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## NATIONAL LEVEL SEMINAR

### ON Globalization & Branding

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## Conference Proceedings

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## BRANDING AND ITS LEGISLATIVE PROTECTION IN INDIA

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### ● ABSTRACT

Here in this research of branding and its legislative protection in India and know what is actual brand or trade mark. The study of such intellectual property on the national level, to find out that what is legal status of trade mark or brand on the way of globalization. In this study the important point is to find out what are the legislative protection provide for the protection of brands and what are the legislative remedies provided by the Indian laws.

### ● INTRODUCTION

Branding is nothing but its special identity of trade or business. To create difference between other trade or business brand or trade name is very essential. Brand or trade name or trade mark which is provides visual difference with other trade products which is helpful to customer to choose their necessary product. In the era of globalization there are thousands of brands and trademarks are registered on national and international level which is come under the intellectual property. And thousands of other brands are working without their registration.

### ● OBJECTIVES OF THE RESEARCH

- 1) To study of concept and importance of branding in legal way.
- 2) To study of the various Indian legislation which deal brand or trademarks in India.
- 3) To study of various legal rights and remedies to dealing with brand and trademark in India.

### ● HYPOTHESIS

The Indian legislation is not sufficient to provide to better protection on local and international level in branding.

### ● BRANDING ISSUS AND LEGISLATION DEAL WITH BRANDING

Trademark is the unique and trade identity where it's like other property the person who need and want to use such property he must have to go certain specified legal procedure or he must have to take prior consent of such owner. Trademark infringement is a violation of the exclusive rights attaching to a trademark without the authorization of the trademark owner or any licensees (provided that such authorization was within the scope of the license). Infringement may occur when one party, the "infringer", uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. An owner of a trademark may commence legal proceedings against a party which infringes its registration. The violation and infringement of such brand or trademarks are difficult to find

out at all marketing and selling places. Infringer always takes undue advantage of popular market brands to sell his duplicate products in to market. Basically infringement is the creation of such mark deceptively similar with other brand, made some minor changes which difficult to understand with original and duplicate brand. And after such successful process of deception they plays with life of consumer by sending their defective duplicate goods in market where at the time to buy goods consumer cannot differentiate with such goods they deceived by infringers.

- **LEGAL REMEDIES**

Trademarks have begun to acquire goodwill and reputation amongst the customers of the good. Well known trademark or brand is likely to be copied by the competitor and they could earn profits by trading on the reputation and goodwill of other trademarks. For purpose of protection trademark the Trade and Merchandise Marks Act, 1958 was enacted. To fulfill the expectations of Trade Related Intellectual Property Rights Agreements (TRIPs), the new statute, namely the Trademarks Act, 1999, has been enacted.

### **Infringement**

Under Section 29 of the Trademark Act 1999 the infringement of right of owner company is said to be made if a company uses a similar trademark and uses it for marketing products similar to the products of a registered company and hence created problems It is further given in the Sub Section (9) of this section that the infringement can also be done by the spoken use of those words as well as by their visual representation.

### **Passing Off**

The Trademark Act does not describe passing off but passing off according to common law principles is when the mark is not only similar to trademark of other company but is also creating confusion for the customers, which ultimately results in damage for business of the company.

Basic legal remedy on branding that is the registration of such brand or trade mark under the trademark Act. Proper and lawful registration of a trademark with the concerned national or international trademarks office, gives some legitimate and privileged rights to the owner of the registered trademark, which are related with the authoritative ownership over the registered trademark; authoritative and exclusive commercial or professional uses of the trademark; security and protection of the trademark; hiring and trading of the trademark with any national and foreign person or company; and selling of the registered trademark. Registration of trademarks is one of the important protections that businesses should avail in India. Many foreign and domestic Applicants have been able to successfully register their marks in India. Indian courts have upheld many of those registrations and granted favorable decisions to rights holders.

The criminal action of infringement or passing off is punishable under the code of Criminal Procedure, 1973. The punishment for falsifying and falsely applying and using



trademarks contained in section 103 and 104 of the Trade Marks Act, 1999 chapter XIII. An offence under the trademark Act is cognizable and non bailable in nature. An offence concerning infringement of trademark is punishable with an imprisonment of not less than 6 months but which may extend to three years. The minimum fine provided under the Act Rupees 50,000 to Rupees 2, 00,000. The Trade Marks Act, 1999 prescribes relief in any suit for infringement of trademarks. It may include an injunction and at the option of the plaintiff, either damages or an account of profit, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure. The order of injunction may include an ex parte injunction or any other interlocutory order for discovery of documents, preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit. The order may also restrain the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, cost or other pecuniary remedies which may finally be awarded to the plaintiff.

#### • **LEGAL RELIEF IN SUITS FOR INFRINGEMENT OR PASSING OFF**

The types of Legal relief to which a plaintiff is entitled are-

- An injunction restraining further use of the infringing mark; perpetual (permeant injunction) or temporary injunction.
- Damages or an account of profits.
- An order for delivery-up of infringing labels and marks for destruction.
- Order for delivery of the infringing labels and marks for destruction.
- Seizure and confiscation of the infringing goods by the police department.
- Arrest of the infringers.
- Fine and penalties.

#### • **CONCLUSION AND SUGGESTION**

Here to conclude that the person acquire the trademark he used his intellectual and performance to give special weightage to his trademark. This intangible proper is huge possibility of its infringement at national, international and also on the cyber space. In the concept of branding and trademark there is no attention on the relationship of trademark owner and consumer. On the other side the owner has various exclusive rights against world at large but this mark or brand should be registered under Trade Mark Act. And several other legislation and judicial remedies are available to protection of brand. On the other hand judiciary also provide better protection to trade mark or brand but it's not sufficient to stop all the infringement at every local area of marketing where it's difficult to understand or detect the trade mark violation by a particular person.

In suggestion it can be drawn that Indian Trade Mark Law must be updated on frequently keeping in pace with the dynamic and new methods of Trade Mark infringement. Both Courts and Enforcement authorities must be well equipped and be trained for efficient disposal of cases relating to Intellectual Property. To avoid such problems like infringement

and passing off or other illegal use of brand there should be registration will be compulsory to every brand. The person who wants to use such property he must have to take prior permission of such owner with proper consideration.

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