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DECEPTIVE SIMILARITY OF TRADEMARK UNDER TRADEMARK LAWS: A CRITICAL STUDY

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ABSTRACT

The concept of misleading similarity has extensively acknowledged as one of the grounds for infringement of Trademark beneath the numerous Trademark regimes. Under the Indian lawful system, the deceptive similarity is likewise taken into consideration because the floor for now no longer granting a Trademark Registration to a candidate via way of means of the Trademark Registrar.

However, the Act of Trademark doesn't confirm any particular standards that could determine the range & scope of this phrase "misleading similarity". To get rid of the gap, it's far vital to notice a judicial stand at the instances regarding the proposed matter. For this, the Indian Judicial Courts have address one-of-a-kind instances offering landmark judgements & guidelines withinside the subjects of deceptive similarity. For figuring out instances of the highbrow properties & deceptive similarity, the precept of phonetic & visible similarity, goodwill, reputation, a check of likelihood, etc., were recognized as standards to check the concept of deceptive similarity via way of means of the Judiciary.

KEYWORDS

Trade Marks Act, 1999, Deceptive Similarity, Trademark Infringement, Identical Marks, Logos.

INTRODUCTION

"Deceptively comparable" trademark is a idea which may be understood because the trademark created, nearly comparable or a look-alike of an already in life trademark so as to lie to and create confuse many of the clients. This idea of misleading similarity has been mentioned in The Trade Marks Act, 1999. According to Section 2(h) of the Act an indicator ought to deemed to be deceptively just like every other trademark if it's far almost resembles with the alternative mark as probable to lie to or reason any confusion withinside the thoughts of others.

Traditionally, chance of bewilderment as to the starting place of an awesome or provider changed into the best floor that led to infringement of the trademark. But as step by step the corporations evolved, there have been a few different grounds or elements additionally that brought about infringement of one's trademark and so a want changed into felt to have a much

broader method in terms of trademark protection¹. Whenever marks are identical, it's miles taken into consideration to be a clean case of infringement as it's miles possibly to reason confusion withinside the minds of people. But there may be conditions wherein marks aren't identical, however proportion enough quantity of similarity. In such cases, despite the fact that marks aren't identical, however if they may be comparable sufficient or have enough diploma of resemblance to be able to reason confusion withinside the minds of people, it could be stated to be infringement. A misleading mark may be stated to be this kind of mark that's possibly to reason confusion withinside the minds of the buyer. The take a look at is twofold. Firstly, that this kind of mark need to reason confusion as to its supply of starting place, to preferred public with common intelligence. Secondly, it's miles the general similarity this is appeared upon and now no longer the character additives of the mark this is taken into consideration.

Concept of Deceptive Similarity

The idea of misleading similarity has broadly known as one of the floor for trademark infringement beneath diverse trademark regimes. Under Indian system, the misleading similarity is likewise taken into consideration because the floor for now no longer granting a Trademark registration to an applicant via way of means of the Registrar of Trademarks². However, the Trademark Act does now no longer verify any precise standards which could determine the ambit and scope of this phrase "misleading similarity," In order to get rid of the gap, it's far essential to notice a judicial stand at the instances concerning the stated count number. For this, the Indian Judicial Courts have treated diverse instances imparting with landmark judgments and hints withinside the topics of misleading similarity. For adjudicating instances of the highbrow houses and misleading similarity, precept of phonetic and visible similarity, reputation, goodwill, take a look at of likelihood, etc. were known as standards to check the idea of misleading similarity, via way of means of the Judiciary. In keeping with Section 11(2) of the Trademarks Act, Registration of such marks which might be deceptively just like a famous or an already present mark isn't always permitted. Where any same or comparable trademark is used with appreciate to items or offerings that aren't comparable, it might purpose taking of an undue benefit of the prevailing trademark and might be adverse to the identification and one of a kind man or woman of that trademark. Such emblems can't be registered.

A trademark may be in comparison retaining in thoughts three criteria Identity among the symptoms and symptoms main to absolute safety beneathneath Article 8(1)(a) EUTMR if the products and/or offerings also are identical. A locating of similarity (or identity) ends in the hole of the exam on probability of misunderstanding according with Article 8(1)(b) EUTMR. The locating of dissimilarity in all 3 elements excludes the probability of misunderstanding. There isn't anyt any want to take a look at similarly conditions of Article 8(1)(b) EUTMR[8] While

¹ <http://ipindia.nic.in/writereaddata/Portal/ev/TM-ACT-1999.html>

² <https://pt.scribd.com/document/211609841/Management-Articles-8-1>

figuring out the probability of misunderstanding, EU continues in thoughts the worldwide impact. If globally the disputed mark may be perceived as originating from the authentic mark's undertaking, absolute safety may be afforded to the authentic mark. While evaluating the marks, a precondition for figuring out probability of misunderstanding is lifestyles of similarity withinside the identities. Dissimilarity of symptoms and symptoms will placed a prevent to the investigation. Whether a probability of misunderstanding exists relies upon on an evaluation of numerous interdependent factors, including similarity of the products and offerings, the applicable public, similarity of the symptoms and symptoms, deliberating their special and dominant elements the individuality of the sooner mark.

The guidelines of similarity among marks had been advanced over time on the idea of the well known Parker J case. The similarity among the marks is as follows:

1. When evaluating this point, the man or woman with common intelligence is considered.
2. The concept in the back of the 2 marks need to be considered whilst evaluating the general that means of the marks, their visible or phonetic resemblance, and, maximum significantly, they could create confusion amongst the overall public.
3. When evaluating the product, the trademark need to be taken as an entire and now no longer as a part of the trademark.
4. There isn't any want for a radical evaluation or letter via way of means of letter.

Important Cases Concerning the Judicial view withinside the count number of Deceptive Similarity

The doctrine of misleading similarity is broadly used withinside the Judicial Courts because the topics of Trademark Infringement. Trademark performs a important significance in a enterprise and its goodwill of excessive want for protective the trademark from being misused and infringed. Judiciary has taken an hobby withinside the topics of Intellectual Property Rights and its principles. The judiciary has additionally appeared into the problem after the issues has aroused concerning the misleading similarity³. The hints were furnished via way of means of the judicial choices so as to make adjudication of instances of trademark infringement a great deal smoother. It is obvious from the instances as a few mentioned under that the courts are going past the literal meanings of the law to offer justice and safeguarding the rights of the investors and protective the pursuits of the clients as well. count number of Deceptive Similarity

³ <https://corpbiz.io/learning/understand-briefly-about-timeline-for-trademark-registration-process-in-india/>

- Case:- M/S Lakme Ltd. v. M/S Subhash Trading⁴, In this count number, the plaintiff turned into a vendor of beauty merchandise beneathneath the trademark call “Lakme” and the defendant turned into additionally promoting the same merchandise beneathneath the logo call of “LikeMe”. The case of trademark infringement turned into filed via way of means of the plaintiff. The High Court held that the names have now no longer been in a class of misleading similarity. These each are separate marks with distinction withinside the spelling and its look.
- Case: – SM Dyechem Ltd. v. Cadbury (India) Ltd, In this count number, the plaintiff has commenced a enterprise of promoting wafers and chips beneathneath the trademark call “PIKNIK”. Later at the defendant has additionally commenced enterprise of sweets beneathneath the logo call of “PICNIC”. A fit turned into filed alleging trademark infringement has been done. The Court held that the logos have now no longer been in a class of misleading similarity as they may be one of a kind in look and has one of a kind composition of words.
- Case:- Cadila Health Care Ltd. v. Cadila Pharmaceutical Ltd, In this count number the Hon’ble Supreme Court has held sure hints for an adjudication of topics associated with misleading similarity in logos. In this precise count number, the events of the case had been the successors of a Cadila group. The dispute has arisen on an difficulty of promoting of the drugs via way of means of a defendant beneathneath the call “Falcitab” which turned into very just like the call of the drugs that has been synthetic via way of means of the plaintiff additionally beneathneath the call “Falcigo”. Both those capsules had been used to treatment the identical disorder. Therefore, the rivalry turned into raised that the defendant’s logo call is growing the confusion many of the clients. The injunction turned into pleaded via way of means of a plaintiff. As in defence, the defendant has claimed that the prefix “Falci” has been derived from a call of the disorder this is Falcipharam malaria. The courtroom docket has found that due to a varied populace withinside the u . s . an infrastructure of the clinical career isn't always so wide, so there may be possibilities of clinical negligence. However, it's far crucial that confusion of logos ought to be strictly averted in case of prescribed drugs and capsules. Therefore, the Court held that whilst naming the clinical merchandise, one ought to take greater precaution and care. The names of the logo, therefore, being phonetically comparable and could quantity to deceptively comparable.
- Case:- M/S Allied Blenders and Distillers Pvt. Ltd. v. Govind Yadav & Anr In this count number, the plaintiff claimed that the defendant’s trademark “Fauji” has faulty misleading similarity because the plaintiff’s has “Officer’s Choice”. The declare has been made at the floor of similarity of an concept in making of the logos as a word “Fauji” this means that a navy officer in Hindi translation. However, each the events are withinside the enterprise of alcoholic beverages. Further, packaging of each the bottles

⁴ 2011(46)PTC 343 (DEL.)

turned into additionally identical⁵. The exchange get dressed performs a substantial position in determining the instances of trademark infringement. In this count number, the courtroom docket has held that there's no misleading similarity among the logos "Officer's Choice" and "Fauji". Therefore the trademark infringement fit case turned into dismissed.

- Case of Montblanc Simplo-GMBH v New Delhi Stationery Mart⁶, it was held that because the marks that had been imagined to be same had been utilized in appreciate to same goods, it's miles then vital to decide whether or not use of such mark could motive confusion withinside the minds of popular public. It isn't vital to show real case of harm of bewilderment; organising chance of bewilderment is sufficient⁷. The Trademarks Act does now no longer especially prescribe any standards to determine the scope and applicability of 'misleading similarity' in a case. But, there are numerous judicial selections which have been handed through the years which have helped offer positive framework or ideas to decide the equal and to apprehend wider interpretation of the term 'misleading similarity'.

Conclusion

Trademarks play a important position in creating a logo call famous and goodwill of any enterprise. Not simplest it does assist in growing the logo cost however additionally it aids in producing the revenue. Being such crucial, the trademark is liable to getting infringed or misused. One such manner of trademark is making "deceptively comparable" logos. Hence keep away from misleading similarity and check in your trademark with an precise call⁸.

M/S Biofarma v. Sanjay clinical Stores (3) laid down different factors that might be taken into consideration whilst figuring out misleading similarity:

- The nature of the marks;
- The percentage of resemblance among the marks ;
- The nature of the products in admire of which they may be used;
- The similarity withinside the nature, person and overall performance of the products of the rival traders;
- The magnificence of purchasers;
- The mode of buying the products;
- Any different surrounding circumstances.

Trademarks play an important function in developing a logo call famous and goodwill of any business. Not handiest does it resource in organizing the logo fee but it additionally enables in

⁵ <https://corpbiz.io/learning/concept-of-deceptive-similarity>

⁶ 1996 PTC(16)567

⁷ <https://www.legitquest.com/case/montblanc-simplo-gmbh-v-new-...>

⁸ <https://corpbiz.io/learning/concept-of-deceptive-similarity-in-trademarks/>

producing revenue. Being such important, the Trademark is unprotected from getting misused or infringed. One such manner of Trademark is making comparable misleading Trademarks. Therefore, to keep away from misleading similarity and check in your Trademark with a special call. Contact a professional or expert who will assist you with Trademark Registration.

