



Beyond Logos: Non-Traditional Trademarks and Their Legal Perspective

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Abstract

Trademarks have evolved beyond standard marks like names, logos, and symbols to include non-traditional forms such as colors, sounds, fragrances, shapes, and even motion. These marks, while unorthodox, have tremendous brand value and play an important role in modern marketing campaigns. While jurisdictions such as the United States and the European Union have made progress in recognizing and protecting such marks, India has taken a more cautious approach. This article examines the concept, categories, and legal recognition of non-traditional trademarks under Indian trademark law, focusing on pertinent decisions and statutory requirements. It also draws parallels with international procedures and emphasizes the difficulties that brand owners experience in registering and enforcing non-traditional trademarks in India. The study adopts a doctrinal and comparative legal approach, analysing statutory provisions, judicial decisions, and regulatory frameworks in India and internationally.

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Introduction

Trademarks, a type of intellectual property, play an important function in modern commerce by serving as markers of origin, ensuring consumers of the consistency and quality of the items or services linked with them. Traditionally, trademarks have been defined as visual signs (words, logos, names, numerals, symbols, and combinations thereof) that can be visually expressed and legally protected. However, during the last few decades, there has been a seismic shift in branding strategy, with businesses increasingly aiming to develop identity and brand equity through innovative and immersive customer involvement.

This phenomenon has accelerated the development of non-traditional trademarks (NTTs). Sound, aroma, color, form, taste, motion, and holographic signs are just a few examples of means of identification that go beyond traditional visual clues. The rise of digital media, multimedia advertising, and consumer psychology-focused marketing has accelerated this trend, making non-traditional identifiers not just conceivable but commercially necessary. For example, the characteristic three-note Intel jingle has garnered global recognition, while the lavender aroma used in sewing thread (In re Clarke, 1990) has been granted trademark protection in the United States ^[1].

In India, the Trade Marks Act of 1999 serves as the primary legal foundation for trademark registration and enforcement ^[2]. While Section 2(1)(zb) of the Act defines "trademark" broadly, its applicability has primarily been limited to traditional marks. The introduction of Trademark Rules, 2017, which included procedures for submitting sound marks in MP3 format, was a significant step forward. However, the entire approach to non-traditional trademarks is still developing, with difficulties in statutory interpretation, procedural deficiencies, and limited jurisprudential progress.

¹In re Clarke, 17 USPQ2d 1238 (TTAB 1990).

² Indian Trade Marks Act, 1999. (1999). Retrieved from <https://legislative.gov.in/sites/default/files/A1999-47.pdf>

This paper investigates the extent and difficulty of recognizing and defending non-traditional trademarks in India. This paper makes three contributions:

1. Doctrinal critique of India's NTT jurisprudence, highlighting inconsistencies in *Nokia Corporation v. Unknown* (sound marks) and *Colgate Palmolive v. Anchor* (color marks).
2. Comparative analysis of the U.S. (*Qualitex*), EU (*Louboutin*), and Australia (*Woolworths*) frameworks.
3. Reform roadmap, including draft amendments to the Trade Marks Rules, 2017, to accommodate sensory marks.

2. Understanding Non-Traditional Trademarks

Non-traditional trademarks (NTTs) represent an important expansion of the scope of intellectual property law beyond conventional visual symbols. They encapsulate a variety of sensory, auditory, and even dimensional characteristics that can serve as identifiers of goods or services, each playing a unique role in the marketplace. As branding continues to evolve in response to technological and cultural shifts, non-traditional trademarks have become vital tools for marketers, distinguishing products, and services in increasingly crowded global markets.

Non-traditional trademarks are typically categorized into the following types:

2.1. Sound Marks

Sound marks, often known as audible trademarks, are distinctive sound sequences used to identify and distinguish products or services. These marks are a powerful technique to create brand identification through audio, generating emotional connections with customers in ways that visual marks may not^[3]. The Intel jingle (the five-note musical sequence heard in Intel's television advertising) and the Yahoo yodel are two well-known sound marks. These sounds are intrinsically tied to the companies they represent, exhibiting the distinct commercial potential of auditory branding.

The Bombay High Court acknowledged sound marks in *Gorbatschow Wodka KG v. John Distilleries Ltd.* [(2011) Bom HC], even though its analysis did not go into detail on their distinctive qualities as auditory identifiers^[4]. Such instances have paved the way for the admission of sound marks, but they also highlight the disparities in court interpretation.

2.2. Color Marks

Color marks are trademarks that consist of a single hue or color combination that customers identify with a certain brand. These marks are often more difficult to register than other types of marks due to the inherent difficulties in demonstrating distinctiveness and the lack of universal agreement on what defines a "color" in the trademark context. Tiffany Blue, the specific shade of blue used by Tiffany & Co. for its jewellery boxes and packaging, is a well-known example of a color mark. Similarly, Cadbury Purple has become synonymous with the chocolate brand in India and around the world. However, the process of registering color

marks is laden with legal difficulties. In *Colgate Palmolive Co. v. Anchor Health & Beauty Care* [(2003) Del HC], the Delhi High Court recognized a color combination as a trademark after proving that it had acquired secondary significance via significant and long-term use^[5]. The Court emphasized that for a color mark to be registrable, it must be more than just ornamental or utilitarian; it must also be distinctively related to the goods in the minds of the consumer.

The Trademarks Act of 1999, Section 2(1)(zb), gives a broad definition of what constitutes a trademark but does not specifically address the registration of color marks^[6]. The lack of detailed guidelines has caused delays and difficulties in the registration procedure, leaving businesses with questions regarding the boundaries of color mark protection.

2.3. Shape Marks

Shape marks are the three-dimensional forms of a product or its packaging that are distinct enough to identify its origin. Iconic examples include the Coca-Cola bottle and the Toblerone chocolate bar, which have become well-known for their distinctive shapes that act as brand identities. Shape marks can also be applied to packaging, where the shape of the container, the arrangement of product items, or the packaging design itself serves as a trademark.

The Trade Marks Act of 1999 allows the registration of three-dimensional marks if they meet the criteria of distinctiveness, non-functionality, and non-obviousness. Section 2(1)(m) of the Act defines a "mark" as including "a shape," allowing for the eventual registration of such marks. However, real challenges remain in demonstrating that a shape does not have a useful purpose. For example, in *Gorbatschow Wodka KG v. John Distilleries Ltd.*, the Bombay High Court permitted the registration of a bottle shape that was deemed artistically different. However, shapes that are necessary for the function of the goods, such as the shape of a perfume bottle or a lightbulb, are exempt from protection^[7].

The problem is to discern between functional and non-functional shapes. As a result, identification of shape marks is still limited, and judicial consistency in interpreting the "distinctiveness" criteria has been weak.

2.4. Scent marks

Scent marks are among the unconventional and less understood types of non-traditional trademarks. A scent mark is a characteristic fragrance linked with a specific product or service that is used as a branding technique. Play-Doh's odor is an example of a fragrance mark that has gained prominence in the United States. In India, however, smell marks encounter major challenges in terms of pictorial depiction, as required by the Trademarks Act.

To be registered as a trademark, a smell must meet the following basic requirements: distinctiveness, non-functionality, and the capacity to identify the source of the goods. The fundamental issue with scent marks is their inability to create a good graphic depiction of the aroma. Internationally, the European Union has encountered comparable issues. In *Shield Mark BV v. Joost Kist* [(2003) ECJ], the European Court of Justice emphasized the

³ Hughes, J. (2020). Non-Traditional Marks: The Limits of Trademark Law. *Journal of Intellectual Property Law*, 27(1), 45-77.

⁴ *Gorbatschow Wodka KG v. John Distilleries Ltd.*, Notice of Motion No. 2369 of 2010 in Suit No. 3046 of 2010, Bombay High Court (2011).

⁵ *Colgate Palmolive Co. & Anr. v. Anchor Health & Beauty Care Pvt. Ltd.*, 2003 (27) PTC 478 (Del).

⁶ Indian Trade Marks Act, 1999. (1999). Retrieved from <https://legislative.gov.in/sites/default/files/A1999-47.pdf>

⁷ *Gorbatschow Wodka KG v. John Distilleries Ltd.*, Notice of Motion No. 2369 of 2010 in Suit No. 3046 of 2010, Bombay High Court (2011).

importance of a "clear and precise" pictorial representation for scent marks, but determined that scent marks do not meet the representation criterion of the Community Trademark Regulation^[8].

Given these problems, smell marks are not recognized under Indian trademark law, and there has been no specific legislative progress addressing their registration. As a result, India is behind in recognizing smell marks as a form of intellectual property.

2.5. Motion Marks

Motion marks are a series of moving graphics used to distinguish products or services. These are especially frequent in advertising and digital media, where the motion aspect draws attention or communicates a brand's identity. Motion marks can include animated logos, moving graphics, or sequences of movements that help define a product.

Motion marks, unlike regular trademarks, are essentially dynamic and require elaborate graphic representation, which complicates registration. Although some jurisdictions, such as the United States and the European Union, allow for the registration of motion marks, India has yet to establish a clear regulatory framework to accept them. Currently, there is no provision in Indian law for registering motion marks, and the procedural criteria are unclear.

Despite the lack of a formal system, international trends indicate that motion marks will acquire importance as digital and multimedia marketing become more common. For example, the USPTO (United States Patent and Trademark Office) has accepted various motion marks, including the animated E! logo, demonstrating the growing recognition of these marks in the worldwide branding landscape.

3. Legal Framework for Trademark Protection in India

According to Section 2(1)(zb) of the Trade Marks Act, 1999, a trademark is defined as a graphic mark that distinguishes one person's goods or services from another⁸.

The term "mark" is defined in Section 2(1)(m) to include "*a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging, or combination of colors, or any combination thereof*" (The Trade Marks Act of 1999)^[9].

This broad definition theoretically allows for the registration of non-traditional trademarks, including sound, shape, and color marks. The Trademark Rules of 2017, which require a sound mark to be presented in MP3 format combined with a graphical representation of the sound notation, aided the detection of sound marks even more.

However, obstacles persist, especially for non-visible signals such as odors and tastes. These marks do not have a globally acknowledged way of graphical depiction, which is still an essential condition under Indian law. This legal system, while broad in theory, has limitations in practice due to procedural and representational impediments.

4. Registration of Non-Traditional Trademarks in India

In India, the registration of non-traditional trademarks (NTTs) is guided by the Trade Marks Act, 1999 and the Trade Marks Rules, 2017. The process of registering NTTs in India

has evolved over time but continues to face significant challenges due to a lack of clarity in the legislation and administrative procedures^[10]. While the registration of traditional trademarks (such as word marks and logo marks) is relatively straightforward, the registration of NTTs, such as sound, color, shape, scent, and motion marks, presents unique difficulties due to the limitations of current law and the absence of a dedicated procedural framework.

4.1. Registration of Sound Marks

The registration of sound marks in India was introduced with the Trade Marks Rules, 2017. Sound marks can now be submitted for registration, but the process remains restrictive and complicated. As per Rule 26(5) of the Trade Marks Rules, 2017, sound marks must be submitted in an MP3 format with a graphical representation. The graphical representation typically takes the form of a sound wave or musical notation, which must clearly represent the sound for the application to be considered.

India's first sound mark, the Yahoo yodel, was registered in 2008, marks a significant step forward in the country's trademark law. Since then, other sound marks, such as Intel's five-note jingle, have also been considered for registration. However, the process remains limited to only a few categories of sound marks, with most sound marks still facing hurdles in registration^[11].

4.2. Registration of Color Marks

Color mark registration in India is more complex, and the mark must have earned distinctiveness via commercial use. The Indian Trade Marks Act of 1999 does not allow the registration of a single color as a trademark unless it can be demonstrated that the color has gained secondary meaning or uniqueness over time. In *Colgate Palmolive v. Anchor Health & Beauty Care* [(2003) Del HC], the Delhi High Court recognized a color combination as a trademark since it had become recognizable over time. Colgate's toothpaste packaging's red and white color scheme was deemed distinctive enough to warrant trademark protection. However, registering a single color (such as Cadbury Purple) without demonstrating acquired uniqueness is more challenging^[12].

4.3. Registration of Shape Marks

The Trade Marks Act of 1999 explicitly covers the registration of shape marks in India. Section 2(1)(m) of the Act incorporates three-dimensional shapes in the definition of a trademark. However, for a shape to be registrable, it must not be one that is inherent in the items or required to produce a technological outcome.

For example, the Coca-Cola bottle form was successfully registered as a trademark in India since it was deemed distinctive and not influenced by the nature of the product. Similarly, Toblerone chocolate's triangle shape has been registered as a trademark.

4.4 Registration of Scent Marks

India's Trade Marks Act of 1999 does not currently include a provision for the registration of fragrance marks. The

⁸ *Shield Mark BV v. Joost Kist* (Case C-283/01), ECJ.

⁹ Indian Trade Marks Act, 1999. (1999). Retrieved from <https://legislative.gov.in/sites/default/files/A1999-47.pdf>

¹⁰ Trade Marks Rules, 2017. (2017). Ministry of Commerce and Industry, Government of India.

¹¹ Watal, J. (2001). *Intellectual Property Rights in the WTO and Developing Countries*. Springer.

¹² *Colgate Palmolive Co. & Anr. V Anchor Health & Beauty Care Pvt. Ltd.*, 2003 (27) PTC 478 (Del).

fundamental reason for this is the difficulty of depicting a fragrance graphically. In contrast to sound or color, a scent is difficult to express in a way that fits the legal criteria for pictorial representation.

4.5. Registration of Motion Marks

Motion marks are trademarks that feature moving graphics or animations. While motion marks are increasingly acknowledged in other jurisdictions, such as the European Union, India does not yet have a specialized mechanism for registering motion marks.

While Rule 26(5) of the Trade Marks Rules, 2017 permits the registration of sound marks in MP3 format, there is currently no provision for submitting motion marks in the same manner^[13]. As a result, firms looking to register motion marks in India face a complicated and ambiguous process.

5. Protection of Non-Traditional Trademarks under Indian Law

The protection of non-traditional trademarks (NTTs) under Indian law has improved, although it is still limited due to a lack of express legislative and procedural restrictions. While Indian courts have acknowledged the distinctiveness of nontraditional marks in some cases, their protection is inconsistent and without clear statutory foundation.

This section will look at how NTTs are protected under the existing Indian legal framework, with a focus on judicial interpretations, administrative practices, and the issues associated with maintaining effective protection.

5.1. Judicial Recognition of Non-Traditional Trademarks

Indian courts have shown a growing willingness to acknowledge the distinctiveness of non-traditional trademarks, but judicial decisions have frequently been inconsistent, particularly for marks that cannot be depicted graphically. Because there is no special legal structure for non-traditional marks, courts must interpret larger provisions of the Trademarks Act of 1999 to protect NTTs.

In *Nokia Corporation v. Unknown* [(2002) Del HC]: This landmark case concerned the recognition of Nokia's characteristic music, also known as the Nokia tune. The Delhi High Court acknowledged that sound marks might be used as a distinguishing feature for products and services. The court decided that the Nokia tune's distinctiveness had been demonstrated due to widespread familiarity and consumer association with the brand, establishing a precedent for sound mark registration^[14].

In *Gorbatschow Wodka KG v. John Distilleries Ltd.* [(2011) Bom HC]: This case dealt with the registration of a three-dimensional form mark—the bottle design for Gorbatschow Vodka. The Bombay High Court held that even if a shape was functional, it could still be registered as a trademark if it was distinctive and non-functional. This case established that shape marks, if not mandated by function, can be registered and protected in India^[15].

While these examples demonstrate advances in the recognition of non-traditional marks, they also indicate inconsistencies and uncertainties in the legal approach. Indian courts have taken a case-by-case approach rather than establishing a clear, unified criteria for non-traditional

trademarks.

5.2. Challenges in Protecting Non-Traditional Trademarks

Despite positive judicial precedents, the protection of non-traditional trademarks in India faces several significant challenges:

- **Inadequate Statutory Framework:** The Trade Marks Act, 1999 does not particularly cover non-traditional marks. Section 2(1)(zb) defines a trademark broadly but does not explicitly categorize sound, fragrance, motion, or shape marks. This lack of statutory clarity causes difficulty throughout the examination process because non-traditional marks must be analysed using a broad framework that is not designed to cope with their distinct qualities.
- **Lack of Procedural Mechanism:** As mentioned in previous sections, there are substantial gaps in the procedural methods for registering nontraditional trademarks. For example, while sound marks can be sent in MP3 format, there is no established procedure for motion or fragrance marks. This poses challenges for businesses to defend unique and distinctive branding methods that do not fit within established trademark categories.
- **Graphical Representation Requirement:** One of the biggest impediments to registering non-traditional trademarks in India is the requirement for graphical representation. Non-traditional marks, such as odors or motions, cannot be visually depicted in a manner that meets legal requirements. The lack of a precise structure for representing these marks frequently results in inconsistent determinations by the Trademark Registry.
- **Proof of Distinctiveness:** Another problem in safeguarding NTTs is the high standard for demonstrating distinctiveness or secondary meaning. Non-traditional marks frequently struggle to create distinctiveness, particularly in regions where consumers have yet to identify the mark with a specific brand. This is especially problematic for marks that have not been in use for a long time and lack widespread consumer identification.

6. International Approaches to Non-Traditional Trademarks

The protection of non-traditional trademarks (NTTs) differs greatly among jurisdictions. While some nations have well-established frameworks for registering and protecting these marks, others are still adapting their systems to reflect the growing importance of non-traditional marks in branding. This section examines the practices of three significant jurisdictions: the United States, the European Union, and Australia, and considers how India might benefit from their experiences to strengthen its own trademark system.

6.1. United States: A Pioneering Jurisdiction for Non-Traditional Marks

The US has been a leader in protecting non-traditional trademarks due to its liberal approach to the Lanham Act (15 U.S.C. § 1051 et seq.). The United States Patent and Trademark Office (USPTO) has acknowledged that non-

¹³ Trade Marks Rules, 2017. (2017). Ministry of Commerce and Industry, Government of India.

¹⁴ *Nokia Corporation v. Unknown*, CS(OS) No. 1685/2002, Delhi High Court (2002).

¹⁵ *Gorbatschow Wodka KG v. John Distilleries Ltd.*, Notice of Motion No. 2369 of 2010 in Suit No. 3046 of 2010, Bombay High Court (2011).

traditional trademarks, such as sound, aroma, and color marks, can function as identifiers of origin if they have gained distinctiveness^[16].

In *Qualitex Co. v. Jacobson Products Co.*, [514 U.S. 159 (1995)], the United States Supreme Court affirmed the validity of a color mark (the green-gold color of Qualitex press pads). Similarly, sound marks like the MGM lion's roar and NBC chimes have been registered successfully^[17]. Color marks have been recognized by US courts as long as they have secondary meaning. The Qualitex instance revealed that consumers could record color alone as a source identifier. Other examples include Tiffany Blue, a color combination employed by the luxury business Tiffany & Co., which is a well-known example of a color mark that has become unique via widespread use. Motion marks, such as animated logos, have also been recognized by the United States legal system. The Walt Disney Company has successfully registered the animated logo as a motion mark. The USPTO allows applicants to register these marks, but they must give a clear portrayal of the motion in video format^[18].

Implications For India: The USPTO's approach to non-traditional marks is both thorough and flexible. India could benefit from similar methods by establishing clear criteria for the registration of non-traditional marks. Introducing methods to handle motion and fragrance marks, as well as explicit procedures for establishing distinctiveness, will assist Indian enterprises streamline their operations.

6.2. European Union: A Standard for Non-Traditional Trademarks

The European Union has built one of the most robust systems for protecting non-traditional trademarks through the European Union Intellectual Property Office (EUIPO). The EU's approach to non-conventional trademarks is heavily impacted by the requirement for clear and exact representations that go beyond typical graphical portrayals. The EU was one of the first authorities to recognize sound marks. In the *Sieckmann case* [C-273/00], the European Court of Justice (ECJ) determined that for a mark to be registrable, it must be "clear, precise, self-contained, easily accessible, intelligible, durable, and objective."^[19] This decision has influenced the EU's approach to non-traditional marks, such as sound marks, which must be conveyed by musical scores or sound recordings.

Louboutin [Case C-324/08] was concerned with the preservation of a particular red color seen on the soles of high-heeled shoes. The court determined that color marks might be protected if they had gained distinctiveness^[20]. However, the threshold for demonstrating distinctiveness is especially rigorous, including considerable proof of customer relationship.

The EUIPO requirements state that motion marks must be properly conveyed, generally through video files that depict the motion, as well as extensive descriptions. One famous

example is the registration of the T-Mobile animated logo^[21]. In *Shield Mark BV v. Joost Kist* [Case C-283/01], the European Court of Justice addressed the question of graphical depiction of scent marks, ruling that smells might be registered if they were represented with sufficient clarity, such as chemical formulas or descriptions^[22].

Implications For India: The EU's approach establishes a complete framework for nontraditional trademarks. India might adopt the EU's emphasis on clear, exact representations, particularly for fragrance and motion marks. Furthermore, India might establish more-strict standards for showing distinctiveness and provide clear rules for representing these marks, comparable to the EU's methods for sound and motion marks.

6.3. Australia: A Progressive Approach to Non-Traditional Marks

The Trade Marks Act of 1995 governs Australia's trademark system, which includes non-traditional marks such as color, shape, and aroma^[23]. The IP Australia office has created an inclusive system that allows the registration of a wide range of non-traditional marks if they meet certain criteria for distinctiveness and graphical representation.

Australia has acknowledged color marks, such as the registration of the Cadbury Purple color, which IP Australia has recognized as a trademark. The registration process for color marks in Australia is identical to that in the United States and the European Union, in that the color must be demonstrated to have acquired distinctiveness. A notable example is Cadbury's purple color for its chocolate wrappers, which has been subject to legal scrutiny in the UK (*Société des Produits Nestlé S.A. v. Cadbury UK Ltd*^[24]).

Shape marks can be registered in Australia as long as they are not required for the product's functionality. The shapes of the Coca-Cola bottle have been successfully registered as trademarks, indicating that 3D shapes are recognized as legal trademarks in Australia. Australia is one of the few countries that recognizes smell marks as registrable trademarks. In *Re Woolworths Ltd.*, [1999], the Federal Court of Australia determined that a specific scent might be registered as a trademark if it was distinctive and capable of distinguishing the goods. IP Australia has created rules for registering motion marks, with a focus on distinct visual representations^[25]. Applicants must supply video recordings that accurately portray the motion of the mark.

Implications For India: Australia's approach to non-traditional trademarks is very important to India, notably in the case of smell marks, which are not yet fully recognized under Indian law. By taking a similar approach to form marks and scent marks, India might make great progress toward giving comprehensive protection for non-traditional trademarks. The Australian system also provides a model for addressing graphical representation issues for motion marks.

7. Challenges in the Indian Context

¹⁶ U.S. Trademark Act (Lanham Act), 15 U.S.C. §§ 1051 et seq.

¹⁷ *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159 (1995).

¹⁸ Kumar, A. (2023). The Challenges of Non-Conventional Trademarks in India. *Indian Journal of Intellectual Property*, 9(2), 112–130.

¹⁹ *Sieckmann v. Deutsches Patent- und Markenamt* (C-273/00).

²⁰ *Louboutin v. Van Haren*, ECJ (2012).

²¹ EUIPO Guidelines for Examination (2017).

²² *Shield Mark BV v. Joost Kist* (Case C-283/01), ECJ.

²³ Australian Trade Marks Act, 1995 (Cth). Retrieved from <https://www.legislation.gov.au/Details/C2023C00124>

²⁴ *Société des Produits Nestlé S.A. v. Cadbury UK Ltd.*, [2012] EWCA Civ 1144

²⁵ *Re Woolworths Ltd.*, Federal Court of Australia (1999).

While non-traditional trademarks (NTTs) have enormous commercial potential, their protection under Indian law presents numerous obstacles. These obstacles are generally caused by deficiencies in the legal framework, procedural issues, and a lack of experience among trademark examiners. Addressing these issues is critical for increasing the effectiveness of trademark protection and allowing firms to use NTTs as unique branding tools.

7.1. Legislative Gaps

One of the key issues is that the Trade Marks Act of 1999 lacks protections for non-traditional marks. While the Act broadens the scope of a trademark, it does not specifically recognize NTTs like sound, form, fragrance, and motion marks. As a result, these marks are frequently considered under broad terms that may not be appropriate for their qualities.

For example, the graphical representation requirement under Section 2(1)(zb) of the Trade Marks Act creates a major obstacle for marks that cannot be effectively reproduced in standard graphical formats. This is especially challenging for aroma, motion, and taste signals, which contradict traditional visual representation. Although the Trade Marks Rules of 2017 provide some rules for sound marks (for example, submission in MP3 format), the lack of complete laws for other types of non-traditional marks impedes their protection.

7.2. Graphical Representation

Another significant obstacle is the demand for graphical representation of a mark, which has proven especially difficult for non-traditional trademarks. Sound, scent, motion, and other sensory Marks transcend traditional representation, posing a challenge in their registration. For example, to appropriately depict a smell mark, a thorough description or chemical formula is required, which many applicants find difficult to navigate. Similarly, motion marks necessitate video or animated representations, which are not always straightforward to convey in the format specified by the Trademark Registry.

7.3. Distinctiveness

Proof of distinctiveness for non-traditional marks is another key difficulty in India. To be eligible for registration, an NTT must be unique and capable of identifying the origin of goods or services. However, demonstrating distinctiveness is often challenging, especially for marks that have not been used for a long time or in specific geographic regions.

In the case of color marks, demonstrating that a specific color has acquired distinctiveness via extended usage in commerce can be a time-consuming and costly task. Similarly, sound and shape marks confront challenges in establishing their distinctiveness and consumer awareness, particularly when they are not well-known or used in the market.

7.4. Lack of Specialized Examiner Training

India's Trademark Registry confronts difficulties in examining non-traditional trademarks due to a lack of specific training for examiners. Non-traditional trademarks necessitate a comprehension of complicated branding tactics, consumer psychology, and sensory aspects, which many trademark examiners may not possess.

The lack of experience in evaluating non-traditional

trademarks frequently leads to inconsistent decision-making, with similar marks being treated differently due to subjective interpretation. This lack of uniformity complicates the registration procedure and causes delays in protecting certain trademarks.

7.5. Limited Judicial Precedents

Another concern is India's limited court precedents for non-traditional trademarks. While some courts have recognized the significance of non-traditional marks, such as the Nokia melody in the Nokia Corporation case, there are few examples that provide specific advice on how non-traditional marks should be treated under Indian law^[26]. The absence of a well-developed body of case law makes it difficult for enterprises to assess the strength and enforceability of their NTTs in India.

Furthermore, the legal interpretation of how distinctiveness is to be shown is ambiguous, especially for new or little used marks. The lack of clarity leads to inconsistent decisions and adds confusion to the protection of non-traditional trademarks in India.

8. Recommendations for Reform

To address the challenges outlined above, several reforms are necessary to improve the protection of non-traditional trademarks in India. These reforms would help align Indian trademark law with global standards, create a more predictable legal environment, and encourage innovation in branding.

8.1. Legislative Amendment

The most necessary reform is an amendment to the Trade Marks Act of 1999 that specifically recognizes and defines non-traditional trademarks. This could contain provisions addressing the distinct properties of sound, scent, form, motion, and other sensory marks. The inclusion of non-traditional trademarks as separate classes in the Act would give more specific standards for their registration and protection.

Additionally, the definition of a trademark should be expanded to include marks that are difficult to depict graphically. Amend Section 2(1)(m) to explicitly include:

"(vii) sounds, scents, tastes, motions, holograms, and other non-visible marks capable of distinguishing goods/services."

This would help to address the issue of graphical representation, which is a key impediment to the registration of non-traditional marks.

8.2. Procedural Clarity

There is a need for more specific procedural standards for registering non-traditional trademarks, especially ones that are difficult to portray graphically. For example, the rules for submitting motion marks should be revised to include more precise instructions for uploading video clips or animations. Similarly, criteria for submitting fragrance marks should be devised, stating what kind of descriptions or chemical formulas are necessary.

The 2017 Trademark Rules should be updated to include provisions for scent marks, taste marks, and motion marks, as well as clear instructions for registering such marks. Providing thorough procedural instructions would speed up the registration process and make it easier for firms to protect

²⁶ Nokia Corporation v. Unknown, CS(OS) No. 1685/2002, Delhi High Court (2002).

their non-traditional trademarks.

8.3. Specialized Training for Examiners

To address the issue of uneven decision-making, the Trademark Registry should fund specific training for examiners of non-traditional marks. This training should include the different forms of non-traditional marks, the criteria for distinctiveness, and the difficulties associated with evaluating these marks.

Furthermore, the Registry may consider forming a specific panel of specialists with understanding in non-traditional trademarks, such as sensory marketing experts or branding professionals, to help with the evaluation of such marks. This would help to ensure that non-traditional trademarks are appraised correctly and fairly.

8.4. Judicial Guidance

Traditional trademarks. Landmark decisions that establish clear criteria for the registration and enforcement of NTTs would provide much-needed clarity to both businesses and trademark examiners. Higher courts, particularly the Supreme Court and the High Courts, should concentrate on instances involving non-traditional trademarks and make clear, consistent verdicts on essential issues concerning their protection, such as distinctiveness and graphic representation. Establishing such precedents would contribute to a more predictable legal environment for businesses.

8.5. Adoption of International Best Practices

India can also benefit from implementing worldwide best practices from countries such as the United States, the European Union, and Australia. These regions have already established extensive frameworks for the protection of non-traditional trademarks, and India can draw on their experiences to improve its own system.

India might begin by modifying its trademark examination procedures to accord with international standards. This would entail establishing more flexible rules for portraying non-traditional marks and setting clearer criteria for demonstrating distinctiveness. Furthermore, India may explore developing an online database to track the registration and protection of non-traditional marks, like the EUIPO's online tools.

8.6. Public Awareness Campaigns

To promote the use and registration of non-traditional trademarks, the Government of India should establish awareness programs aimed at businesses, legal experts, and the public. These efforts should emphasize the value of non-traditional trademarks in modern branding and teach firms how to secure them.

Such advertisements should also highlight the advantages of filing non-traditional trademarks and outline the stages required in the registration process. By increasing awareness, India might develop a more innovative and competitive branding scene.

9. Conclusion

The expansion of trademarks beyond basic visual indicators is a fundamental change in the modern branding landscape. Non-traditional trademarks (NTTs), which include sound, color, form, scent, and motion marks, provide firms with unique options for establishing brand and consumer memory.

While the United States, the European Union, and Australia have deliberately altered their legal systems to accommodate these unorthodox forms, India's legal system is still in its early stages.

Although the Indian Trade Marks Act of 1999 gives a broad definition of trademarks, the absence of express statutory recognition and procedural clarity for NTTs has resulted in ambiguity in their registration and enforcement. Judicial initiatives, while encouraging, have not yet resulted in consistent or comprehensive jurisprudence. Furthermore, the strict demand for graphical representation continues to impede the perception of certain sensory marks, such as scents and motions.

This article emphasizes the critical need for India to modernize its trademark laws through targeted legislative revisions, procedural reforms, and administrative capacity building. India may achieve a more inclusive and progressive trademark policy by including clear statutory provisions, increasing representative criteria, and harmonizing examiner training with global best practices.

Recognizing and safeguarding non-traditional trademarks is more than just legal reform; it is a strategic need for empowering Indian enterprises in a competitive global market. Strengthening the legal infrastructure for NTTs will encourage innovation, protect brand equity, and position India as a leader in the rapidly changing field of intellectual property law.

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