



Role of Trademark in Protection of Consumer Rights.

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CHAPTER- 1 INTRODUCTORY

1.1 INTRODUCTION

As indicators of the provenance and origin of goods and services, trademarks are essential to modern trade. Ensuring fair and honest trading practices, building consumer trust, and stimulating economic development all depend on the preservation of consumers' rights. Additionally, trademarks foster brand loyalty and trust among consumers, contributing to the overall success and reputation of businesses.

As per the World Intellectual Property Organization (WIPO), “A trademark is a sign capable of distinguishing the goods and services of one enterprise from those of other enterprises¹. Trademarks are protected by intellectual Property Rights. Trademarks are recognizable names, symbols, sounds, shapes, or phrases that are used to identify and set one seller's goods or services apart from another seller's in the marketplace. Trademarks are primarily used to identify the source and avoid customer confusion and fraud by helping consumers identify and trust particular brands or items.

1.2 OBJECTIVE

1. To elucidate the significance of trademarks in consumer protection.
2. To analyze the relationship between trademarks and consumer trust.
3. To evaluate the effectiveness of trademark laws in safeguarding consumer interests.
4. Role of Trademark with respect to Consumer rights.

¹ WIPO

1.3 HYPOTHESIS

1. Effective trademark regulations positively impact consumer confidence and satisfaction.
2. Strong trademark enforcement contributes to market transparency and fair competition.
3. Inadequate trademark protection leads to consumer vulnerability and market distortions.

1.4 RESEARCH QUESTIONS

How does trademark awareness influence consumer decision-making?

What legal frameworks exist to protect consumers through trademark regulation?

What is the consequence of confusion in Brand Identification?

It's Implementation and Suggestions?

1.5 STATEMENT OF PROBLEM

There are still unanswered questions about the full scope of trademark laws' effects on consumer rights, despite the proven importance of trademarks in consumer protection. In order to close these gaps and provide light on the complex relationships that exist between trademarks and consumer welfare, this research will be conducted. Trademarks are essential to this ecosystem because they are markers of quality and brand identification. Nonetheless, there is ongoing discussion and examination on the degree to which trademarks actually safeguard consumer rights. The purpose of this research paper is to examine whether trademarks are effective in protecting consumer interests in the face of changing market conditions and new threats. The proliferation of eTailing Platforms and Social Media has changed consumer behavior and interactions with brands in today's Digital Age. Trademarks face new challenges in the digital world, even though they continue to be essential for brand recognition and consumer confidence. Online marketplaces often struggle to curb the sale of counterfeit goods, leading to consumer confusion and brand dilution.

1.6 MODE OF CITATION

This paper adopts the Oscola citation style for referencing sources.

1.7 REVIEW OF LITERATURE

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1.8 RESEARCH METHODOLOGY

Utilise data analysis to assess consumer perceptions of trademarks and their association with brand trust and satisfaction. Review existing scholarly articles, case studies, and legal texts related to trademarks and consumer protection. Analyse trademark laws and regulations in different jurisdictions. Examine how these laws address consumer rights and ensure product safety. Investigate real-world cases where trademarks played a role in consumer protection. By establishing ownership rights and preventing consumer confusion, trademarks have evolved into indispensable tools for consumer protection and brand differentiation. Overall, the literature reviewed underscores the pivotal role of trademarks in protecting consumer rights, fostering brand trust, and promoting market efficiency. However, challenges persist in adapting trademark laws and enforcement mechanisms to address evolving market dynamics and emerging technologies.

1.9 CHAPTERISATION SCHEME

1. Introduction
2. Understanding Trademark and Consumer Rights
3. Misleading Trademark Practices
4. Brand Identification
5. Suggestions and Conclusions

CHAPTER - 2

UNDERSTANDING TRADEMARK AND CONSUMERS RIGHT

2.1 THEORETICAL FRAMEWORK: UNDERSTANDING TRADEMARK AND CONSUMERS RIGHT

As per the World Intellectual Property Organization (WIPO), “A trademark is a sign capable of distinguishing the goods and services of one enterprise from those of other enterprises. Trademarks are protected by intellectual Property Rights.² Essentially, trademarks have the functionality of guaranteeing the identity of the origin of the trade-marked product so that it does not lead to confusion between products of similar origin (Fhima 2005)³. The goal of trademark protection is to preserve the goodwill and reputation connected to a brand, giving customers confidence in the source and caliber of the products or services that wear the mark. Additionally, it encourages fair competition in the market by prohibiting the unauthorized use of well-known trademarks. When a third party uses a mark that is identical to or similar to a registered trademark in connection with comparable goods or services, it is considered trademark infringement and can cause confusion among consumers as well as dilution of the brand value. Owners of trademarks can defend their rights by using legal measures to enforce their marks, such as cease and desist letters and lawsuits alleging infringement. According to Landes & Posner (1987)⁴ trademark regulation has the singular capability of selling monetary efficiency. Traditionally, courts have always tried to view trademarks as signs that help consumers match products with producers and find the products in the market without getting confused (McKenna 2007)⁵.

In *Laxmikant Patel v. Chetanbhai Shah*⁶, the Supreme Court of India ruled that it is prohibited for anyone to conduct his business in such a way that consumers believe the goods or services belonging to someone else are his or are linked with him. In the corporate sector, the principles of integrity and fair play are and ought to be fundamental rules. When someone uses or plans to use a name that already belongs to someone else in connection with their business or services, it causes confusion and increases the likelihood that the other person would receive their customers and clients instead of him, which would be detrimental to the first party. Additionally, the trademark denotes the caliber of the products and services.

2.2 TRADEMARK AND CONSUMER RIGHTS

Regarding trademarks, the two legal frameworks support and enhance one another. The interests of manufacturers, customers, and the general public are safeguarded by trademark regulations. A consumer is a

² Trademarks, WORLD INTELLECTUAL PROPERTY ORGANIZATION

³ Fhima 2005

⁴ Landes and Posner, 1987

⁵ McKenna 2007

⁶ *Laxmikant V. Patel v. Chetanbhai Shah & Anr*, 2002 (24) PTC 1 (SC)

person who purchases or leases products or services from businesses for their own purposes, and they should be shielded against dishonesty⁷. A number of regulations exist to shield consumers against dishonesty, and trademark law serves as a safeguard against deception regarding the legitimacy of commodities, services, or products. It serves as a covert instrument for consumer protection. From phoney and fraudulent goods and services. Since the main goal of trademark laws is to safeguard the rights of manufacturers and industrialists against the use of their marks without authorization or agreement, this protection is indirect.

The creation of an interface between the enterprise that makes or advertises the product and service and the one that the consumer chooses is made possible by trademark protection regulations; this further empowers the customer to select from a range of goods and services, those that he wishes to buy or trusts. The regulations that ban unfair practices or competition help the customer to be well-informed and forbids deceptive advertising of goods and services.

2.3 INFLUENCE OF TRADEMARK AWARENESS ON CONSUMER DECISION MAKING

Instantaneous decision-making: In the fast-paced consumer environment of today, trademark knowledge is essential for making quick decisions. Customers frequently form snap decisions based on their perception and identification of trademarks, particularly in congested markets with plenty of rival goods and services. Customers are more likely to prefer a reputable brand over unknown competitors when they are familiar with the trademark.

Trademark identification is important because it allows consumers to make confident and well-informed purchasing decisions. Trademarks that consumers are familiar with make it easier for them to browse the wide range of products available to them. They also assist them distinguish between authentic products and imitations or counterfeit ones⁸. Strong brand recognition encourages repeat business and customer loyalty because it helps consumers form favourable connections and trust with well-known brands.

2.4 IMPACT OF TRADEMARKS ON CONSUMER BEHAVIOUR IN DETAILS

For a brand to be recognized, trademarks are essential. They function as audible or visual clues to assist customers in recognizing and differentiating various brands in the marketplace. When consumers are making judgments about what to buy, they are more likely to notice and remember brands that have a strong trademark recognition. Examples of instantly identifiable trademarks that arouse particular associations and perceptions in the minds of consumers are the Coca-Cola logo and the Nike swoosh.

⁷ The Role Of Industrial Property In The Protection Of Consumers, WIPO accessed on 12 April 2021

⁸ When it comes to geographical indicators, the same rule holds true. It helps the buyer select among a variety of items by creating a connection between the product and its place of origin.

Brand perception and image are significantly shaped by trademarks. Trademarks can transmit certain meanings and connotations about a brand's quality, values, and personality through its design, colour scheme, font, and symbol usage. Customers frequently draw conclusions about a product's qualities from the trademark of the brand. For example, a luxury brand with an elegant and sophisticated logo can be thought to sell premium, high-quality goods. Trademarks with a long history can increase customer credibility and confidence. Customers are more likely to feel secure when they buy goods from well-known and reliable companies. Trademarks reassure customers about the calibre and dependability of the goods and services being provided by acting as markers of brand legitimacy and consistency.

In a competitive market, trademarks help firms stand out and establish a distinctive personality that sets them apart from rivals. A unique trademark can develop into a significant asset for a company, giving it a long-term edge over competitors. Brands with identifiable trademarks may be preferred by consumers over generic or unbranded substitutes, increasing their market share and financial success.

Trademarks have the ability to impact customer purchasing decisions across a range of decision-making phases. When weighing their options, consumers may be drawn to and evaluate a certain brand due to a well-known trademark. Furthermore, favourable connections with a company's trademark can affect how customers view a product's value, quality, and desirability, which in turn affects their propensity to buy.

Trademarks provide legal defence against competitors' unauthorised use or copying of trademark identifiers. In order to preserve brand integrity and avoid consumer confusion or deceit, this protection is crucial. Companies allocate substantial resources towards the registration and maintenance of their trademarks in order to protect their intellectual property and maintain their market share.

2.5 IMPORTANCE OF TRADEMARK IN BUSSINESS

Owners of businesses need to know why trademarks are important assets that might aid in business growth. Some of the arguments supporting the significance of trademarks for businesses are listed below:

Trademarks are an effective communication tool. In a single brand or logo, trademarks may convey both intellectual and emotional attributes and indications about you, your company, and its reputation, products, and services.

Trademarks make it simple for customers to find you. Because of the saturation of the industry, it is challenging to differentiate your business from the competitors. A strong commercial communication tool for drawing in customers and setting your business, goods, and services apart are trademarks and brands.

Consumers are less likely to look for alternatives when they see a trademark since they can easily identify the firm and the person they are doing business with. It's possible that a customer's decision to purchase it will be influenced by your brand.

Trademarks are important property. Trademarks may increase in value over time. The more positive people see your firm, the more valuable your brand will be. Trademarks are perpetual.

Trademarks have the potential to streamline the hiring process. Positive feelings may be elicited in people's minds by brands. Consequently, job searchers find employment opportunities more enticing. If staff members are passionate about the company's brand and the goods and services it offers, employee retention might increase.

CHAPTER- 3

MISLEADING TRADEMARK PRACTICES

3.1 MIALEADING TRADEMARK PRACTICES: A THREAT TO CONSUMER TRUST

Trademarks serve as identifiers and reassuring lights in the complex web of the market, directing customers confidently toward the goods and services they want. Nevertheless, deceptive trademark tactics frequently jeopardize the integrity of this trust by violating trademark owners' rights and more importantly eroding customer confidence and trust. The core values of fair trade and informed consumer choice are seriously threatened by these dishonest business practices, thus it is important to look more closely at their effects and the safeguards put in place to stop them.

3.2 TYPE AND CHARACTERSTICS OF DECEPTIVE BEHAVIOUR

A wide range of dishonest strategies are used by certain companies to obtain an unfair advantage and are collectively referred to as misleading trademark practices. These activities can be in a variety of forms, such as:

3.2.1 Trademark infringement is the use of a trademark without permission that is confusingly close to or identical to a registered trademark, deceiving customers into thinking they are purchasing goods or services from a legitimate company.

3.2.2 Selling products or services while pretending to be affiliated with another brand and deceiving customers about the real source of the item is known as "passing off."

3.2.3 Counterfeiting: Producing and distributing knockoff goods under a well-known brand without permission, frequently sacrificing reliability and quality.

3.2.4 Cybersquatting: The registration of domain names that bear a striking resemblance to well-known trademarks with the intention of deceiving customers or demanding money from the owner of the brand.

3.2.5 Advertisements that are misleading include those that make false, exaggerated claims that mislead consumers into thinking a good or service has features or endorsements that it does not.

3.3 THE EFFECT OF CONSUMER CONFIDENCE

Trust is the cornerstone of customer behaviour. Have faith in the brand's quality, the legitimacy of the goods you've bought, and the correctness of the product information.

Deceptive trademark tactics erode customer trust by making them more susceptible to fraud, putting their health and safety in jeopardy (in the case of counterfeit goods), and weakening their faith in the marketplace. The reputation of the industry and customer faith in market systems as a whole may be impacted more broadly by this breakdown of trust than just specific companies.

3.4 THE INDIAN LEGAL SYSTYEM'S REACTION TO TRADEMARK MISUSE

The legal system in India has been carefully crafted to confront and combat deceptive trademark practices, thanks to its extensive framework. This framework aims to protect customers from unfair tactics and deceit in addition to preserving trademark owners' interests. Indian law has responded to these issues by combining judicial interpretation, legislative measures, and enforcement strategies to provide a strong barrier against deceptive business activities.

3.4.1 LEGISLATIVE FRAMEWORK

The Trade Marks Act, 1999- The Trade Marks Act, 1999 is the cornerstone of India's reaction against deceptive trademark practices. A comprehensive legal framework for the registration, defence, and enforcement of trademarks in India is provided by this Act. It establishes the standards for what qualifies as a trademark, the registration procedure, and the rights granted to trademark owners. Crucially, it also specifies what exactly qualifies as trademark infringement, such as the unlawful use of a brand that is confusingly close to or identical to a registered trademark and is therefore likely to mislead or confuse consumers. Famous trademarks are subject to further protection under the Act, which is especially strict when it comes to their usage and extends beyond the categories of products and services for which they are registered.

The Consumer Protection Act, 2019- The Consumer Protection Act of 2019 provides an additional degree of consumer protection against deceptive acts in addition to the Trade Marks Act. It covers all aspects of unfair trade practices, such as selling counterfeit items, deceptive advertising, and misrepresenting goods or services. With the help of this Act, customers can now report unfair business practices and request remedies, including monetary damages for their injuries.

3.4.2 JUDICIAL INTERPRETATION AND ENFORCEMENT

The Indian judiciary has played a crucial role in strengthening the battle against deceptive trademark activities by interpreting the terms of these Acts and establishing precedents. Indian courts have been swift in punishing infringers with injunctions and compensating victims of deceptive activities with damages. The judiciary has made clear the scope of legal protection and the requirements for establishing infringement or passing off through significant rulings. For example, the Indian Supreme Court has stressed the importance of consumer perception in assessing the possibility of confusion or deception through deceptive trademarks in a number of its rulings. These court rulings support the Indian legal system's consumer-focused strategy for combating deceptive business practices.

Background- In the case of "SALESKEN" versus "SASKEN,"⁹ The plaintiff, who owns the trademark "SASKEN," filed a plea for a permanent injunction against the defendant's use of the mark "SALESKEN." The plaintiff alleged trademark infringement, arguing that the defendant's mark was deceptively similar and likely to cause confusion among consumers. However, the Trial Court dismissed the plaintiff's plea, prompting an appeal to the higher court.

Legal Analysis: Whether the marks "SALESKEN" and "SASKEN"¹⁰ were sufficiently similar to support a finding of trademark infringement was the main question on the court's agenda. The Court carried out a thorough study, taking into account elements including conceptual linkage, visual resemblance, and phonetic similarity. The Court determined that even with the same suffix "KEN," the overall intellectual impressions of the marks were different. "SALESKEN" indicates ideas linked to sales and marketing, but "SASKEN" transmits connections related to technology and innovation. The plaintiff's mark "SASKEN" had gained market recognition and goodwill, the Court added, further setting it apart from the defendant's mark. The Court also underlined how crucial it is to take customer impression and confusion risk into account. It stated that, in general, customers are perceptive and able to tell apart similar marks, particularly when the products or services sold under those marks are unique.

3.5 DIRECTIVES TO AVOID UNFAIR TRADE PRACTICES

As per the Department of Civil Supplies and Consumer Affairs, a complaint under Section 17¹¹ of the Consumer Protection Act, 2019 may be filed in writing or electronically to the District collect concerning a breach of

⁹ Role of Consumer perception in Trademark Infringement <www.legalserviceindia.com.html>

¹⁰ Sasken Technologies Ltd Vs Istar Skill Development Pvt Ltd[2023] AC 3951/2021

¹¹ Consumer Protection Act, 2019

consumer rights or unfair trade practices that negatively impact the interests of consumers collectively. This is done to safeguard consumer interests regarding the imposition of service fees in hotels and restaurants and to stop unfair commercial practices. Furthermore, the District Collector is empowered to investigate these issues and notify the Central Authorities of his conclusions.

In accordance with Section 18(2) (1)¹² of the Act, the Central Consumer Protection Authority has released recommendations to prevent unfair business practices and safeguard consumers' rights when it comes to service imposition. The Central Consumer Protection Authority provides the following guidelines in order to prevent unfair business practices and safeguard consumer interests regarding the imposition of service charges: No restaurant or motel may impose a service fee in the bill by default or automatically. A service fee cannot be assessed to customers under any other name. No hotel or restaurant has the right to charge a service fee; instead, it must clearly indicate that the price is optional, discretionary, and up to the customer's discretion. Depending on the total amount, there are no restrictions on service provision or entry. Customers can report infractions to the district collector, who will investigate or follow up with them if necessary.

Customers can make concerns with the National Consumer Helpline (NCH), 1915, or the State Consumer Helpline No. 2236758, 1800-11-4000¹³. Consumer complaints about deceptive business practices can be filed with the Consumer Commission. The complaint may also be electronically filed using the e-daakhil website at www.edaakhil.nic.in for a prompt and effective resolution. A complaint from the client may be sent for evaluation to the District Collector of the relevant district.

3.6 Case Analysis.

3.6.1 Horlicks Ltd. v. Zydus Wellness Products Ltd. (2020)¹⁴

In this case, both companies are producers of healthy drinks, yet Zydus sponsored a television commercial that disparaged the products of Horlicks Ltd. The advertising was shown in a number of languages, including Bengali, Tamil, and English. The Delhi High Court cited previous rulings on defamation, deceptive advertising, and the legislation limiting the publication of commercials on television in reaching its conclusion that the advertisement is defamatory since it provides no particular proof of the product's quality. Additionally, because

¹² Consumer Protection Act, 2019

¹³ Department of Information and Publicity

¹⁴ (PDF) Unfair Trade Practices and Their Impact on Consumer Trust SUBMITTED BY. Available from: https://www.researchgate.net/publication/370340833_Unfair_Trade_Practices_and_Their_Impact_on_Consumer_Trust_SUBMITTED_BY [accessed Jun 02 2024].

electronic media leaves an impression on viewers' minds, this advertising would be detrimental to both consumers and the complainant, who would suffer long-term injury.

3.6.2 In Pepsi Co. Inc. v. Hindustan Coca-Cola Ltd., 2003¹⁵

The Delhi High Court determined that the method, target audience, and plot of an advertising are important factors to take into account when determining whether or not there has been disparagement. This lawsuit is predicated on this well-known ruling

CHAPTER- 4

BRAND IDENTIFICATION

4.1 Probability of Confusion: How Can You Tell Whether a Trademark Is Being Infringed?

4.1.1 The Mark's Strength - If a mark is descriptive and lacks significant secondary meaning, it is considered "weak". A mark is deemed "strong" if it has taken on additional significance or if it is arbitrary, fantastical, or provocative. It will be challenging for the owner of a weak mark to demonstrate a probability of misunderstanding. For instance, it was found that the mark Maid for cleaning services in America was descriptive. In order to establish secondary meaning, the proprietor could not produce a convincing display of sales or advertising. As a result, the owner of the trademark lost an infringement lawsuit against a mark that was comparable. To demonstrate secondary meaning in the event that descriptiveness is a factor in an infringement action, a survey may be carried out.

4.1.2. Marks' resemblance- Generally speaking, all aspects of a mark—including look, sound, meaning, and commercial impression—must be compared. It can be necessary to analyse and contrast each mark's components in order to determine whether two marks are comparable. The owner of the mark OAG Travel Planner formerly filed a lawsuit against the owner of the mark The Travel Planner. The court found that although the mark "Travel Planner" was weak and descriptive, the combination of "Travel Planner" and "OAG" produced an arbitrary mark. The court found that there were visual and auditory similarities between the marks, which

¹⁵ (PDF) Unfair Trade Practices and Their Impact on Consumer Trust SUBMITTED BY. Available from: https://www.researchgate.net/publication/370340833_Unfair_Trade_Practices_and_Their_Impact_on_Consumer_Trust_SUBMITTED_BY [accessed Jun 02 2024].

would likely lead to customer confusion. Nevertheless, a claim of mark resemblance can still be made notwithstanding the addition of a prefix or suffix, letter changes, or additional information.

For example, the following marks were similar: Magnavox and Multivox; Simoniz and Permanize; Platinum Puff and Platinum Plus; Zirco and Cozirc; and Maternally Yours and Your Maternity Shop.¹⁶

4.1.3 Similarity of Goods- Whether an average, responsible buyer would be likely to buy one thing while thinking he was buying the other is the test of infringement. Generally speaking, if a trademark owner uses a comparable mark on things that are wholly unrelated, they may do so. A trademark owner may be able to protect connected items as well. Electric lamps may also use a mark, much like paraffin lamps do. In these situations, the courts take into account whether the general public would fairly anticipate that the products were produced by the same company. Customers are more likely to anticipate an increase of the product base the more widely used and well-liked the brand is.

4.1.4 The Defendant's Objective- While the defendant's intent is not a necessary element in establishing infringement, it is a pertinent one. The Restatement of Trademarks states that as a party aiming to induce confusion would typically succeed in doing so, it is acceptable to take the defendant's intent into account. Since the defendant typically cannot provide direct proof of their intent to deceive, the plaintiff must rely on circumstantial evidence, such as the defendant's choice of the mark or the defendant's ongoing use of the mark in spite of the plaintiff's warning.

4.2 Consequence of Confusion in Brand Identification:

4.2.1 Loss of Loyalty and Trust from Customers:

- **Consumer Dissatisfaction:** When consumers find it difficult to recognize a brand, they may get impatient and stop believing in it. This may result in a decline in brand loyalty and a preference for rivals with more recognizable identities.
- **Reduced Brand Loyalty:** Customers who are confused are less likely to form deep emotional bonds with the brand, which lowers the likelihood of long-term and repeat purchases.

¹⁶ Likelihood of Confusion: How Do You Determine If a Trademark is Infringing? | Nolo

4.2.2 Diminished Brand Value:

- Diluted Brand Image: Consumers may see a brand as less distinctive as a result of confusion. The total equity and value of the brand may suffer as a result.
- Decreased Perceived Value: Customers may view a brand as having less value if they are unsure about its identification, which may have an adverse effect on their willingness to pay higher costs.

4.2.3 Adverse Effect on Market Share and Sales:

- Reduced Sales: Customers may be reluctant to make a purchase from a brand they are unclear about or do not fully understand, which can result in a fall in sales due to confusion.
- Loss of Market Share: The market share of the confused brand may decline as a result of competitors capturing a bigger portion of the market with more recognizable and consistent brand identities.

4.2.4 Inadequate Marketing Approaches:

- Wasted Marketing Expenditure: If customers are confused about a brand, marketing initiatives may be less successful. Budgets and resources for marketing may be squandered as a result.
- Inconsistent Messaging: Inconsistent messaging can lead to confusion regarding brand identification and reduce the coherence and impact of marketing initiatives.

4.3 Trademarks and Quality Assurance

4.3.1 Trademarks as Consistency Symbols- Trademarks function as markers of the source of products and services. They might take the form of logos, names, symbols, or other distinguishing signals. An implicit guarantee of constant quality is entwined with this identifying function. Based on their prior experiences, buyers anticipate that a product linked with a well-known brand would live up to certain expectations. A key component of the quality assurance philosophy is this expectation. When a customer buys a product from a well-known brand, such as Coca-Cola, for example, they are expecting the beverage to taste and be of the same calibre as before. The company's trademark serves as a symbolic representation of its strict quality control procedures, which guarantee uniformity across batches and locations.

4.3.2 Establishing and Preserving Consumer Trust: Trademarks play a crucial role in establishing and preserving consumer trust, which is a fundamental aspect of consumer behaviour. A trademark gives customers

peace of mind that the goods they are buying is authentic and maintains the brand's standards for quality. This guarantee is especially crucial in marketplaces overrun by phoney and inferior products. Using a trademark reduces the chance of buying subpar goods. Trademarks like the Louis Vuitton monogram and the Rolex crown, for instance, let buyers know that they are purchasing genuine, high-end products in the luxury goods industry. The consumer's trust in the purchase is increased when these trademarks are present since they comfort them about the product's originality and quality.

4.3.3 The Law and Quality Assurance- A systematic approach for guaranteeing quality assurance is provided by the legal framework pertaining to trademarks. According to trademark regulations, a trademark must be unique and not deceptive. A level of quality is implicitly enforced by this legal obligation, as any notable deviance from the established quality might result in trademark protection being revoked as a result of customer fraud. Furthermore, a lot of nations have laws that let authorities and customers take legal action against businesses that don't uphold the standards of quality that come with their trademarks. For instance, in the US, the Lanham Act offers legal protection against deceptive advertising and trademark dilution. Customers are protected by this legal safeguard because it guarantees that businesses will be held responsible for the calibre of their goods.

4.3.4 Brand Loyalty and Trademarks- Building brand loyalty is greatly aided by quality control through trademarks. Customers are likely to have a preference for a brand if they consistently receive high-quality products and services from it. This can result in repeat business and brand promotion. Positive encounters with the brand's products over time are frequently what foster this loyalty. For example, Apple Inc.'s branded products have helped to build a strong brand loyalty. The Apple logo is a representation of cutting-edge, superior technology. Apple devotees have faith that any product with the Apple brand would live up to their expectations. Due to the lower likelihood of client attrition, the firm benefits from this loyalty in terms of competitive advantage.

4.4 Importance of brand and its protection

A brand, often referred to as a trademark legally, is defined as a name, design, symbol, or word that sets one seller's goods or services apart from those of other sellers. Conversely, trademarks and brands are two different concepts that are sometimes confused. A brand is an idea in marketing that helps any company grow its clientele, whereas a trademark is really a legal phrase. While brands are intangibles that include a company's personality, identity, or relationship, trademarks are tangible items like a logo, image, or design.

Companies are always searching for methods to protect their brand image through trademark registration since they are aware that once registered, their trademarks will last as long as they are routinely renewed. Corporate organisations strongly oppose invoking trademark protection in the event of a change in position or profile, which might affect the brand value.

Companies want trademark protection because it identifies the origin of the goods, reduces the cost of customer searches, and expands their client base. It's also thought that the majority of businesses adhere to their brand image and register their trademarks in order to get the respect of their industry. Businesses utilise trademark protection to stave against unscrupulous competitors and pirates who damage their reputation.

Merchandising rights are now recognised and safeguarded by trademark law, which stops rivals from producing similar goods and passing them off as the original by using the original company's logo or brand image. Because people who purchase counterfeit goods are aware that they are not licenced and are not confused about the source or origin of the counterfeit goods, this proves that the public interest is subordinated to the maintenance of the brand image.

4.4.1 The Coca Cola Company v. Bisleri International Pvt. Ltd. (2009)¹⁷

Under a master agreement, the defendant in this case, Bisleri, sold and transferred the trademark MAAZA to Coca-Cola, together with formulation rights, know-how, intellectual property rights, and goodwill for India. In 2008, the accused company filed the trademark MAAZA in Turkey and started exporting fruit drinks under the same name. The plaintiff, Coca-Cola, requested damages for passing off and trademark infringement in addition to a permanent injunction. Citing trademark infringement, the court in this case imposed an interim restraining order forbidding the defendant (Bisleri) from using the brand MAAZA in India or for export.

¹⁷ <https://blog.ipleaders.in/> The central rationale for trademark protection in protecting the brand value of businesses - iPleaders

CHAPTER- 5

SUGGESTIONS AND CONCLUSION

5.1 Suggestions

The public confusion argument should be taken into consideration by trademark law. When there is concurrent usage, the interests of the trademark owners should take a backseat to the likelihood of consumer deception and public misunderstanding. There the focus has to change from the owners of trademarks' property rights to the rights of consumers. Consumer fraud is a socio-economic crime that impacts the material well-being of the community as a whole. Extreme caution must be used to guarantee that concurrent, fair, and normal use of the rival marks won't cause misunderstandings or deceit among the general public.

The Act does not specify a minimum amount of time for concurrent usage. It is not necessary for concurrent use to be continuous or extensive. The Registrar has broad discretion and does not need the court's approval for the same. In most cases, the Registrar's order will not be interfered with by the court. As a result, the Registrar cannot use his discretion in an arbitrary manner. The Registrar must apply requirements and limitations relevant to significant elements like colour, commodities, manner, location of use, and so forth in order to prevent confusion in situations of concurrent usage, etc. No registration will be allowed in cases of triple identity, even in cases of legitimate concurrent usage or exceptional circumstances. The public rights of the consumers not to be deceived must be given priority over the private rights of the proprietors.

5.2 Suggestion as to Unfair Trade Practices

While confronting unfair trade practices may be difficult, there are some suggestions that might aid in reducing or even getting rid of them. Just a few examples are: Governments may fortify current laws and policies by enacting and implementing new ones that specifically target unfair trade practices. These laws can define unfair trade practices, provide penalties for offenders, and protect the rights of victims.

Companies should be required to provide more information about their business practices, including supply chain transparency, labour rights, and environmental impact. This can help consumers make informed decisions about the goods they purchase and discourage companies from employing unfair trade practices.¹⁸

¹⁸ (PDF) Unfair Trade Practices and Their Impact on Consumer Trust SUBMITTED BY. Available from: https://www.researchgate.net/publication/370340833_Unfair_Trade_Practices_and_Their_Impact_on_Consumer_Trust_SUBMITTED_BY [accessed Jun 02 2024].

5.3 Implications for Practice and Policy- The research's conclusions have important ramifications for practice and policy:

- Strengthening Legal Frameworks: To shield consumers from fake goods and dishonest business activities, legislators should keep improving and fortifying trademark rules. This involves working together internationally to enforce cross-border trademark protections.
- Increasing Consumer knowledge: To raise knowledge of the value of trademarks and how they safeguard consumers' interests, consumer education initiatives should be put in place. Consumers with greater knowledge are more able to identify and believe in trademarks, which lowers the possibility of fraud.
- Supporting firms: In order to help small and medium-sized firms (SMEs) register and safeguard their trademarks, governments and regulatory agencies should offer support. Financial support and streamlined procedures can motivate more companies to spend money on trademark protection.
- Fighting Counterfeiting: More effective tactics are needed to fight counterfeiting. This entails tougher sanctions for those who commit counterfeiting, more money for law enforcement, and cooperation with internet retailers to detect and eliminate fake products.
- Encouraging International Standards: International trademark laws and standards should be harmonized. Trademarks can guarantee that customers throughout the world are consistently protected by them through international agreements and collaboration.

5.4 To Conclude - In the contemporary economy, trademarks are essential because they provide a trifecta of benefits—legal, psychological, and economic—that together safeguard the interests of consumers. They serve as protectors against dishonesty, enablers of market efficiency, and guaranteeers of quality. Trademarks serve as more than just symbols; they represent the dependability and confidence that buyers look for when making selections about what to buy.

Trademarks will become more and more important as markets become more digital and globalized. To maintain the integrity of trademarks and ensure that they continue to be effective tools for consumer protection, policymakers, companies, and consumers must collaborate. By doing this, we can promote a market where all players may engage in fair, trustworthy, and creative competition.

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