



Preserving Authenticity in Green Trademark: A Study of Green Trademarks and Their Legal Challenges in India

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ABSTRACT:

Green marketing, which promotes environmentally friendly products, has seen significant growth as concerns over climate change and sustainability have intensified. In India, consumer awareness regarding environmental issues has increased, leading to a greater demand for eco-friendly products and services. As a result, green trademarks have emerged as a way for businesses to showcase their commitment to sustainability. However, this rise has also led to challenges such as greenwashing—where companies make false environmental claims to attract eco-conscious consumers and the risk of genericization, where commonly used environmental terms lose their distinctiveness, threatening trademark protection.

Despite the Indian Trademark Act, 1999, allowing for the registration of green trademarks, the issues of misleading claims and loss of brand distinctiveness persist, undermining the effectiveness of green trademarks in promoting sustainability. The purpose of the research aims to analyze these issues within the context of Indian trademark law, exploring the role of regulatory frameworks in protecting both consumers and businesses. The research follows a qualitative methodology by examining legal frameworks, published research and known websites. By examining global practices and regulatory approaches, this paper aims to provide actionable recommendations to improve the effectiveness of green trademarks, ensuring they fulfill their intended role in promoting sustainable consumer behavior while safeguarding brand integrity.

Key words: Green trademark, Green washing, Generalization, Eco friendly

BACKGROUND:

Over the past few decades, green consumerism has risen, with buyers increasingly aware of their impact on environmental protection. The reason for evolving this eco-friendly product is for the sake of climate change and its impact. In our country According to the Bain report¹, sustainability is a growing concern for Indian consumers, 20% of consumers in India are environment and socially conscious that has motivated the Indian market and makes priority over these products. So the increasing importance of environmental sustainability has led to the rise of green marketing, with companies adopting eco-friendly trademarks to promote their products. These marks help distinguish genuine environmental efforts from superficial claims—a phenomenon known as "greenwashing." The rise of greenwashing and potential overgeneralization of eco-terms erodes consumer trust, impacts purchasing behaviors, and challenges the legitimacy of green trademarks. This study aims to explore how current legal frameworks in India and globally address these concerns. While Indian law allows for green marks within its trademark framework, achieving distinctiveness and authenticity remains a challenge. This paper explores the need for Effective regulation and strengthened certification are vital to protecting green trademarks, preserving brand identity, and promoting sustainability.

LITERATURE REVIEW:

Green marketing promotes environmentally safe products, addressing growing concerns about pollution and global warming. However, greenwashing misleads consumers by falsely portraying environmental responsibility². Companies often employ greenwashing tactics, such as misleading advertising or superficial environmental claims, while failing to make meaningful eco-friendly changes, undermining genuine sustainability efforts. Genuine sustainability practices and stronger regulatory frameworks are needed to protect consumers, ensuring authenticity in green branding and marketing³. The article⁴ explores the challenges posed by genericism and genericide in trademark law. It examines the impact of terms becoming generic through

¹ Times of India (June 6, 2022), <http://timesofindia.indiatimes.com/articleshow/92030126.cms>.

² Ramesh Kumar & Rakesh Kumar, Green Marketing: Reality or Greenwashing, 1(5) ASIAN J. MULTIDISCIPLINARY STUD. 47 (2013), available at www.ajms.co.in.

³ Praful Vijay, More, The Impact of Greenwashing on Green Brand Trust from an Indian Perspective, 8(1) AJIP 162 (2019).

⁴ Deven R. Desai & Sandra L. Rierson, Confronting the Genericism Conundrum, 8 J. INTELL. PROP. L. 1 (2001).

widespread usage, diminishing their trademark value, and the difficulties trademark holders face in maintaining brand distinctiveness amidst increasing public use of language. The article discusses the rise of green trademarks, their role in signaling eco-friendly products, and the growing risk of greenwashing. It highlights international efforts, particularly in China and the EU, and calls for stricter regulation in India to prevent deceptive practices⁵

RESEARCH PROBLEM:

Historically, green marks were not granted trademark status due to a lack of distinctiveness. However, they have now been adapted to meet the criteria for trademark registration, aiming to resolve several challenges. Despite their registration, issues such as green washing, consumer distrust, complications in purchase decisions, and generalization have emerged. These challenges raise critical questions about the appropriateness of granting trademark status to green marks. This research paper explores these issues comprehensively, compares them globally, and proposes remedial measures to address them, with a focus on promoting and preserving genuine sustainability.

RESEARCH QUESTION:

1. Whether the issues like green washing and generalization play in undermining the legitimacy of green trademarks, and how does it impact consumer trust and purchasing behavior?
2. How can existing frameworks be strengthened to ensure that green trademarks maintain authenticity and are not generalized or misused?

RESEARCH OBJECTIVE:

1. To examine the impact of green washing and generalization on the legitimacy of green trademarks.
2. To identify potential improvements to existing frameworks that would help preserve the authenticity of green trademarks and prevent their misuse or overgeneralization.

RESEARCH METHODOLOGY:

This study employs doctrinal methodology, analyzing primary and secondary sources such as statutes, case law and scholarly articles. Articles were also utilized, and they came from several respected journals, magazines, and websites. Examine and evaluate concepts on green trademark and its advantage, case law, government legislation, as well as legal documents pertaining to issues such as green washing and generalization.

GREEN MARK AND ITS ADVANTAGES

A green mark refers to the use of symbols, logos, tags, or other indicators by a company to signify that their product is environmentally friendly. This designation suggests that the company's products or services have a minimal environmental impact. The development of such trademarks offers benefits to consumers, businesses, competitors, and society, as outlined below.⁶

- **Consumer Trust and Loyalty:** – In today's socially aware market, consumers are increasingly drawn to brands that reflect their own values. A green trademark acts as a clear symbol of a company's dedication to sustainability, building trust and loyalty among environmentally minded shoppers.
- **Competitive Advantage:** – Businesses with prominent green trademarks stand out in the marketplace, drawing in customers who prioritize eco-friendly options. This distinction can give these companies a competitive advantage over rivals who lack a visible commitment to sustainability.
- **Legal Protection and Reputation Management:** – Green trademarks offer legal safeguards against misuse or imitation by competitors, protecting a company's reputation established on eco-conscious principles. They enhance the credibility of a brand's environmental claims and prevent those claims from being diluted or misused.
- **Driving Innovation and Responsibility:** – The pursuit of a green trademark often requires innovative solutions in production, materials, and supply chains. This drive for sustainability pushes companies to adopt eco-friendly technologies, materials, and processes, fostering a culture of innovation and corporate responsibility.

Companies that genuinely embrace eco-friendly practices, maintain transparency in their sustainable efforts, and explicitly commit to achieving their environmental and corporate social responsibility goals contribute significantly to reducing environmental impact. Products from such companies, when publicly verified and capable of substantiation, can be recognized as truly environmentally friendly. There is an urge to grant trademark rights for these green products as a reward for their efforts.

⁵ Sunanda Bharti, Seen to Be Green, *India Bus. L.J.* (June 7, 2023), <https://law.asia/green-trademarks-csr-environmental-commitment/>.

⁶ The Power of Green Trademarks, Wissen Research Blog (accessed Nov. 9, 2024), <https://www.wissenresearch.com/blog/the-power-of-green-trademarks/#:~:text=The%20Green%20Trademarks%3A%20%E2%80%93%20A%20green,its%20impact%20on%20the%20environment.>

CURRENT STATUS UNDER INDIAN TRADEMARK LAW

Trademark means a mark that distinguishes its goods or services from that of the others by using a graphical representation⁷. For a mark to qualify for registration, it must be graphically represented; capable of being distinguishing its own goods or services from the other and such a mark should be used or proposed to be used in the course of trade between goods or services. No distinctive character, deceptively similar, consist only of markings or indications used in commerce to designate the quality, kind, amount etc, have become usual in the present language, it deceives or confuses the public, scandalous, offend religious sentiments are few grounds for refusing the registration of trademark⁸.

Green trademarks can indeed be granted as they fulfill graphical representation and have distinguishing nature from other registered marks⁹. Under the Indian Trade Marks Act, 1999¹⁰. While there is no distinct provision specifically for "green trademarks," companies can register trademarks that reflect their eco-friendly products or services. This will indicate compliance with certain environmental standards and represent the quality of the products they label¹¹. Green trademark enable consumers make a way for informed choice¹². Like any other trademark, these marks must meet the criteria of distinctiveness and must not be misleading. Many businesses utilize eco-friendly logos, labels, or symbols to represent their environmental commitment and these marks can be registered under the Act to secure their use in India. Beyond certification, recognition of green trademark is essential to combat deceptive trademark, green washing and ensure brand identity, consumer protection, safeguards for infringement.

For example, Godrej has registered the tagline 'Good & Green' to emphasize their goal of producing environmentally friendly products and fulfilling their social responsibility to create a greener India. Similarly, beauty brands like 'Mama Earth' and 'Biotique' are also categorized under green trademarks. At present, two notable green marks in India are Godrej and Nestlé. The 'Good & Green' initiative by Godrej highlights their commitment to reducing pollution and fostering a greener nation. Nestlé, on the other hand, pledged in 2018 that all of their products would be 100% recyclable and reusable by 2025.

In India, green brands are often granted trademarks when combined with other words, whether unique or descriptive. For example, a tours and travel company has registered "Green India" as a trademark. In *Natures Essence Private Limited v. Protogreen Retail Solutions Private Limited*¹³, the court ruled that the use of "Nature's Tattva" infringed on the trademark "Nature's Inc.", despite the different products involved, as both were in the same category. The Delhi High Court clarified that while "nature" is descriptive; it acquires distinctiveness and meaning when paired with "Inc." or "Essence."

CHALLENGES FACED BY GREEN TRADEMARKS IN INDIA

To prevent green washing, environmental claims must be substantiated and supported by certification. Even after the granting of green trademarks, brands face challenges such as misleading claims (green washing) and genericization, which threaten brand identity and legal protection in a growing market.

Green washing and False Environmental Claims

The widespread use of phrases such as "green," "eco," "sustainable," "organic," "natural," "environmentally friendly," and "climate neutral" to refer to any environmentally beneficial product. The concept of green products has become highly attractive to consumers, prompting companies to adopt green marketing strategies. They incorporate terms like "sustainable," "eco," and "organic" into their branding and create environmentally-themed advertisements. However, some companies engage in green washing¹⁴, making false or misleading sustainability claims to deceive eco-conscious customers. This deceitful marketing practice hides the true nature of their products and can lead to unfair trade practices.

Labels such as "organic" and "eco-friendly" illustrate the potential for greenwashing in the realm of green labels. Originally, certain certifying bodies, like GreenPro, used these words to denote goods that adhered to sustainability or environmental requirements. But when these phrases propagated, numerous businesses started using "organic" or "eco-friendly" in their products without getting certified, which made them not as distinctive and increasing the false environmental claims.

When comparing the Indian scenario with global practices¹⁵, the European Union (EU) has rejected several green labels for being overly descriptive. Examples of such denials include names like EcoTrend, ECOLAB, EcoPerfect, EcoDoor, EcoPro, EcoTherm, EcoTech, EcoPreform, EcoFinishes, GreenWorld, GreenLine, and others.. Similarly, the United States has a more nuanced approach to trademark registration for green brands. In 2013, the United States Patent and Trademark Office (USPTO) rejected the trademark application for "Green Seal," which was intended for a tape product. The

⁷ Trade Marks Act, No. 47 of 1999, S.2(1)(zb) (India)

⁸ Trade Marks Act, No. 47 of 1999, S. 9 (India)

⁹ Ketan Joshi & Avantika Singh, Green Marks: Certification Mark vs. Trademark, MAHESHWARI & CO. Blog (Jan. 24, 2023), <https://www.maheshwariandco.com/blog/green-marks-certification-mark-vs-trademark/>.

¹⁰ Trade Marks Act, No. 47 of 1999, S.2(1)(zb) (India)

¹¹ Ibid

¹² Ibid

¹³ Natures Essence Pvt. Ltd. v. Protogreen Retail Sols. Pvt. Ltd., CS(COMM) 581/2020, Delhi High Court (Mar. 9, 2021) (India).

¹⁴ WIPO Mag. (Oct. 2022), https://www.wipo.int/wipo_magazine/en/2022/04/article_0006.html.

¹⁵ Tanya Saraswat, Validity of Trademarks for Green Labels, MONDAQ (June 9, 2023), <https://www.mondaq.com/india/trademark/1327806/validity-of-trademarks-for-green-labels>.

USPTO examining attorney denied registration on the grounds that the term "Green Seal" was deceptively misdescriptive under Section 2(e)(1) of the Lanham Act and comprised deceptive matter under Section 2(a). Despite the company's intention to expand its pre-existing line of tapes (Red Seal and Blue Seal), the board concluded that the word "green" conveyed to consumers that the tape was environmentally friendly, even though it was not. This ruling highlights a growing trend in both the EU and the USA where trademark laws are being used to combat green washing, ensuring that brands do not falsely represent their environmental impact.

Risk of genericization:

Genericide, also known as the doctrine of genericism in many countries, refers to the gradual transformation of a trademarked term into a generic term due to widespread usage by the public. Once a term becomes generic, it can no longer be granted trademark protection, and existing trademarks become unenforceable, as the term loses its distinctiveness—a process known as generalization. This phenomenon poses challenges for companies, as they have limited influence over how the public refers to their trademarked products¹⁶.

The evolving climate crisis calls for action from all sectors, including brand owners¹⁷. As a result, there is likely to be growing demand for trademarks related to green products and services, as well as terms, slogans, and symbols that signify environmental consciousness. However, this creates a paradox: as consumers gain greater awareness and familiarity with terminology associated with sustainability, recycling, and healthy living, their perception of these terms becomes more nuanced. This increased awareness can make it more challenging for trademark applicants to demonstrate that their marks are distinctive, rather than merely descriptive or laudatory.

When a trademark becomes generic, one of the major legal challenges is the *loss of enforceability*. Once a mark is considered generic, the trademark owner loses the exclusive right to enforce it, which can undermine brand control and lead to several issues¹⁸: When a trademark becomes generic, the owner loses the ability to restrict competitors from using the term, leading to market dilution and a decline in the brand's distinctiveness and value. This loss of exclusivity can cause consumer confusion about product source and quality, weakening brand loyalty and trust. Companies also suffer a loss of investment in intellectual property and face increased marketing costs to differentiate their products from others using the term. Furthermore, maintaining brand distinctiveness may require costly rebranding efforts, including new trademark registrations, marketing campaigns, and identity rebuilding.

To prevent genericide, the International Trademark Association (INTA) recommends that brands adopt the following strategies: Develop internal "Best Practices to Avoid Genericide" while the brand is still being established. Create a written explanation for correct usage of the mark that can be easily distributed to third parties, such as licensees or consumers, when improper usage is identified. Engage an experienced search vendor to monitor print media, online publications, and the internet for any misuse of the mark. Consider using the ® registration symbol (or TM/SM for unregistered trademarks) and exercise caution when approving unconventional advertising and promotional content to prevent public confusion about proper usage. The EUIPO rejected "Sustainability through Quality" as too promotional (EUIPO Guidelines). The USPTO denied "Eco Perfect" and "EcoPure" for being descriptive of eco-friendly qualities without distinctiveness (U.S. Trademark Manual). The UKIPO rejected "Natural Energy" for lacking brand identity (UKIPO Trademark Manual). In Australia, ACCC rejected "100% Natural" for being generic and potentially misleading (ACCC Green Marketing Guide). The USPTO also refused "EcoCertified" for implying certification without third-party verification (USPTO Trademark Guidelines). So in order to get registered, it should be distinct and not descriptive. So it is suggested to combine the descriptive terms to distinct terms.

SCOPE AND LIMITATION:

The study primarily focuses on India, with limited comparison to international trademark laws. It addresses the evolving nature of green trademark regulations and does not deeply explore consumer behavior's direct impact on brand success.

CONCLUSION:

This research explores the evolving field of green trademarks, focusing on their role in promoting sustainable practices, distinguishing eco-friendly products, and protecting brand identities. It examines the legal framework in India, challenges like greenwashing and genericization, and offers suggestions for improving the effectiveness of green trademarks. However, challenges like greenwashing and genericization threaten their effectiveness. Effective certification and substantiation of environmental claims are necessary to prevent misleading practices, while distinctiveness is vital for maintaining trademark protection.

SUGGESTION:

The author recommends that in the future, market operators should develop increasingly innovative ways to communicate pro-environmental messages to consumers while carefully selecting their green trademarks. The author also suggest for compulsory registration of trademark along with the mandatory certification mark for all the products respectively. Companies must actively monitor trademark usage to avoid genericide, ensuring their marks retain distinctiveness. Strengthening certification processes, clear guidelines, and consumer education will enhance the effectiveness of green trademarks.

¹⁶ Pranit Biswas & Girishwa Sai, Lost in the Crowd!..The Life of Generic Trademark, SS Rana & Co. Blog (May 10, 2022), <https://www.ssrana.in>.

¹⁷ Denmeyer, *Big Challenges for Green Trademarks*, DENNEMEYER (last visited Nov. 10, 2024), <https://www.dennemeyer.com/ip-blog/news/big-challenges-for-green-trademarks/>.

¹⁸ Deven R. Desai & Sandra L. Rierson, Confronting the Genericism Conundrum, 63 *Hastings L.J.* 505 (2012).