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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**WHITE BLACK LEGAL: THE LAW JOURNAL**

# **THE POWER OF INTANGIBILITY- IMPACT OF TRADEMARKS ON BRANDING**

*Mahak Agarwal*

## **INTRODUCTION: BASICS OF TRADEMARK**

India being a mixed market, it has a number of industries operating under this concept. The competition faced by the companies is extreme. For any enterprise to thrive in this market it needs to create a brand value and brand recognition. The simplest way through which this is achieved is via trademarks. The need for trademarks can be considered a three-prong approach to represent goods or services by:

- Helping consumers recognise the source
- Helping consumers determine the quality
- Helping consumers make a purchasing decision

Once such value is attached to the trademark, it is imperative to protect it from misuse and infringement by others.

Trademark is defined as a distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others<sup>1</sup>. Hence, it distinguishes it from the similar goods and services of some other enterprise or person. For example, 'LENOVO' is a trademark that identifies goods (computers) and 'HDFC BANK' is a trademark that identifies services (banking and financial services). According to section 2(e) of the Trademark Act, 1999 "certification trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person.<sup>2</sup> WIPO defines a trademark as a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks may consist of words, combination of words, numerals, names, abbreviation of names. They might also be drawings, three dimensional shapes and packaging of goods,

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<sup>1</sup> BLACK'S LAW DICTIONARY, 1741 (11th ed., 2019).

<sup>2</sup> § 2(e), The Trademark Act, 1999.

colours or combination of colors. Even the non visible signs such as music and fragrances may constitute trademarks.

Trademarks perform different functions In particular they :

- help consumers identify and distinguish products or services;
- enable companies to differentiate between their products;
- are a marketing tool and the basis for building a brand image and reputation;
- may be licensed and provide a direct source of revenue through royalties;
- re a crucial component of business assets;
- encourage companies to invest in maintaining or improving quality products; and
- may be useful for obtaining finance.

In order to protect a trademark one must get it registered. Trademarks are territorial rights. Therefore, they must be registered separately in each country in which the protection is desired. Moreover, trademarks in general are limited to specific goods and services. This means that it can be used by some other company for dissimilar goods and services. In order to avoid the need to register separately with each national or regional office, WIPO administers a system of international registration of marks. This system is governed by two treaties, the Madrid Agreement Concerning the International Registration of Marks, and the Madrid Protocol. A person who has a link (through nationality, domicile, or establishment) with a country party to one or both of these treaties may, on the basis of a registration or application with the trademark office of that country, obtain an international registration having effect in some, or all of the countries of the Madrid Union.

Registration is not, however, the only way of protecting a trademark: unregistered trademarks are also protected in some countries, but in a less reliable form.

A owner of a trademark shall have the following exclusive rights<sup>3</sup> :

- Use of the mark to identify its goods and services;
- Impeding others to use and sell the same or similar Same or similar trade mark for products or services;
- To authorize others to use the mark (e.g., through franchising or licensing Agreements) and with payment in return.

For registering a trademark an application must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign to be

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<sup>3</sup> Lombard & Geliebter Trademark Attorneys, *Reasons Why Trademarks Are Important to Your Business*, [http://www.lgtrademark.com/wp-content/themes/nextclient/media/Reasons\\_Why\\_Trademarks\\_Are\\_Important\\_to\\_Your\\_Business.pdf](http://www.lgtrademark.com/wp-content/themes/nextclient/media/Reasons_Why_Trademarks_Are_Important_to_Your_Business.pdf).

registered, including any colors, forms or three dimensional figures. It must also contain the list of goods and services to which the sign would apply. The sign must be distinctive, it must not be deceptive, it should not be contrary to public order or morality and it should not be identical or confusingly similar to any existing trademark. The detailed process of registration is further discussed in this article.

According to WIPO, the term of trademark registration can vary, but is usually ten years. It can be renewed indefinitely on payment of additional fees. Trademark rights are private rights and protection is enforced through court orders.

## **DIFFERENCE BETWEEN A BRAND NAME AND A TRADEMARK**

When you start a small business there is a lot to consider. The most important decision to make is how to represent your brand. This is how your company will be recognized by the public. The brand and the trademarks are the assets of your company. Oftentimes brands or trademarks are used interchangeably with the product, for example Xerox (the brand) is used to represent photocopy of papers. Although these terms are used interchangeably, they are not synonymous. When considering the two, remember the "all-but-not-all" rule. All trademarks are brands but all brands are not trademarks.

Historically, the term 'brand' dates back to the days when the owners of the horses and the cattles placed marks on them to differentiate them from the property of other owners. Decades later after the industrial revolution better manufacturing enabled worldwide sale of goods, and manufacturers wanted their goods to be differentiated from those of the competitors, which led to brand names. These names have market power and legal protections need to be granted to avoid others usurping the names or creating confusion on the marketplace. The trademark is that legal protection. A trademark grants the owner exclusive rights regarding the use of a brand identifier, as well as the power to prevent others from creating confusion or unfair competition through legal action.

The difference between trademark and brand name can be mentioned as follows:

- 1) **FUNDAMENTAL CONCEPT:** A brand name helps the marketers to create a powerful brand image or identity of the product to position the product or brand in the minds of the target audience/segment. The basic brand name meaning should not be confused with the trademark itself. Trademark is related to the commercial source of the goods or services or their origin. Conceptually, it is called the "badge of origin". Simply put, the trademark is claimed to be a brand name or even a part of the brand name which is legally covered.

- 2) **LEGAL PROTECTION:** A brand name is not a legal name. It is a name simply selected by the company to represent its product. On the other hand trademark provides legal protection, no other company can use a trademark registered by any other company.
- 3) **LENGTH OF USE:** There are no time limitations to the use of a brand name, except any restrictions that may be regulated at the local level. A trademark on the other hand is limited to ten years which can be renewed.

Therefore, if a business is using a brand name without legal protection (i.e without a registered trademark) it is holding out to the public that this is the name and/or logo that will be associated with the company and its products. This may actually infringe on an existing mark that is in fact a registered trademark. Before you register a trademark to protect the name of your company, it is necessary to take due diligence to ensure that you do not infringe the registered trademark of anyone else.

### **WHAT IS TRADEMARK INFRINGEMENT?**

A party which holds right to a certain trademark can sue other parties for trademark infringement. United States Patent and Trademark Office defines trademark infringement as an unauthorised use of a trademark or service mark on or in connection with goods and/or services in a manner that is likely to cause confusion, deception, or mistake about the source of the goods and/or services.

An example of trademark infringement would be if some other company or person uses the same mark on the same goods or service. If someone tries to manufacture the computers under the Apple brand it will create a confusion in the minds of the consumers. Many customers will believe that they are Apple Inc. buying a computer manufactured by, therefore trademark infringement can be claimed by the use of the Apple mark. Scars must be similar in meaning, form and sound to create consumer confusion. Some other examples of trademark infringement include using apricots or applets for computers. However, if you use the same product that is completely unrelated, you will not be accused of trademark infringement. For example, “Habib beauty and co.” and “Habib law firm” can be acceptable because the customers will easily be able to differentiate between the two and the services which they are giving.

When looking into trademark law one must know there are two types of trademark infringement:

1) **DIRECT INFRINGEMENT**: Direct infringement is defined under section 29 of the Trademarks Act, 1999. The elements that have to be occur for a direct breach to occur are as follows:<sup>4</sup>

- **Use by an unauthorised person**- a violation of trademark occurs when it is used by a person who is not authorised to use it by the holder of the trademark.
- **Identical or deceptively similar**- the trademark used by the unauthorised person shall be identical or deceptively similar to the original trademark. This means that the copied trademark might create a confusion in the minds of the consumers of the product being similar to the original product. The word ‘might’ here means that the plaintiff just needs to prove that there is a possibility and there is no need to prove actual happening.
- **Registered trademark**- The act only extends to registered trademarks. If the trademark is not registered with the trademark registry then the owner can commence proceedings under the common law for passing off or misrepresentation, or under legislation which prohibits unfair business practices.
- **Class of goods or services**- In order to establish infringement the goods or services must fall under the same class as the registered trademark.

2) **INDIRECT INFRINGEMENT**<sup>5</sup>: Another aspect of trademark infringement in India is Indirect Infringement. Unlike direct infringement, there is no provision for indirect infringement in the Act. The principal and application for indirect infringement arise from the Universal law principle. It holds responsible not only the infringer but also anyone who induces the direct infringers to commit the infringement. Indirect infringement can take place in two forms:

a) **VICARIOUS LIABILITY**- According to section 114 of the Act, if a company commits an offence under this act then everyone in the company is held liable for the

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<sup>4</sup> § 29, The Trademarks Act, 1999.

<sup>5</sup> Intepat Team, *Trademark Infringement In India – Direct And Indirect*, MONDAQ (Aug. 23rd, 2016), <https://www.mondaq.com/india/trademark/521372/trademark-infringement-in-india-direct-and-indirect>.

act except for the person who acted in good faith or had no knowledge of the infringement.<sup>6</sup>

The element of vicarious liability are:

- Where the person may control the principal infringer 's activities
- When the individual knows of and contributes to the infringement
- Where the individual may derive financial benefits from the infringement

**b) CONTRIBUTORY INFRINGEMENT:** This type of infringement occurs if the person materially contributes or induces the direct infringer to commit the infringement. In case of contributory infringement there is no exception as there is no chance that the contributor is acting in good faith.

The basic elements of contributory infringement are-

- When the person is aware of the infringement.
- When the person materially contributes to the direct infringement
- When the person induces the direct infringer to commit infringement.

Thus any form of trademark infringement in India, whether direct or indirect, may attract liability. To prevent trademark infringement, you can contact our trademark experts before launching your brand or company to get a consultation.

### **A COMPETITIVE ADVANTAGE OF USING TRADEMARKS**

Intellectual property law can not grant desirability, but it can help to protect creativity. Within the context of intellectual property law, numerous instruments are available. In any given situation which method is most useful depends on careful study. In today's business world people spend a huge amount of resources to build an effective trade regime both to establish their brand name as well as winning a competitive advantage over their competitors.

Trademark essentially specifies a customer, the source of the product or service. This is the trademark's primary role, as customer confidence in the brand is beneficial to one it plays a vital role in today's business world. Trademark is a tool that attracts the attention of the customer towards their goods when there are hundreds of similar products out there in the market to choose from. For example, a manufacturer is manufacturing a certain type of detergent, which is lying in the supermarket with dozens of other detergents. Though the consumer chooses the product on the basis of lucrative price and packaging but the vital role is played by the brand name as it ensures quality of the product.

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<sup>6</sup> § 114, The Trademarks Act, 1999.

Specifically start-ups need to protect the brand name or logo for business growth, advancement and expansion. The trademark not only assists in securing properties, using the name to the owner's advantage, preventing trademark infringement, but also in obtaining a competitive edge over the industry rivals.

Registering of your trademark gives the following advantages for the brand:<sup>7</sup>

### **BRAND VALUE**

Well branded products are framed by their values. Registration of trademarks plays a vital role in building a brand. Brand value is an asset which the businesses utilize for capturing the market share. Trademarks make the brand known and appreciated worldwide. It also makes the brand popular in foreign markets and helps in capturing business in unknown markets.

For example if you choose a brand name that does not exist in the dictionary, it will be easy to register it with the registrar and it also creates an impact in the minds of the consumers if assisted by a tagline. The chances of it being used by anyone else in the industry is remote. Such as Sony, Samsung etc.

### **IDENTITY OF THE PRODUCTS**

Having a trademark on the product makes it distinguishable and recognizable. Having a distinctive trademark will help you stand out from the competition. It gives you a unique and memorable brand identity and at the same time expresses all the characteristics and features of the product.

When the goods bear a trademark of a brand they trust, the choice of the product from the variety available on the market becomes easy for them.

In an ideal situation, the manufacturer or service provider should select those distinctive, easy to remember and pronounce trademarks. For example Aquafina for mineral water.

Sometimes the manufacturers think it is beneficial to have a descriptive mark as compared to a non descriptive mark, but it is difficult to register such a mark as it might be already used by other competitors in the market. Thus attracting your customers to their product leading to loss of customer base.

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<sup>7</sup> Lindsay Mooray, *Establish competitive advantage with trademarks*, NEWHOPE (May 01, 2008), <https://www.newhope.com/managing-your-business/establish-competitive-advantage-trademarks>

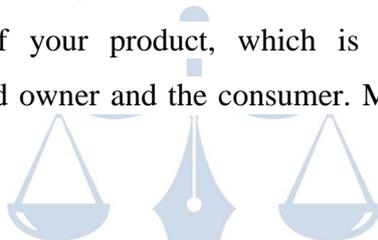
## **COUNTERFEIT PRODUCTS**

By having a trademark affixed to your product you can benefit the competitive world as it would prevent other people from copying or counterfeiting your product. Has this happened consumers would lose trust in the brand and you might lose them to the competitors.

Trademarks are not only used in the manufactured products but also in natural products. For example WASHINGTON apples or SUNKIST oranges. The best thing about the defined trademark is the assurance it provides to consumers about the accuracy of the product quality if they buy the product from any outlet at different times. But to maintain this trust, it is the duty of manufacturers to maintain the quality of products at all times, which will make customers buy your products repeatedly, leading to an increase in customer base.

## **ADVERTISEMENT AND REPETITIVE USE**

When a registered trademark is used for advertising packaging and product labelling and is used repeatedly by the manufacturer, it becomes known and common on the market place. Consumers become aware of your product, which is why advertising is considered advantageous to both the brand owner and the consumer. Marketplace advertising will be a competitive advantage.



## **BUILDING BRANDS USING TRADEMARKS**

A trademark helps in distinguishing the original goods of one party from those of other parties. This property of trademark distinguishing goods from other sources is called its origin function. Other functions of trademark include the quality functions. These refer to certain positive attributes and subjective values and the communication functions which convey the trademark image through advertising to and between consumers. For example in the L'Oreal/Bellure case<sup>8</sup> The courts said “these functions include not only the essential function of the trademark, which is to guarantee to consumers the origin of the goods or services but also its other functions, in particular that of guaranteeing the quality of the goods or services in question and those of communication investment or advertising.” Brand functions are also similar but relate additionally to image, identity, character, personality, culture, essence and reputation.

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<sup>8</sup> CJEU, 18 June 2009, case C-487/07 at para. 58.

## **HOW TO SELECT A SUCCESSFUL TRADEMARK?**

Choosing a good trademark is not an easy task. Infact, there are specialized companies whose main service is to find or develop an appropriate trademark for your needs. While there are no hard-and-fast rules of what may be a successful trademark, there are some useful guidelines that can be followed.<sup>9</sup>

### **1) CHECK THE LEGAL FACTORS:**

- The main idea of a trademark is to be as unique and distinctive as possible. Therefore avoid using generic words. For example use of salt for death salt, other generic terms would be facial tissue, computer software etc.
- Avoid using descriptive words. The words that describe the nature or quality of a product are less likely to be registered. Hence, the mark ‘cold beer’ cannot be registered because it describes the product sold. Similarly the use of the mark ‘soft’ to sell bed linen, ‘shoeland’ to sell shoes.
- The marks that are geographically descriptive are also not preferred to be registered. For example the mark ‘AMMAN BAND’
- Deceptive marks are also a ground for refusal. The mark should not be such that it deceives the consumers about the product. Therefore use of mark ‘orwoola’ for 100% synthetic products cannot be registered.
- Words or marks that are against public order or morality are also not eligible to be registered. For example use of slang in your trademark.
- The functional features such as shape of the handles and blade assembly for a pair of scissors, which is necessary for the functioning of the scissors or handle as such on a coffee cup cannot be registered.
- Having two identical or very similar trademarks for the same type of product could cause confusion among the consumers. Therefore one should avoid using similar marks and conduct a proper trademark search before registering it. For example the mark ‘class-mate’ cannot be registered as the mark ‘classmate’ is already registered.

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<sup>9</sup> Elias Borges, *How to Create a Truly Distinctive Trademark*, THE BALANCE SMALL BUSINESS (Apr. 12, 2019), <https://www.thebalancesmb.com/how-to-select-a-good-trademark-2948672>.

## 2) **CHOOSE A STRONG MARK:**

- Choosing a fanciful word is one of the strongest methods to have a successful trademark. But it also demands great marketing efforts. Fanciful marks are entitled to immediate trademark protection and may be protected in both competitive and noncompetitive industries. These are words that are not mentioned in the dictionary and are invented solely for the purpose of functioning as a trademark. For example the use of the word KODAK for photographic supplies.
- Secondly, use of arbitrary marks is also very effective. Arbitrary marks are those which have a common meaning but are used as a trademark for a product which has no relationship to the common meaning. A mark that is descriptive or generic in one industry can be arbitrary and entitled to protection in another industry, such as the word "computer" when used as a trademark for clothing.
- A suggestive mark is one that suggests or hints at, but does not describe, the qualities or characteristics of the product. Suggestive marks are also considered inherently distinctive and, therefore, entitled to trademark protection immediately upon use. WORDPERFECT® is a suggestive mark for word processing software.
- Some of the descriptive marks can be protected if the distinctive character is established through extensive use. For example 'sweet' for chocolates or 'rapid', 'innovative' for computers.

## 3) **CHECK COMMERCIAL FACTORS:**

- It should be easy to read, spell and pronounce in all relevant languages.
- It should not have an adverse meaning in slang or undesirable connotations.
- It should be suitable for export markets with no adverse meaning in foreign languages, especially if you intend to commercialize the product abroad.
- It should not create confusion as to the nature of the product.
- It should be adaptable to all advertising media.

## 4) **CHECK AVAILABILITY** :One must conduct proper research to check the availability in

- home country and potential export markets.
- Current product lines and potential future products/services.
- Trademark search.

## **HOW TO REGISTER YOUR TRADEMARK?**

Steps to register the trademark in India:

**The Applicant:** An applicant makes an application for registration of a trademark for goods or services included in one class in triplicate on Form TM-1 with a prescribed fee, while on Form TM-51 for registering the same mark in more than one class. The fee payable is to be multiplied by the number of classes in which it is to be registered.

The Application will include:

- a representation of the trademark accompanied by 5 additional representations of the mark. The size of the representation shall not exceed the size 33 cm x 20 cm.
- a transliteration and translation of any part of the mark that is in a language other than Hindi or English.
- indication of the class of goods or services.
- address of the principal place of business of the applicant.<sup>10</sup> If the applicant has no residence or place of business in India, an address for service is to be given.<sup>11</sup>
- a statement of the period during which, and the person by whom it has been used in respect of the goods or services or a statement that the mark is proposed to be used. The Registrar may require the applicant to file an affidavit testifying to such usage with exhibits showing the mark as used.
- Signature of applicant or his agent. In the case of agent, a Power of Attorney on Form TM-48 is to be filed.
- If it is a partnership firm, the names of all partners together with the nationality of each of them and the status of the firm, whether registered or not, are to be given, while in case of a corporate body, the country of incorporation is to be stated.
- If the trademark consists of shape of goods or its packaging, the representation should consist of at least five different views of the mark and a description in words of the mark while in case of three dimensional mark, the reproduction of the mark should consist of two dimensional graphic or photographic reproduction, and
- If color combination is claimed, colors are to be indicated, accompanied by one reproduction in black and white and four reproductions of the mark in color.

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<sup>10</sup> Rules 3 and 17, The Trade Marks Rules, 2017.

<sup>11</sup> Rule 19, The Trade Marks Rules, 2017.

**THE TRADEMARK OFFICE:** Application is to be filed at the appropriate office of the Registry at Mumbai, Delhi, Chennai, Kolkata or Ahmedabad, depending upon the place where the applicant resides or has his principal place. In case of foreign applicants, the place mentioned as the address for service in India will determine the appropriate office at which the application should be filed.

**ALLOTMENT OF NUMBER:** Filing of an application will be acknowledged by the Registrar by way of return of one additional representation of the trademark, with the official number duly entered thereon.

**EXAMINATION:** The application is subjected to formal and substantive examination. The formal examination checks whether the application complies with the requirements of the Act and Rules. The substantive examination includes examination for distinctiveness and a search amongst the registered trademarks and pending applications to ascertain whether there are on record any marks identical to or deceptively similar to the mark sought to be registered in the relevant class(es). The time taken between filing an application and taking it up for examination is about ten to fifteen days.

**EXPEDITED EXAMINATION:** An applicant may request for expedited examination of an application for registration of a trademark on Form TM-63 together with a declaration stating the reason for the request, on payment of five times the application fee. In such a case, application is taken up for examination immediately.

**FURTHER PROCEDURE:** After due consideration of any evidence of use or of distinctiveness of the mark or any other matter, the Registrar may refuse the application or accept it absolutely or subject to amendments, modification, conditions or limitations, if any. The applicant may ask for a hearing or comply with the requirements of the Registrar within the time specified. Thereafter, the decision of the Registrar is communicated to the applicant.

**PUBLICATION AND OPPOSITION:** When an application is found to be acceptable, the details of the application are published in the Trade Marks Journal to allow any person to oppose its registration within three months from the publication date or within a further period not exceeding one month in the aggregate. At present, applications are published in the Trade Marks Journal normally within three months of acceptance.

**REGISTRATION:** If there is no notice of opposition, or if the opposition has been duly considered and dismissed, then the trademark is registered and a registration certificate is issued for a period of 10 years from the date of filing the application. At present, registration certificates are issued by the Registry within eight to ten months of filing of an application, unless it is contested in an opposition proceeding. The Register of Trade Marks contains all the relevant details, such as the mark, the date of filing, actual date of registration, the goods or services and the class or classes in respect of which it is registered and all other particulars.<sup>12</sup>

**RENEWAL:** The registration may be renewed for successive periods of 10 years. For this purpose, an application has to be submitted in Form TM-12 by the proprietor or his agent within six months prior to the expiration of the current registration of the trademark. If the registration has not been renewed, or the prescribed surcharge has not been paid within the grace period permissible under law, the Registrar may remove the mark and advertise the fact in the Trademark Journal. However, an application for restoration of the mark to the register and renewal may be made in Form TM-13 (together with the prescribed fees) after six months but within one year from the expiration of the last registration of the Trademark. When the registration of the mark is restored and renewed, the fact will be advertised in the Trademark Journal. At present, renewal is affected across the counter on production of previous renewal certificate or other document and in all other cases within fifteen days.

**REMOVAL OF MARK FOR NON-USE:** Non-use of a registered trademark for a continuous period of five years renders the mark liable for removal.<sup>13</sup> The period of five years will be reckoned from the date of actual registration and not from the filing date of application for registration. The use of a trademark by a licensee or a registered user will be deemed to be used by the proprietor.<sup>14</sup> Non-use may be justified due to “special circumstances in the trade”, which would include restrictions imposed by any law or regulation on the use of the trademark in India.

WIPO suggests three ways to register a trademark abroad if already registered in India:

- 1) **THE NATIONAL ROUTE:** Your business may apply to the trademark office of each country in which you are seeking protection by filing the corresponding application in

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<sup>12</sup> § 6, The Trademark Act, 1999.

<sup>13</sup> § 47, The Trademark Act, 1999.

<sup>14</sup> § 48, The Trademark Act, 1999.

the required language and paying the required fee. A country may require you to use the services of a locally based trademark agent for this purpose.

2) **THE REGIONAL ROUTE:** If you wish to apply for protection in countries which are members of a regional trademark system you may apply for registration, with effect in the territories of all Member countries, by filing an application at the relevant regional office. The regional trademark offices are:

- The African Regional Industrial Property Office (ARIPO) for English-speaking African countries
- The Benelux Trademark Office.
- The Office for the Harmonization of the Internal Market of the European Union (OHIM) for Community trademarks (CTM) in the countries of the European Union
- The Organisation Africaine de la Propriété Intellectuelle (OAPI). for protection in French-speaking African countries

3) **THE INTERNATIONAL ROUTE**<sup>15</sup>:

- If your home country is a member of the Madrid system and your trademark has been registered or applied for in or with effect in that country, you may use the Madrid system (administered by WIPO) to register your trademark in more than 70 countries that are party to the system. This protocol resulted from the Madrid Agreement of 1989, and came into force in the year 1995. This highly significant system in connection with international businesses is administered by the International Bureau of the World Intellectual Property Organization (WIPO), Geneva, Switzerland. At present, there are 91 member countries to this Madrid Protocol in the world. In 2013, India also became a member to this international treaty for trademarks to provide a unique opportunity to all domestic companies to protect their mark across the world jurisdictions by filing one application with one set of fees.
- The TRIPS Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights): This international agreement which came into existence in the year 1995, is efficiently and prudently administered by the World Trade

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<sup>15</sup> Ashwin D. Rajan and Mohan Porwal, *Registration And Protection Of Trademarks- In India And Abroad*, MONDAQ (Jun. 12, 2014), <https://www.mondaq.com/india/trademark/320302/registration-and-protection-of-trademarks-in-india-and-abroad>

Organization (WTO), and has at present over 150 member countries of the world over.

- Berne or Paris Convention: The Berne Convention has the great credit for being the oldest convention in the whole world, for protection of intellectual property. In 1971, this Berne Convention of 1886 was modified in Paris. This famous convention has been signed by as much as 170 countries, which are located in regions all across the whole world.

Once you have obtained the trademark in jurisdiction you can use the ® symbol to tell people that your mark is registered. Until then you may choose to use the TM symbol alongside your mark to indicate that you consider the mark to be commercially valuable and connected with your business, but that it has not yet been registered.

### **CONCLUSION**

The brand and the trademark are one of the most precious assets of the companies. Branding is a time consuming, expensive exercise. But, once all consumers order your product by name, the business is set to capitalize on coming years. Making a proper search and getting to know the basics on trademark can help avoid wrong applications and wrong trademark registrations.

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