs, digital infringement—confronting food brands.
- To assess compliance with international intellectual property obligations.
- To propose evidence-based reforms for strengthening the trademark protection regime.

## 2.3 Hypothesis

The working hypothesis, consistent with the doctrinal tradition of the research, is that the Indian judiciary has played an indispensable and expansive role in protecting food industry trademarks—interpreting domestic legislation harmoniously with international conventions and evolving principles that have subsequently been codified—but that significant legislative lacunae remain that require urgent parliamentary intervention.

## 2.4 Methodology

The research adopts a doctrinal methodology, drawing upon primary sources including statutes, judicial decisions (Indian, UK, and US courts), international conventions, and regulatory instruments. Secondary sources include peer-reviewed journal articles, academic texts, policy documents, and institutional reports. The analysis is descriptive, analytical, and comparative in character. Data visualisations are constructed from publicly available trademark registration data, case statistics, and industry reports to augment the textual analysis.

### **3. Historical Evolution of Trademark Law in India**

#### **3.1 Pre-Statutory Era**

Prior to 1940, trademark disputes in India were governed exclusively by common law, drawing substantially from English equity jurisprudence. The remedy of passing off—preventing a trader from misrepresenting his goods as those of a competitor—was the primary vehicle of trademark protection. Indian courts consistently applied the tests articulated in foundational English decisions, including the classical trinity of goodwill, misrepresentation, and damage formulated in *Reckitt & Colman Products Ltd. v. Borden Inc.* (1990).

#### **3.2 Statutory Development: 1940–1999**

The Trade Marks Act, 1940 introduced, for the first time, a statutory registration regime for trademarks in India. It was succeeded by the Trade and Merchandise Marks Act, 1958, which consolidated the law and expanded the scope of protected marks. However, the 1958 Act did not extend protection to services and was inadequate to address the complexities of globalised trade.

#### **3.3 The Trade Marks Act, 1999: A Paradigm Shift**

The Trade Marks Act, 1999 represented a comprehensive statutory overhaul, enacted in fulfilment of India's TRIPS obligations. Its key innovations included: extension of protection to service marks; recognition of non-conventional marks (sounds, smells, colours); introduction of the concept of well-known trademarks; codification of relative grounds of refusal; provision for civil reliefs including Anton Piller orders, John Doe orders, and Mareva injunctions; and creation of criminal offences for trademark falsification and counterfeiting.

**Table 1: Legislative Evolution of Trademark Law in India**

Year	Legislation	Key Features
Pre-1940	Common Law (England)	Passing off remedy; no registration mechanism
1940	Trade Marks Act, 1940	First statutory registration of trademarks in India
1958	Trade & Merchandise Marks Act, 1958	Consolidated law; restricted to goods; no service marks

1999 / 2003	Trade Marks Act, 1999 (in force 2003)	TRIPS-compliant; service marks; non-conventional marks; well-known TM; civil & criminal remedies; IPAB
2016	National IPR Policy	Streamlined registration; IP awareness; CIPAM established

## **4. Legal Framework: Trade Marks Act, 1999 and the Food Industry**

### **4.1 Registrability and Grounds for Refusal**

Section 2(1)(zb) of the Act defines 'trademark' expansively to include any mark capable of graphical representation that distinguishes the goods or services of one enterprise from another. For food businesses, this encompasses brand names (Amul, Maggi, Parle), logos, packaging colour schemes (Cadbury's purple), shapes (Toblerone's triangular prism), and certification marks.

Section 9 specifies absolute grounds for refusal, excluding marks that are: (i) devoid of distinctive character; (ii) descriptive of the kind, quality, or geographical origin of the goods (e.g., 'Organic', 'Fresh', 'Crispy' would ordinarily fail); or (iii) customary in trade. However, the proviso to Section 9(1) preserves registrability where a mark has acquired distinctiveness through use—the doctrine of secondary meaning—as applied in *J.L. Mehta v. Registrar of Trademarks* (AIR 1962 Bom 82), where 'SULEKHA' (a descriptive Hindi word) was upheld as a valid trademark through long use.

Section 11 prescribes relative grounds—likelihood of confusion with an earlier mark, or association with a well-known mark—that may bar registration. The Supreme Court's test in *Amritdhara Pharmacy v. Satya Deo Gupta* (AIR 1963 SC 449) remains the locus classicus: the court assesses whether an unwary consumer of average intelligence and imperfect recollection would likely be confused.

### **4.2 Infringement and Passing Off**

Infringement under Section 29 arises when a person, without the registrant's consent, uses an identical or deceptively similar mark in relation to identical or similar goods or services. For well-known trademarks, Section 29(4) extends protection even to dissimilar goods or services—a provision of particular relevance to iconic food brands such as Cadbury or Amul. Passing off, rooted in common law and preserved under Section 27, provides a remedy even

for unregistered marks. The classic tri-partite test (goodwill, misrepresentation, damage) was extensively applied in *Cadbury India Ltd. v. Neeraj Food Products* (2007 SCC OnLine Del 841), where the Delhi High Court granted an injunction against a confectionery manufacturer whose packaging deceptively mimicked Cadbury's distinctive trade dress.

### 4.3 Well-Known Trademarks and the Food Industry

Section 2(1)(zg) defines 'well-known trademark' as one that has become known to a substantial segment of the relevant public. Section 11(6) mandates that the Registrar consider the degree of knowledge in the relevant public, duration and geographical extent of use, and promotions. Well-known status confers cross-category protection. The Delhi High Court in *Daimler Benz AG v. Hybo Hindustan* (1993) granted such protection to 'BENZ' against use on undergarments—a precedent later codified in the Act.

**Table 2: Types of Trademark Marks Relevant to the Food Industry**

Type of Mark	Description	Food Industry Example
Word Mark	Textual brand name or slogan	'Maggi', 'Amul', 'Haldiram's'
Design / Logo Mark	Graphical representation or logo	McDonald's Golden Arches; KFC Colonel
Trade Dress	Overall visual appearance of product/packaging	Cadbury's purple wrapper; Coca-Cola bottle shape
Colour Mark	Distinctive colour or combination	Cadbury's Pantone 2685C purple
Shape Mark	Distinctive product or packaging shape	Toblerone triangle; Coca-Cola contoured bottle
Certification Mark	Certifies quality/origin/standard	USDA Organic; FSSAI certification; Agmark
Geographical Indication	Identifies goods from a particular region	Darjeeling Tea; Basmati Rice; Alphonso Mango
Sound Mark	Distinctive audio associated with brand	Britannia's 'ting-ting-ta-ding' jingle

## **5. Judicial Analysis: Landmark Decisions in Food Trademark Disputes**

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### **5.1 Deceptive Similarity and Consumer Confusion**

The Supreme Court of India in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (2001 SCC OnLine SC 578) formulated a multi-factorial test for deceptive similarity: the nature, class, and composition of the goods; the characteristics of the likely purchasers; the mode of purchase; and the degree of care that consumers exercise. This test, though articulated in a pharmaceutical context, has been adopted wholesale in food trademark litigation, given the comparable dynamics of mass-market consumer goods.

In *Amritdhara Pharmacy v. Satya Deo Gupta* (AIR 1963 SC 449), the Supreme Court held that in assessing infringement, the test is the overall impression produced by the competing marks on an unwary consumer—not a meticulous textual comparison by an expert. The court noted that the marks must be compared as a whole, and minor differences do not negate deceptive similarity if the dominant element is reproduced.

### **5.2 Trade Dress Protection**

Trade dress—the visual totality of a product's appearance, including colour, packaging, and get-up—is protectable under the Act as a form of trademark, notwithstanding the absence of an explicit statutory definition. The Delhi High Court in *Colgate Palmolive Co. v. Anchor Health and Beauty Care Pvt. Ltd.* (2003 SCC OnLine Del 1005) articulated the governing standard: if the first-glance impression of a product creates confusion or near-similarity in packaging, colour combination, or layout, it constitutes passing off.

*ITC Ltd. v. Britannia Industries Ltd.* (2016 SCC OnLine Del 5004) is a seminal trade dress decision in the food sector. The Delhi High Court restrained Britannia NutriChoice biscuits from replicating the distinctive trade dress of ITC's Sunfeast Farmlite Digestive biscuits, holding that even functional elements may cumulatively create a distinctive visual impression meriting protection.

The evidentiary challenge of establishing non-functional distinctiveness of trade dress was further ventilated in *Zydus Wellness Products Ltd. v. Cipla Health Ltd.* (2023 SCC OnLine Del 3785), where the court affirmed that minor packaging similarities can suffice to mislead ordinary consumers in a crowded FMCG market.

### **5.3 Genericization: The Maggi Problem**

Brand genericization—or 'genericide'—occurs when a trademark becomes so pervasive that it

is treated by consumers as the generic name for a product category. 'Maggi' in India is frequently used as a synonym for instant noodles, raising the risk of trademark abandonment. Indian courts, drawing on the principle of Section 29(4), have resisted genericization claims for well-known food marks. In *Daimler Benz AG v. Hybo Hindustan* (1993 SCC OnLine Del 605), the court held that permitting use of a well-known mark on unrelated goods would dilute the mark's distinctiveness—an argument equally applicable to genericization in the food context.

#### 5.4 Passing Off in the Food Sector

The passing off action requires proof of: (i) goodwill and reputation attached to the plaintiff's goods; (ii) a misrepresentation by the defendant; and (iii) resulting damage. In *Cadbury India Ltd. v. Neeraj Food Products* (2007), the Delhi High Court found all three elements established where the defendant's packaging was designed to closely resemble Cadbury's, thereby trading on Cadbury's established market reputation. The court emphasised that in the food sector—where consumer reliance on visual cues is particularly high—the threshold for establishing misrepresentation is appropriately lower.

**Table 3: Case Matrix – Landmark Food Trademark Decisions in India**

Case	Court & Year	Issue	Key Holding
<i>Cadila Health Care v. Cadila Pharmaceuticals</i>	SC, 2001	Deceptive Similarity	Multi-factor test; phonetic & visual similarity both relevant
<i>Cadbury India v. Neeraj Food Products</i>	Del HC, 2007	Trade Dress / Passing Off	Packaging imitation constitutes passing off; injunction granted
<i>ITC Ltd. v. Britannia Industries Ltd.</i>	Del HC, 2016	Trade Dress	Overall visual impression of biscuit packaging protectable
<i>Zydus Wellness v. Cipla Health Ltd.</i>	Del HC, 2023	Packaging Similarity	Minor similarities sufficient to mislead consumers in FMCG market
<i>Colgate Palmolive v. Anchor Health</i>	Del HC, 2003	Trade Dress	First-glance similarity in colour/packaging = confusion; passing off established

Amritdhara Pharmacy v. Satya Deo Gupta	SC, 1963	Deceptive Similarity	Global impression test; marks compared as a whole
Daimler Benz v. Hybo Hindustan	Del HC, 1993	Well-Known TM / Dilution	Well-known TM protection across product categories; laid groundwork for s.2(1)(zg)

## **6. Key Challenges in Trademark Protection for Food Brands**

### **6.1 Counterfeiting and Imitation**

Counterfeiting remains the most pervasive challenge confronting food trademark owners in India. The ease of replicating packaging—particularly in unorganised markets—and the consumer's reliance on visual cues create fertile conditions for imitation. The National Crime Records Bureau (NCRB) data indicates a consistent annual rise in IPR-related offences, though systematic data on food-sector-specific trademark counterfeiting is not separately compiled, itself a governance deficiency.

Sections 103 and 104 of the Act criminalise the use of counterfeit trademarks, providing for imprisonment of up to three years and fines. However, enforcement remains inconsistent, particularly in the absence of specialised IP enforcement units in most states.

### **6.2 Descriptive Marks and the Distinctiveness Dilemma**

Food brands frequently seek registration for marks that describe desirable product attributes—'Fresh', 'Natural', 'Pure', 'Organic'—which are per se ineligible under Section 9(1)(b). The line between descriptive and suggestive marks is difficult to demarcate, and the doctrine of secondary meaning—which rescues descriptive marks through acquired distinctiveness—is itself uncertain in its application. The time required to establish secondary meaning has not been legislatively prescribed, and courts have rendered inconsistent judgments on the quantum of use required.

### **6.3 Geographical Indications and Their Relationship with Trademarks**

The Geographical Indications of Goods (Registration and Protection) Act, 1999 creates a distinct category of protection for products with specific geographical origins—Darjeeling Tea, Basmati Rice, Kashmiri Saffron, Alphonso Mango. There exists a doctrinal tension between GI protection and private trademark claims: Section 9(1)(b) prohibits registration of marks that indicate geographical origin, while the GI Act creates a sui generis collective right. This

interface has generated litigation—most notably concerning the 'Basmati' designation in international trade contexts—and calls for more nuanced legislative coordination.

#### 6.4 Domain Names and Digital Trademark Infringement

The proliferation of e-commerce has introduced new vectors of trademark infringement in the food sector. Domain name squatting—the registration of a trademark-identical domain by a third party to extort payment or divert traffic—remains inadequately addressed by the Trade Marks Act, 1999, which contains no express provision on domain names. Indian courts have applied the Act's provisions by analogy, holding that a domain name constitutes a trademark and that its unauthorised registration can ground an infringement action (*Rediff Communication Ltd. v. Cyberbooth*, 1999 (4) BomCR 278).

The absence of an Indian equivalent of the United States Anti-Cybersquatting Consumer Protection Act, 1999 is a material legislative gap. India's reliance on ICANN's UDRP and the .IN Dispute Resolution Policy (INDRP) provides only partial protection, with no mechanism for statutory damages.

#### 6.5 International Trademark Challenges

Indian food brands expanding globally—and foreign food brands entering India—encounter the variability of national trademark regimes. Trademark squatting in certain jurisdictions (where local entities pre-register foreign marks) has affected major Indian brands. Conversely, India's GI protections for products like Darjeeling Tea have faced challenges in export markets, requiring active bilateral diplomatic engagement and litigation.

**Table 4: Severity and Frequency Matrix of Trademark Challenges in India's Food Sector**

Challenge	Frequency	Severity	Legislative Adequacy
Counterfeiting / Imitation	Very High	High	Moderate – criminal provisions exist but enforcement weak
Trade Dress Copying	High	High	Partial – courts protect but no explicit statutory provision
Genericization / Brand Dilution	Medium	Very High	Inadequate – no anti-genericide mechanism

Domain Name Squatting	High	Medium-High	Inadequate – no dedicated cybersquatting statute
Descriptive Mark Disputes	Medium	Medium	Partial – secondary meaning doctrine applies but inconsistently
International / Cross-border Infringement	Medium-High	High	Partial – Madrid Protocol covers registration; enforcement varies
Ambush Marketing	Low-Medium	Medium	Inadequate – no specific legislation; only general passing off

## **7. International Legal Framework and India's Compliance**

### **7.1 The TRIPS Agreement**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), annexed to the WTO Agreement in 1995, establishes minimum standards of trademark protection that WTO member states must ensure. Article 15 defines protectable marks; Article 16 grants exclusive rights; Article 17 permits limited exceptions; and Articles 41–61 mandate effective enforcement mechanisms. India's Trade Marks Act, 1999 is substantially TRIPS-compliant, particularly in its provisions on infringement, well-known marks, and criminal sanctions.

The TRIPS Agreement's Article 22-24 provisions on geographical indications have been of particular salience for India's food sector. TRIPS requires protection against use of GIs in a manner misleading the public as to geographical origin—directly applicable to the Basmati, Darjeeling Tea, and Alphonso disputes.

### **7.2 Paris Convention**

The Paris Convention for the Protection of Industrial Property (1883), to which India is a signatory, establishes the principles of national treatment and priority rights. The right of priority (Article 4) allows a trademark applicant who has filed in one member state a six-month priority period to file in other member states. These principles are foundational to India's international trademark relations and are reflected in the Act's provisions on international applications.

### 7.3 Madrid Protocol

India acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in 2013, enabling Indian trademark owners to seek protection in multiple jurisdictions through a single application filed with the Indian Trade Marks Registry. This has been particularly beneficial for Indian food brands—Haldiram's, MTR, Amul—expanding internationally, and for foreign food multinationals seeking Indian protection.

**Table 5: India's International Trademark Obligations and Domestic Implementation**

Convention / Treaty	Year Joined	Key Provisions	Indian Implementation
Paris Convention	1998	National treatment; priority rights	TM Act 1999 s.154–159; priority provisions
TRIPS Agreement	1995	Minimum standards; enforcement	TM Act 1999; GI Act 1999
Madrid Protocol	2013	International registration system	TM Act s.36A–36M; CGPD TM as receiving office
Nice Agreement	1957	Classification of goods/services	45 classes used in Indian TM registration
ICANN UDRP	2000	Domain name dispute resolution	Adopted for .com; .IN INDRP for country-code domains

## **8. Trademark Registration Process in India's Food Sector**

### **8.1 Application and Examination**

The trademark registration process in India is administered by the Controller General of Patents, Designs and Trade Marks (CGPD TM). For food products, the relevant Nice Classification classes are Class 29 (meat, fish, poultry, dairy, processed fruits and vegetables), Class 30 (coffee, tea, cocoa, sugar, rice, flour, bread, pastry), and Class 31 (fresh fruits, vegetables, grains). A prospective registrant must conduct a prior art search, file Form TM-A with prescribed fees, and submit a specimen of the mark.

The examination phase assesses compliance with Sections 9 and 11—absolute and relative grounds. In the food sector, applications are frequently objected to on grounds of

descriptiveness (Section 9(1)(b)) or likelihood of confusion with existing marks (Section 11(1)). The examiner's report must be responded to within 30 days, failing which the application is treated as withdrawn.

## **8.2 Opposition and Registration**

Upon acceptance, the mark is advertised in the Trade Marks Journal for a period of four months, during which any third party may file an opposition under Section 21. In the food sector, opposition proceedings are common—particularly by established FMCG players challenging new entrants with similar marks, packaging, or naming conventions. If no opposition is filed, or if the opposition is decided in the applicant's favour, the mark is registered for a period of ten years from the date of application.

## **8.3 Renewal and Non-Use Cancellation**

Trademark registration is renewable indefinitely in successive ten-year periods (Section 25). Failure to use a registered mark in relation to the goods or services for which it is registered for a continuous period of five years may render the mark liable to cancellation on application by any aggrieved person under Section 47. This non-use cancellation mechanism is particularly relevant in the food sector, where product discontinuations and brand rationalisations are common.

# **9. Trademark Strategy in the Indian FMCG Sector: Case Studies**

## **9.1 Coca-Cola: A Global Paradigm**

Coca-Cola's trademark strategy exemplifies comprehensive multi-layered protection: the word mark 'Coca-Cola'; the distinctive cursive logo; the red-and-white colour scheme; and the contoured bottle shape (protected as a shape mark). The company has registered these marks across all relevant classes in India and has enforced them aggressively. The lesson for Indian food businesses is the imperative of protecting not merely the brand name but all distinctive elements of brand identity.

## **9.2 Amul: Brand Architecture in Indian FMCG**

Amul's trademark portfolio illustrates the strategic use of a 'house brand' architecture—the parent mark 'Amul' appears across dairy products in Classes 29 and 30, buttressed by sub-brand marks for specific products (Amul Butter, Amul Ice Cream). The Amul Girl mascot is

separately protected as a design mark. The Gujarat Cooperative Milk Marketing Federation (GCMMF) has consistently enforced the Amul marks against imitators, establishing precedents in passing off and deceptive packaging.

### **9.3 Parle Products: Protecting Iconic Packaging**

Parle-G's yellow-and-white packaging and the distinctive child image have been the subject of imitation by regional confectionery manufacturers. Parle's enforcement strategy—combining civil injunction proceedings with criminal complaints under Section 103—has been largely successful, though the difficulty of protecting non-registered packaging elements (prior to the ITC v. Britannia precedent) illustrated the need for proactive trade dress registration.

## **10. Reform Proposals: Strengthening the Trademark Regime for Food Brands**

### **10.1 Legislative Reforms**

The following legislative reforms are proposed on the basis of the analysis conducted in this paper:

- **Mandatory Trademark Registration:** The current voluntary registration regime should be replaced with a mandatory one for commercial operators, eliminating the uncertainty and burden associated with establishing goodwill in passing off actions.
- **Explicit Trade Dress Provision:** The Act should be amended to incorporate an express definition and protection mechanism for trade dress, specifying the threshold of distinctiveness required and the defences available.
- **Anti-Cybersquatting Statute:** India requires dedicated anti-cybersquatting legislation, modelled on the US ACPA 1999, with provisions for statutory damages and in rem jurisdiction over domain names.
- **Anti-Genericism Mechanism:** An explicit provision compelling active use of marks and imposing obligations on registrants to take steps against genericization (including the use of genericness disclaimers) should be introduced.
- **Ambush Marketing Provisions:** Section 29 should be amended to specifically prohibit ambush marketing, with clear definitions and event-based protections for authorised sponsors.
- **Mandatory ADR:** Pre-litigation Alternate Dispute Resolution (mediation, conciliation) should be mandatory in trademark disputes, reducing burden on courts and expediting

resolution.

### 10.2 Institutional Reforms

- **Specialised IP Courts:** Commercial courts with dedicated IP divisions, staffed by judges with specialist trademark training, should be established at the district level and in all High Courts.
- **IP Enforcement Training:** Regulatory and law enforcement agencies (Police, Customs, FSSAI) should receive periodic training on trademark identification and enforcement.
- **Digital Monitoring Infrastructure:** A government-backed platform—potentially leveraging AI and blockchain—for monitoring online trademark infringement in the food sector should be developed.
- **FSSAI-CGPDTM Coordination:** Mandatory cross-referencing between FSSAI labelling approvals and CGPDTM trademark records would prevent the grant of regulatory clearance to products with infringing marks.

### 10.3 Technological and Industry Measures

E-commerce platforms operating in India should be required to implement robust trademark-based take-down policies with verifiable response timelines. Brand owners should invest in AI-assisted monitoring tools capable of scanning online marketplaces for infringing listings. Blockchain-based product authentication—linking product batches to trademark records—offers a scalable consumer-facing anti-counterfeiting mechanism.

**Table 6: Reform Proposals – Priority Matrix**

Reform Proposal	Priority	Timeframe	Mode of Implementation
Anti-cybersquatting legislation	Very High	Short-term	Parliamentary amendment / new statute
Specialised IP courts	Very High	Short-term	Judicial infrastructure expansion
Explicit trade dress provision	High	Medium-term	Amendment to TM Act 1999
Mandatory ADR in TM	High	Short-term	Amendment to CPC s.89 / TM

disputes			rules
AI-based digital monitoring	High	Medium-term	Public-private partnership
Ambush marketing prohibition	Medium	Medium-term	Amendment to TM Act s.29
Mandatory TM registration	Medium	Long-term	Fundamental legislative redesign
FSSAI-CGPDTM coordination	High	Short-term	Inter-ministerial MoU / regulation

## 11. Conclusion

This research paper has undertaken a systematic and multi-dimensional analysis of trademark law's operation within India's FMCG and food sector. The inquiry has proceeded along four axes: the historical evolution of the legislative framework; the substantive content of the Trade Marks Act, 1999 as applied to food brands; the judicial contribution to trademark jurisprudence; and the challenges and reform imperatives that characterise the contemporary landscape.

The conclusions of the paper may be synthesised as follows. First, the Indian judiciary has discharged a pivotal and creative function in extending trademark protection to food brands, developing doctrines of deceptive similarity, trade dress protection, and well-known trademark dilution that have outpaced statutory text and subsequently prompted legislative reform. The decisions in *Cadila*, *Cadbury v. Neeraj*, *ITC v. Britannia*, and *Colgate v. Anchor* represent jurisprudential landmarks of enduring significance.

Second, notwithstanding these achievements, the legal framework exhibits material lacunae. The absence of dedicated statutory protection for trade dress, the inadequacy of anti-cybersquatting provisions, the absence of an anti-genericization mechanism, and the legislative silence on ambush marketing collectively represent a framework ill-equipped to address the challenges of a digitally mediated, globally integrated food economy.

Third, India's compliance with its international intellectual property obligations—under TRIPS, the Paris Convention, and the Madrid Protocol—is substantially satisfactory in formal terms but requires deeper substantive reinforcement, particularly in the areas of enforcement,

GI protection in export markets, and digital trademark policing.

Fourth, a suite of legislative, institutional, and technological reforms is necessary and feasible. The prioritisation of anti-cybersquatting legislation, specialised IP courts, and explicit trade dress protection would yield the most immediate improvements. Longer-term structural reforms—mandatory registration, inter-agency coordination, and public awareness campaigns—would substantially strengthen the ecosystem.

The hypothesis of the research—that the Indian judiciary has played an influential and expansive role in trademark protection while legislative lacunae persist—is confirmed by the analysis. The normative prescription is clear: India must legislate proactively, invest in judicial and enforcement capacity, and embrace technology as an instrument of trademark protection if its food sector is to realise its global potential without being undermined by infringement, imitation, and brand dilution.

**KEY**

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*Indian Courts have consistently led legislative reform in trademark jurisprudence, but the pace of statutory modernisation has not kept pace with the dynamics of the digital food marketplace. Comprehensive reform is an urgent national imperative.*

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