

TRADE MARKS ACT, 1999

[Act No. 47 of Year 1999 dated 30th. December, 1999]

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An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows: -

CHAPTER I: PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Trade Marks Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

PROVIDED that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation

(1) In this Act, unless the context otherwise requires, -

(a) "Appellate Board" means the Appellate Board established under section 83;

(b) "assignment" means an assignment in writing by act of the parties concerned;

(c) "associated trade marks" means a trade marks deemed to be, or required to be, registered as associated trade marks under this Act;

(d) "Bench" means a Bench of the Appellate Board;

(e) "certification trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;

(f) "Chairman" means the Chairman of the Appellate Board;

(g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932) which is the proprietor of the mark from those of others;

(h) "deceptively similar"-A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;

(i) "false trade description" means-

(I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied". or

(II) any alteration of trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect; or

(III) any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or metres than there are contained therein standard yards or standard metres; or

(IV) any marks or arrangement or combination thereof when applied -

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or

(V) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials -

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorised the use of such name or initials; and

(c) is or are either the name or initials of a fictitious person or some person not bona fide carrying on business in connection with such goods or services,

and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

(j) "goods" means anything which is the subject of trade or manufacture;

(k) "Judicial Member" means a Member of the Appellate Board appointed as such under this Act, and includes the Chairman and the Vice-Chairman;

(l) "limitations" (with its grammatical variations) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode or area of use within India or outside India;

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;

(n) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman and the Vice-Chairman;

(o) "name" includes any abbreviation of a name;

(p) "notify" means to notify in the Trade Mark Journal published by the Registrar;

(q) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(r) "permitted use", in relation to a registered trade mark, means the use of trade mark -

(i) by a registered user of the trade mark in relation to goods or services-

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) for which he is registered as registered user; and

(d) which complies with any conditions or limitations to which the registration of registered user is subject; or

(ii) by a person other than the registered proprietor and registered user in relation to goods or services -

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) by consent of such registered proprietor in a written agreement; and

(d) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject;

(s) "prescribed" means prescribed by rules made under this Act;

(t) "register" means the Register of Trade Marks referred to in sub-section (1) of section 6;

(u) "registered" (with its grammatical variations) means registered under this Act;

(v) "registered proprietor", in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;

(w) "registered trade mark" means a trade mark which is actually on the register and remaining in force;

(x) "registered user" means a person who is for the time being registered as such under section 49;

(y) "Registrar" means the Registrar of Trade Marks referred to in section 3;

(z) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(za) "trade description" means any description, statement or other indication, direct or indirect,-

(i) as to the number, quantity, measure, gauge or weight of any goods ; or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade; or

(iii) as to fitness for the purpose, strength, performance or behaviour of any goods, being "drug" as defined in the Drugs and Cosmetics Act, 1940, or "food" as defined in the Prevention of Food Adulteration Act, 1954; or

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided, as the case may be; or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided; or

(vi) as to the mode of manufacture or producing any goods or providing services; or

(vii) as to the material of which any goods are composed; or

(viii) as to any goods being the subject of an existing patent, privilege or copyright,

and includes -

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters;

(b) the description as to any imported goods contained in any bill of entry or shipping bill;

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters;

(zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

(zc) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(zd) "Technical Member" means a Member who is not a Judicial Member;

(ze) "tribunal" means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is pending;

(zf) "Vice-Chairman" means a Vice-Chairman of the Appellate Board;

(zg) "well-known trade mark", in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

(2) In this Act, unless the context otherwise requires, any reference-

(a) to "trade mark" shall include reference to "collective mark" or "certification trade mark";

(b) to the use of a mark shall be construed as a reference to the use of printed or other visual representation of the mark;

(c) to the use of a mark, -

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Trade Marks Registry shall be construed as including a reference to any office of the Trade Marks Registry.

(3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.

(4) For the purposes of this Act, "existing registered trade mark" means a trade mark registered under the Trade and Merchandise Marks Act, 1958 immediately before the commencement of this Act.

CHAPTER II: THE REGISTER AND CONDITIONS FOR REGISTRATION

3. Appointment of Registrar and other officers

(1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act as he may from time to time authorise them to discharge.

4. Power of Registrar to withdraw or transfer cases, etc.

Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

5. Trade Marks Registry and offices thereof

(1) For the purposes of this Act, there shall be a trade marks registry and the Trade Marks Registry established under the Trade and Merchandise Marks Act, 1958 shall be the Trade Marks Registry under this Act.

(2) The head office of the Trade Marks Registry shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of trade marks, there may be established at such places as the Central Government may think fit branch offices of the Trade Marks Registry.

(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Trade Marks Registry may exercise its functions.

(4) There shall be a seal of the Trade Marks Registry.

6. The Register of Trade Marks

(1) For the purposes of this Act, a record called the Register of Trade Marks shall be kept at the head office of the Trade Marks Registry, wherein shall be entered all registered trade marks with the names, addresses and description of the proprietors, notifications of assignment and transmissions, the names, addresses and descriptions of registered users, conditions, limitations and such other matter relating to registered trade marks as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer under sub-section (2) any reference in this Act to entry in the register shall be construed as the reference to any entry as maintained on computer or in any other electronic form.

(4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

(5) The register shall be kept under the control and management of the Registrar.

(6) There shall be kept at each branch office of the Trade Marks Registry a copy of the register and such of the other documents mentioned in section 148 as the Central Government may, by notification in the Official Gazette, direct.

(7) The Register of Trade Marks, both Part A and Part B, existing at the commencements of this Act, shall be incorporated in and form part of the register under this Act.

7. Classification of goods and services

(1) The Registrar shall classify goods and services, as far as may be, in accordance with the International classification of goods and services for the purposes of registration of trade marks.

(2) Any question arising as to the class within which any goods or services falls shall be determined by the Registrar whose decision shall be final.

8. Publication of alphabetical index

(1) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods and services referred to in section 7.

(2) Where any goods or services are not specified in the alphabetical index