WWW.IJRPR.COM

International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Trademark Dilution and Brand Protection: Legal Challenges and Global Perspectives

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ABSTRACT

Simply because a business uses its trademarks doesn't mean you can always tell where it came from. An important goal is achieved: the brand's worth and reputation are solidified. The dilution theory posits that tracing the origin of a trademark is not crucial to the mark's functioning. Another tenet of the idea is that trademarks have some element of originality, beyond their symbolic meaning. The common perception is at odds with this notion. How to prove that the strength or value of a trademark has been reduced has been the most pressing issue in trademark law over the last decade. It has been very challenging and dangerous to apply this idea of diluting. Among the many issues with dilution law is the fact that it offers a solution in the absence of a reasonable justification for the harm or loss. Little has been spoken or explained about the notion of dilution, even if the concept has just been recognised in both local and international courts, which means that local courts have a big responsibility to protect trademarks against dilution. The existence of such uncertainty facilitated our research by providing a chance to compare the concept of dilution from different viewpoints and in different jurisdictions, thereby illuminating it. Examining the relative merits of the American and Indian legal systems, the article concludes that the former is more robust. To achieve this, it draws attention to the judicial interpretation mechanism of the dilution provision, elaborates on the concept by referencing important cases decided under US law and European judgements within the framework of the dilution laws, and finally, draws attention to the concept.

INTRODUCTION

Using trademarks has been around since ancient times. Marking goods and artefacts dates back to the dawn of humanity. A trademark has several purposes beyond just being a source link. While trademarks do not reveal where an idea came from, they do stipulate that any associated goods or services must have come from the same place or via the same channels that brought satisfaction to consumers(1). It guarantees familiarity and high quality to consumers. Therefore, it is vital for the growth of a brand. The opposite of what most people think, a trademark really helps the owner's credibility and popularity(2). Because of how crucial the mark is to the product's sales, it should be distinctive and not seen elsewhere.

Trademarks, unlike actual assets, are intangible and have the potential to grow in value over time, making them a significant asset to any manufacturing firm. To help establish a brand or label, manufacturers often use unique words, names, or symbols as trademarks. Associating a famous brand with a product that is confusingly similar to or different from the original mark could cause consumers to infer the manufacturer's quality level. Companies benefit from trademarks because they facilitate communication between producers and customers. Trademarks allow businesses to communicate vital information about their position, goods, and services via a single sign or brand(3).

In today's rapidly evolving, globally interconnected technology and innovation landscape, the aforementioned benefits highlight the critical need of trademark infringement protection. Inevitably, a third party's unauthorised use of a producer's brand on identical or confusingly similar products or services constitutes trademark infringement.

In order to get a complete understanding of dilution, its evolution, and its current state across jurisdictions, researchers need to conduct extensive study and review the available data. The following facts and information were deemed beneficial for the researcher's ongoing examination of these issues after examining the literature:

According to the legendary dilution theorist Frank I. Schechter3, dilution is "the gradual whittling away or diffusion of the individuality and grasp upon the minds of the public at large of the trademark by associating it with goods of non-competing nature" (The Rational Basis of Trademark Protection)(4). In her article titled "Evaluating Trademark Dilution from the Consumer," Sarah Lux argues against the use of customer confusion as a means to show dilution. Even in the absence of consumer confusion, she said, any damage to a respectable brand constitutes dilution. The use of the same mark on different products is necessary to prove dilution, according to T.G. Agitha's article "Trademark Dilution—the Indian Approach5". Equally important to her is the idea that trademark infringements, including dilution, should be safeguarded and punished accordingly. In his work State and Federal Trademark Dilution6, Courtland L. Reichman distinguishes between two types of dilution. Dilution lessens the distinctiveness of the original brand while still allowing customers to easily recognise it(5).

To compare the legal environment, the authors used Trademark Dilution: Federal, State, and International law by David S. Welkowitz. Newly passed state legislation, especially those impacted by the most recent Model State Trademark Bill, are detailed in the book, along with the revised State Dilution statute and its defences and remedies. The Trademark Dilution Revision Act of 2006, written by Jennifer Files Beerline and titled "Anti-Dilution Law, New and Improved," was also perused. Because of its shortcomings, the Federal Trademark Dilution Act gave rise to the Trademark Dilution Revision Act of 2006, as this page explains to the researcher. Lastly, the researcher gained a better understanding of the dilution restrictions in India via Dev Gangjee's study titled The Polymorphism of Trademark Dilution in India. Reputation and other commodities are used to illustrate the Dilution provision of the Trademarks Act 1999.

TRADEMARK DILUTION: A HISTORY AND BACKGROUND

Exactly What Is a Trademark?

Trademarks serve the function of safeguarding source identifications. Manufacturers and retailers use these identifiers to distinguish their items from competing ones(6).

Getting Your Marks Registered

Registration in the United States does not necessitate the existence of exclusive or protectable trademark rights. On the other hand, trademark rights in a use area are granted when a mark is used or displayed in connection with goods for sale or advertisements for services. Registering a trademark with the United States Patent and Trademark Office (USPTO) also offers you rights that are valid throughout the country. Any mark that is functional, scandalous, immoral, descriptive, or purposefully misdescriptive, or even a U.S. flag or coat of arms may result in trademark registration denial by the USPTO. A company's right to contest federal registration is unrestricted(7).

Unlike copyright or patent rights, trademark rights endure indefinitely, provided the mark is not abandoned or becomes a generic term. The federal government considers a mark abandoned if it has been non-used for three years(8).

A NEW ERA IN DILUTION THEORY: A WORLDVIEW VIEW

Frank Schechter first proposed the concept of trademark dilution, which he described as the gradual transfer of the distinctiveness and public perception of a mark to goods and services that are not in direct competition with it. A year later, Judge Learned Hand issued an injunction prohibiting the defendant from using the same mark on different items.

The diluting idea, like other legal patterns, has its roots in tradition but was put out by an actual scholar. To weaken trademark protection, Frank I. Schechter lays the basis in his semiannual report, The Historical Foundations of the Law Relating to Trademarks. The Rational Basis of Trademark Protection, published two years afterwards by Schechter, established the dilution model(9).

A. The Growth of Diluting Agents in the United States

In the initial part of the twentieth century, allegations of trademark infringement often stemmed from direct rivalry, and the term "deception" did not include ambiguity about validity, affiliation, source, or link. By 1920, trademark law had evolved and a gap in the protection of trademarks in the United States had been discovered. The 20th century saw a dramatic shift in the nature of business dealings(10).

The "Eastman Kodak Case" came first, followed by 17 A major shift occurred in the United States' attitude to trademark protection in England. When the Eastman Company, makers of Kodak photos, sued, it prevented Kodak Cycle Company from using the KODAK trademark on their bikes. According to the Court's reasoning, ambiguity might arise even in the absence of direct competition between goods. Contrary to popular belief, the court was not debating confusion or dishonesty. It emphasised how important it is to safeguard the KODAK mark so that it remains unique. But the Court crafted its ruling such it would follow the commodity standard of direct competition(11).

U.S. courts upheld the decision made by the Eastman Company. Vogue Co. v. Thompson-Hudson Co.18 is a hailed case in point. Hats were sold by Thompson and Hudson, the defendants, under the brand name VOGUE HATS. The claim was that this infringed upon the trademark of VOGUE BY Vogue Co., which included a woman's figure and the letter V (V-GIRL).

There is also the case of Wall v. Rolls-Royce. Similar or competing items were not the only ones that may be considered infringing, according to the Third Circuit Court of Appeals' ruling. Rolls-Royce radio tubes were used here. Since aeroplanes and cars rely on electricity, and the business may have branched out into new electric items using radio tubes, the court broadened the scope of reason to include both as directly competitive commodities(12). In unusual cases involving "fame" as a mitigating factor, the court used conventional infringement standards.

In 1932, the Department of Justice's contempt for trademark property rights thwarted an effort to enact a Federal Dilution Statute. Over 25 states have passed diluting legislation since 1947, thanks to the increased accessibility of the state legislature.

Looking at the situation through the lens of the Federal Trademark Dilution Act (FTDA) in relation to the scope

The disputed mark was not protected by the Federal Trademark Dilution Act (FTDA), which only applied to well-known marks prior to their use in trade and commerce."to recognise and differentiate goods or services irrespective of existence or absence of competition among the proprietor of the said famous mark and the unauthorised parties, or any possibility of misperception, error or deception" meant that famous marks could not be taken away by unauthorised parties, according to 23 FTDA.24 An examination of the FTDA reveals that the scope and subject matter of protection are unclear(13).

The term "famous" and the threshold for protection under the anti-dilution act were not defined in the Act, but it did address famous mark eligibility. Because of this ambiguity, different US courts came up with different standards for enforcement(14). Courts' divergent approaches to interpreting the law led to frequent conflicts.25

Trial courts in the United States often disagreed with the FTDA's vague definition of "famous" because of this. A key concern at the time was whether the anti-dilution act just protected naturally unique marks or marks that become distinctive by the application of product of commerce over time.(15-18)

"Thane Intern., Inc. v. Trek Bicycle Corp." established that only naturally distinctive marks may be protected under FTDA, whereas "New York Stock Exchange Inc. V. New York New York Hotel LLC"27 established that only the second circuit could reach that conclusion(19). The eighth circuit was completely in disagreement.

Despite NYSE's notoriety, the court rejected its dilution claims because the Lanham Act's anti-dilution shield is only applicable to fundamentally unique marks and not to marks that have gained distinctiveness via ancillary meaning(20). NYSE said that the mark is distinctive, if not inherently so, then via acquired consequential meaning; nonetheless, it remained uncertain whether the Act applies to marks that are not distinctive in and of themselves. The judge in "TCPIP Holding Co. v. Haar Communications Inc.,"29 highlighted the inherent distinctiveness of a mark.

Another FTDA-related controversy revolved on the Act's protection of trade dress and packaging.It was also a contentious subject in 30 US courts(21). Despite the lack of a definition of "famous," the Federal Trademark Dilution Act of 2006 in the United States established criteria for establishing renown under section 1125(c)(1).

Future of India Following the Trademarks Act of 1999

The relevant provision of the Trademarks Act of 1999 regarding trademark dilution is section 29(4). To introduce trademark dilution in India, Section 29(4) was enacted by the Trademarks Act, 1999. Section10(3) of the Trade Marks Act of 1994 in the United Kingdom is comparable to the area.(22) To provide further protection for famous trademarks without requiring a "probability of perplexity" for various goods, Section 29(4) defines weakening as invasion. You won't find the "probability of confusion" criterion here.

The Trademarks Act, 1999 is still being amended since few cases have made it to court, namely over Section 29(4). The legislative intent in drafting Section 29(4), which governs trademark weakening dilution, is to ascertain trademark weakening for different items. Decisions are still being made by the court using an incorrect definition of trademark weakening, even though there are clear limitations in legislation.

An example of a case where the court's decision was founded on an incorrect dilution assumption is "Hamdard National Foundation v. Abdul Jalil"(23). The plaintiff claimed for trademark infringement because the defendant used the famous "HAMDARD" mark on Basmati rice; the plaintiff used the mark for Unani medicines.

Trademark infringement in non-competition items is characterised as "likelihood of deception" according to the court's ruling on erroneous understanding(24). Evidently, misleading similarity is not required by clause 29(4). The incorrect definition of "deceptive similarity" was provided in section 2(1)(h).

Mark infringement was the basis for the lawsuit between Ford Motor Co. and C.R. Borman. The appeal argued that the Act is exempt from Section 29(4), which applies only to well-known Indian trademarks. It is not necessary for the plaintiffs to show that the defendants misled customers or that the trademark application would deceive them(25).

According to the Court's interpretation of Section 29(4) of the Act of 1999, the aggrieved party is exempt from proving the defendant's dishonesty if the trademark is famous in India, in contrast to the High Court's decision in the Hamdard National Foundation case. Although the Court adhered to the actual relevant structure of the 1999 Trademark Strengthening Act, the decision was unconvincing as the court hardly considered the benefits of the case(26).

UPCOMING PROBLEMS WITH DILUTION OF TRADEMARKS IN INDIA

Globalisation saw a boom at this time. Manufacturers now have new options to sell their items internationally thanks to trade and commerce globalisation. An internationally recognised brand is born from this. Owners have a responsibility to prevent illegal use of their famous marks in such a situation(27). Due of its singularity, a mark may be easily recognised by customers all across the globe and is considered a brand. Problems have either persisted in causing controversy or have managed to slip through the cracks notwithstanding the passage of anti-dilution legislation and the subsequent identification of dilution as a distinct kind of infringement.

The mark's widespread recognition is not necessary for compliance with Indian law or the TRIPS agreement, even though none of these jurisdictions expressly prohibits dilution. Additionally, unlike US regulations, the reputation criteria is relaxed(28). The provisions of TRIPS that define famous marks and the Indian Trademark Act55 make this quite evident. Acknowledgment and support from others are necessary for both actions. As opposed to how well-known the mark is among relevant individuals, the US standard of "wide recognition among the general consuming public" is much more expansive(29).

In India, things are far worse since, according to Indian law, the criteria for approval within the relevant sector of society are quite malleable. If a court or registrar orders a trademark to be famous in at least one part of the public, then it is considered well-known in India according to Indian law and the WIPO/Paris Union Joint Recommendation 56. The mark's dilution-based protection is further undermined by these circumstances, which further limit its identification. Therefore, dilution problems may be insurmountable when using these ideas. The principles of dilution limit the scope of the Trademark Act, 1999, which only covers famous marks or marks with a worldwide reputation(30).

A trademark in India that has been registered with good intentions might be considered infringed upon if someone uses it for commercial gain without proper authorization and "takes unfair advantage of" or otherwise undermines the registered brand's exclusivity or goodwill, as stated in Section 29 of the Trademark Act, 1999.57In contrast to other parts that handle infringement, this one is clear. Unless otherwise allowed, unjust, or with the intent to harm the product's market reputation, this ambiguous clause forbids utilities on comparable or unrelated goods or services of imprints with goodwill in India(31).

Since it does not specify the criteria, the meaning of "well-known mark" in Section 2(1) (zg) is unclear. From various angles, the Court may reach different conclusions about the meaning of the phrase. Therefore, in order to prevent irregularities and ambiguities, famous trademarks need a clearly stated rule or decision factor. Section 1158 has also been hindered by the vagueness of famous trademarks. Even after taking into account the provisions of Sections 6, 7, and 9 in establishing mark recognition(32). Since these criteria for demonstration are subjective, their interpretation by the court is of the utmost importance. This highlights the necessity of efficient regulation in determining the necessities of a famous mark to aid in handling cases of dilution.

THE 2005 TRADEMARK DILUTION REVISION ACT ANALYSIS

Most importantly, the TDRA uses the chance of dilution as its baseline.No. 83 Without a definition of 'dilution,' the 'likely to produce dilution' proof criterion would have been unrealistic, according to Moseley. The TDRA provides the necessary clarity in this regard. "Dilution" was defined in FTDA in a single way.84 The accusation of dilution was not clarified. The Supreme Court raised doubts about whether tarnishment was included in the FTDA's definition of dilution, although it did acknowledge that "blurring" was covered.85 "Dilution by blurring" and "dilution by tarnishment" are now defined in the TDRA, and the two concepts have separate legal standards(33). Differences in the nature of the damage caused by blurring and tarnishment need separate approaches to the underlying processes that lead to diluted injury. The association lowers the mark's perceived value and makes its "distinctiveness" less clear.

An additional requirement of the TDRA is that a mark be "widely recognised by the general consuming public of the US as an identification of source," while simultaneously reducing the number of guiding components to four. It goes on to demonstrate that a mark may be famous and qualify for dilution protection even if it has little intrinsic uniqueness but a lot of secondary meaning.No(34). State laws are rendered practically meaningless by the TDRA due to the absence of such definitions in state legislation(35). Requiring the owner of a well-known mark, who is faced with the loss of the mark's distinctiveness, to wait until harm has already occurred before obtaining an injunction goes against equity, even if many experts think it is too early to enjoin a mark user before real harm has occurred.

CONCLUSION

Only famous, well-respected, or otherwise prominent brands are eligible to get anti-dilution protection, according to research on the notion of dilution and existing laws. The owner puts in the time and effort to make sure the mark becomes a globally recognised brand for its quality, which sets it apart from typical infringement. These indicators are simple to see, and unsanctioned individuals often attempt to take advantage of their fame or influence. Although the new Trademark Act 1999 prohibits weakening, a separate legislative authorization is required for counteractive action in the present Indian environment in order to meet global assurance requirements and the new trademark law is a start in the right direction. The following suggestions may be taken into account in order to circumvent existing regulations and make the idea of dilution more uniform, trustworthy, and autonomous:

- Section 11 and 29 (4) show a resistance between them. One talks about well-known marks while the also highlights reputation marks. So, the clauses are at odds with one another. The discrepancy between court judgements and actions might be due to chance alone. A closer look at the two parts reveals that passing off is the sole international trademark protection mechanism, whereas "trans border reputation" is the primary emphasis of Indian law.
- Section 29(4) should replace marks with reputation with "well known" to provide global marks more recognition and a broader subject matter of protection.
- Section 11 enforcement has been hindered by the vagueness of well-known marks. Regardless of whether trademark familiarity is determined using Subsections 6, 7, and 9. The subjective rules of this Act must be explained by the Court. This highlights the need of a precise criterion for recognisable markers that can manage fading protection while making correct decisions.

No matter how well-known a stamp may be, the Act will only protect registered marks. A legal framework is desirable even if the offloading process meets this need. In order to preserve unregistered trademarks and lessen the burden of passing off requirements, this research suggests administrative modifications.

In the opinion of the researcher, it may be necessary to make revisions to Section 28 (b) and (c). Ads are considered to infringe on a "registered trademark" if:

i. The distinctiveness of the registered mark is at risk due to encroachment, or

ii. Is detrimental to the reputation of the registered mark; as a result, this regulation limits fair use and comparative advertising.

Consumers are allowed to compare goods and services and parody, critique, remark, or report on such marks, as long as they adhere to the fair use guidelines, which differ from the US standards of dilution. Under this Article, the property rights of every trademark owner are unqualified. Concerns about potential future limits on free speech are voiced in this section. Considering the aforementioned, it is recommended to delete such a portion. The article has covered TDRA dilution problems in the US and Indian legislation. In light of these difficulties, we may consider the following alternatives.

- The court has ample discretion under the TDRA to take into account the considerations listed in the Act to determine blurring and notoriety, but it is not obligated to base its decision on these reasons alone to determine blurring and popularity when addressing the significant aspects included in the Act. Judges are prone to making arbitrary decisions when given too much leeway. Since too much discretion results in unpredictability, this research also implies that courts should review important factors under the Act.
- The lack of a definition for "tarnish weakening" is another oversight in the Act. While the Act does provide components for estimating blurring-related weakening in a multi-factor test, it does not include factors for tarnishment. The absence of a ruler gives the court wide latitude to determine its value. The lack of a universally accepted metric for damage caused by a tarnishment means that various courts will often reach different results. Once again, the parties are left vulnerable to the unpredictability and ambiguity of the judiciary. As a result, the authors of this article argue that the Act needs updating so that courts are obligated to base their estimations of weakening by tarnishment on certain characteristics.
- In order to obtain compensation under the Act for blurring or tarnishment, the party that has been damaged must provide an explanation of the connection between the marks. Even if the mark is confusingly close to the common mark of the party that is wronged, there is no recourse unless connection is shown. The Act recognises this as a need that is superfluous. If the parties' footprints were indistinguishable, some court hosts presumed blurring after Moseley. Since this assumption is not acknowledged by the Act, it is at odds with it. An unfair party should be granted redress and a court decision made in their favour if they can prove that two markings are confusingly similar. Connection with resemblance should not be a strong need.

Even with appropriate limits and Acts, it is clear that dilution laws cannot provide complete protection for famous or well-known brands. Legal gaps render an Act ineffective. If the courts do not keep an eye on the new concept, according to Mark A. Lemley, it will take root.

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[9]. WILLIAM M. BORCHARD, A TRADEMARK IS NOT A COPYRIGHT OR A PATENT 2, 3 (Cowan, Liebowitz & Latman, P.C. ed., 2005).

[10]. Id. In India, the law with respect to registration of a trademark is a little different. Though the registration of a trademark in India is contingent on whether the person claiming to be the proprietor of the trademark used or proposed to be used by him desires to get it registered, it is explicitly settled that there shall be no remedy available for infringement of an unregistered trademark. See § 18 & § 27, Trade Marks Act, 1999.

[11]. “[I]n general terms, a product feature is functional, and cannot serve as a trademark, if it is essential to the use or purpose of the article or if it affects the cost or quality of the article, that is, if exclusive use of the feature would put competitors at a significant non-reputationrelated disadvantage.” Qualitex Co. v. Jacobson Products Co., Inc., 514 U.S. 159, 165 (1995) (citing Inwood Lab., Inc., v. Ives Lab., Inc., 456 U.S. 844, 850, n.10).

[12]. BORCHARD, supra note 5, 4.

[13]. See The Trade Mark Act, 1946, (also known as The Lanham Act) 15 U.S.C. § 1127 (2000) (stating that three consecutives years of non-use constitutes prima facie abandonment).

[14]. I-emley. sltpra nore 3 at r69g. He cails this the probrcm of ,.doctrinar creep.. and is of the view that the rnosl ob'ious exampre of docirinar creep in traJenrark rarv

[15]. See generally, Scott Duval, The Trademark Dilution Revision Act of 2006: Balanced Protection for Famous Brands, 97 TRADEMARK REP. 1252, 1258 (2007).

[16]. FTDA defined dilution as the "lessening of the capacity of a famous mark to identify and distinguish goods and services".

[17]. Moseley v. Victoria supra note 12.

[18]. Dilution by blurring is "association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark." TDRA, 15 U.S.C. § 1125(c)(2)(B). Dilution by tarnishment is 'association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark'. 15 U.S.C. § 1125(c)(2)(C). See also, Louis Vuitton Maletier S.A. v. Haute Diggity Dog, LLC, 2007 WL 3348013 (4th Circuit., No. 06-2267, November. 13, 2007), where the Fourth Circuit held that in the context of blurring, "distinctiveness refers to the ability of the famous mark uniquely to identify a single source and thus maintain its selling power." See generally, Scott Duval, supra note 83.

[19]. It also states that a famous mark that is "distinctive, whether inherently or through acquired distinctiveness", can qualify for protection against dilution. Supra note 83.

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