

## TRADEMARK REGISTRATION: NOT A MANDATE BUT A NECESSITY

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### **Abstract**

*Trademark Registration is increasing day by day as it is a unique source of establishing goodwill between product source & the consumer. Trademark, being a distinctive identification mark, communicates to the customers about the brand's quality. According to the annual report of 2020-2021 published by Office of the Controller General of Patents, Designs, Trademarks and Geographical Indications, 255976 trademarks were registered in the year 2020-2021. However, on the other hand, increasing trademark registrations has been resulting in increasing trademark infringement & passing off actions. The laws for trademark infringement & passing off has become transborder with the changing world. With the increasing registrations of trademark, it becomes necessary to safeguard the interest of the trademark users of prior use and to analyse the scope of laws related to trade mark infringement & passing off. The paper analyses the laws related to the trademark infringement & passing off along with its remedies. It also aims to find out the interests of the unregistered trademark users' protection under the present law. The papers also attempt to study the new principles evolved by the Courts with changing times and whether trademark registration provides an edge in the new global world.*

**Keywords:** Intellectual Property Rights, trademark, well-known trademark, prior use, transborder reputation.

### **1. Introduction**

Human beings always want to own real estate or property. Property gives a right of status, dignity to the property owner in relation to that property. Usually, property is in tangible form i.e., physical property but there is one intangible property i.e., the brain of a human being which is a type of an intellectual property. The result of Intellectual Property is creative ability, creation, idea, innovation. There are various kinds of Intellectual Properties like Copyright, Trademark, Patent, Geographical Indications, etc.

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The present Research deals with one of the forms of Intellectual Property Rights (IPR) IPR i. e. Trademark, its infringement & passing-off action. Trademark is a kind of distinctive mark which helps in distinguishing the goods & services of the trade mark owner from the other traders. Although trademark registration is not mandatory, people today are getting their trademark registered on a large scale which makes it necessary to study after laws of the trademark infringement & action of passing-off. Trademark is a reputation and good will of the brand. Today, the passing-off action has become transborder even when products are not sold in that area then also the action for the same could be taken due to the world-wide value. Today businesses have developed globally which makes trademark a very important aspect while communicating to the consumer. The paper attempts to find out whether the laws related to trademark infringement and passing off actually protects the interests of trademark owners or are there any loopholes in the system that makes it tough for the trademark owners of previous use to get his rights enforced without his previous registration.

Even after the provisions for trademark under the Trademark Act, 1999 there is a huge rise in the number of cases of trademark infringement. The author has strived to locate the problems and analyse passing-off under the Common law which opens the doors of jurisprudence to study the same. Legislation alone cannot protect the rights because trademark law is not exhaustive, it is the judiciary which has to interpret the same and provide justice to the actual trademark holder. Both passing-off & trademark infringement goes hand in hand but where infringement fails, passing off plays a major role under the Common law. Hence, the author has also further attempted to analyse remedies available against the trademark infringer.

## **2. Concept of Trademark**

The word 'Trademark' comprises two words. To know about trademarks, first we need to understand what a mark is. A mark may be any symbol, word, letter, or any combination of these items. It can include smell, sound, 3D shapes as well. Therefore, a trademark is a mark which is:

- i. used in trade;
- ii. to identify the goods & services provided by the trademark owner;

- iii. to distinguish the goods & services of the trade mark owner from the goods & services of other traders.

*For example* – Apple electronics company has a trademark of Apple as a unique symbol to recognise its products.

According to Dr. S.R. Myneni, graphically when a mark can be represented as a product or service, can differentiate between goods or services of one individual with that of another and can be denoted by means of shapes, colour combination or packaging styles, we can term this type of mark as a Trademark.<sup>1</sup> Section 2(1)(zb) of Trademark Act defines Trademark as a mark which is 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.<sup>2</sup>

### 2.1. Significance of Trademarks

A trademark has the following significance in the world of trade and commerce:

- i. Builds Reputation of the product and owner.
- ii. Better tool to Communicate the Consumer.
- iii. People can Find goods easily.
- iv. Acts as Valuable Assets.
- v. Provides Uniqueness & Distinctiveness.
- vi. Acts as Advertisement.
- vii. Promotes the Growth of Business

In the case of *Laxmikant Patel v. Chetan Bhai Shah*,<sup>3</sup> the Honourable Supreme Court held that the law has not empowered anyone to do business in such a manner that a client or customer would believe that the business belongs to someone else as his own. There are two reasons for the same:

- i. Firstly, honest and fair play should be the basic policies of business; and
- ii. When someone uses an already used mark which confuses the customer to choose for the original makes injury to the rightful owner.

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<sup>1</sup> S.R. Myneni, *Law of Intellectual Property* (Asia Book House, Hyderabad, 2<sup>nd</sup> edn., 2003).

<sup>2</sup> The Trade Marks Act, 1999, s. 2(1)(zb).

<sup>3</sup> 2002 (24) PTC 1 (SC).

### 3. Trademark Infringement

Infringement usually means breaking, disobeying or violating some law but when the same is related in the context of trademark then it means that one person is using someone else's trademark without his/her permission to gain monetary benefits out of it. The one who infringe the trademark although is not breaching any contract but is using someone else's intellectual property to divert the attention of the consumer to make monetary benefit for himself. Trademark infringement can be better called trespassing someone's intellectual property to gain monetary advantages.

Trademark infringement is done in two ways:

- i. Infringement of registered trademark
- ii. Infringement of unregistered trademark

Whenever a trademark is infringed, the registered owner can easily file a suit for trademark infringement under the statute. If the trademark is registered, then the owner can get it corrected or rectified by making an application to the High Court. Trademark owners can take action under the Common law as well by filing passing-off under the law of Tort. But when the trademark is not registered the owner can only make the passing-off action under law of tort. No infringement suit can be filed.

*Section 29 of Trademark Act 1999 states that - A registered trademark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*<sup>4</sup>

#### 3.1. Elements of Trademark Infringement

The following are the elements of trademark infringement:

- i. *Unauthorised Use* – When the defendant uses without the authority or permission of the plaintiff.
- ii. *Used during the course of Business or Trade* – The infringed trademark must be used in the course of business or trade.

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<sup>4</sup> The Trade Marks Act, 1999, s. 29.

- iii. *Misrepresentation*
- iv. *Identical Mark* – A mark which can create confusion that it belonged to the plaintiff.
- v. *Registered Mark* – Mark must be registered under the statute.

### 3.2. Methods of Infringement

Infringement of trademarks can take place in the following forms:

- i. Similar Mark for Identical Services or Goods
- ii. Identical Mark for Identical Services
- iii. Identical Mark for Similar Services or Goods
- iv. Similar Mark for Similar Services or Goods
- v. Likelihood of Confusion
- vi. Similar Ideas
- vii. Initial Interest of Confusion

In *Honda Motors Co. Ltd. v. Mr. Charanjit Singh and Ors.*,<sup>5</sup> the Honourable Court held that the respondent cannot be allowed to use the mark 'HONDA' as a trademark to sell cookers, as the plaintiff is already selling motorcycles under the same trademark which can create confusion in consumers' minds.

### 4. Rights of Previous User

The rights of the previous user prevail over the user of the registered trademark. It means that even if the trademark is not registered and the user is previous then also under any circumstances the rights of the previous owner cannot be mishandled or retained by the registered trademark user in any case even if the mark is similar or identical. It was made so by the legislature because there may be cases in which the rightful owner might not have registered his trademark but he is using it from the start and the defendant might have got it registered to take the advantage, so to avoid such fraudulent practices the legislature has played very nicely while enacting the Act.

*Section 34 of the Trade Marks Act 1999 states that* - even the registered trademark owner is not entitled to restrain or interfere any person who is previous user in

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<sup>5</sup> 2003 (26) PTC 1 Del.

time, then the registered owner even if such previous user's trademark resembles or is identical to the registered mark with regards to the goods and the right of previous user which was protected by the earlier Act.<sup>6</sup>

Further, Section 33 of the Act says that, the registered trademark owner/user is in no way entitled to restrain or interfere with any person or a predecessor in title who is previous user of the unregistered mark, even if such trademark is deceptively similar or identical with the registered trade mark under the Act.<sup>7</sup>

Hence, it can be clearly said that the intent of the legislature has always been protecting the true owner of the mark, not the registered one.

In *S. Syed Mohideen v. P Sulochana Bai*<sup>8</sup> the honourable Supreme Court held that the rights of the user who is the previous one is even above any Trademark registration and hence one who is a previous user will always override the registered trademark owner.

### 5. Domain Name Infringement

Domain names were created to serve the technical function of providing addresses for computers which were easier to remember than underlying IP addresses. But as long as the commercial activities have increased on the internet the domain names have also started to become a matter of trademark infringement. Domain names always help in buying and selling activities among traders and consumers.

In *Yahoo Inc. v. Akash Arora & Netlink Internet Services*,<sup>9</sup> the Honourable Delhi High Court held that domain name is also a trademark. Although the word 'Yahoo' is a dictionary word, it has acquired a uniqueness and distinctiveness thereby entitling it to a maximum degree of protection.

In *Titan Industries Limited v. Prashanth Koorapati & Ors.*,<sup>10</sup> the Honourable Court restrained the respondent to use the domain name 'TANISHQ', as the plaintiff was

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<sup>6</sup> The Trade Marks Act, 1999, s. 34.

<sup>7</sup> The Trade Marks Act, 1999, s. 33.

<sup>8</sup> 2015(2) RCR(Civil) 810.

<sup>9</sup> 1999(19) PTC (201) DEL.

<sup>10</sup> Delhi High Court suit no. 179 of 1998.

using the similar name for selling jewellery and watches since 1994 and had registered trademark in 23 countries.

## 6. Legislation and Passing Off

Legislation since 1940 has tried to protect the rights of previous users by providing different provisions under the different enactments of trademark. Section 27 of the Trademark Act 1999 states that there is no action for infringement of unregistered trademarks. Therefore, no person is permitted to institute any proceeding to prevent or to recover damages for infringement of an unregistered trade mark. The sub-section, however, provides that the law does not impact any rights of action or remedies that may be available against someone who passes off goods or services as the property of another person or as services rendered by another person.<sup>11</sup>

The above provision shows that the legislature has given the utmost importance to the unregistered trademark owner. It would have created a lot of problems and hardships for the trademark owner who has not registered himself under the statute if the registered trademark owner's right had been made superior to it.

Lord Diplock in *Erven Warnink Besloten Vennostcap v. J. Townend & Sons (Hull) Ltd.*,<sup>12</sup> held the following as minimum requirement to make an action of passing off:

- i. Misrepresentation
- ii. Traders must make it during the course of trade.
- iii. Goods or services supplied by him to his potential customers or his end customers
- iv. Which is calculated to damage business or reputation. From another trade (in the sense of a reasonably foreseeable consequence).

Above requirements were, however, reduced to three in *Reckitt & Coleman Products Ltd. v. Borden Inc.*,<sup>13</sup> by Lord Oliver as:

- i. The existence of plaintiff's goodwill
- ii. Misrepresentation

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<sup>11</sup> The Trade Marks Act, 1999, s. 27.

<sup>12</sup> (1979) AC 731 at p. 742.

<sup>13</sup> (1990) 1 All ER 873.

- iii. Damage to the plaintiff's goodwill or reputation

In *Harrodas v. Harrodian School*,<sup>14</sup> it was held that there are three elements of tort for establishing a passing-off action and these three elements are referred to as the 'Classical Trinity', which are as follows:

- i. Reputation
- ii. Deception
- iii. Damage

### 6.1. Transborder Reputation

Cross-border reputation means the reputation of a product across geographical borders and borders. According to the Cross-Border Reputation Doctrine, it does not matter if the goods are manufactured or sold in India, even if the goods are of great name and notoriety and are not registered, under general tort law one can sue. India is a signatory to the Madrid Protocol and the TRIPS Agreement.

In *Milmet Oftho & Ors v. Allergen Inc.*,<sup>15</sup> held although the appellant is not manufacturing its products in India but was manufacturing in many other countries and had a world-wide reputation under the mark UCOFLOX and case was decided in the appellant's favour.

In *N. R. Dongre v. Whirlpool Corporation Ltd.*,<sup>16</sup> the Honourable Apex Court held that WHIRLPOOL had worldwide reputation and even if trademark registration was not renewed by the respondent company in 1977, it makes no ground to believe that respondent will not use the trademark WHIRLPOOL and hence an irreparable loss will be likely to be made to goodwill and reputation of the respondent company.

### 6.2. Kinds of Passing Off

Following are the kinds of passing off action

- i. *Extended Passing Off*: In case there is misrepresentation of quality of the product owing to which the reputation of the plaintiff is injured. The action here is not

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<sup>14</sup> (1996) RPC 698 at 713.

<sup>15</sup> 2004 (12) SSC 624.

<sup>16</sup> (1996) 7 (SC) 55, (1996) 5 SCC 714.

based on the three classical principles rather it is based on the injury to the quality of the hard-earned goodwill.

- ii. *Reverse Passing Off*: It is a situation when the defendant sells plaintiff's products as his own by removing the plaintiff's trademark and affixing his own label as if the product is produced by the defendant only.

### 6.3. Position in India

In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals*,<sup>17</sup> the full bench of the Apex Court held that the principles laid down by the English Courts cannot be made applicable entirely in India. The Courts have to understand the difference between India and England. The consumers of both the countries cannot be equated with each other. The marks were phonetically similar so the marks were similar in idea too.

### 6.4. Justifications for Passing Off

- i. The mark, name or symbol of plaintiff's goods is not distinctive and has not gained reputation.
- ii. The name, mark or symbol not passing off the goods of the plaintiff.
- iii. The Respondent himself has a right to use the name, mark or symbol complained of by virtue of honest concurrent use or otherwise.
- iv. Bonafide mistakes are not likely to be repeated.
- v. Plaintiff not entitled to relief on the account of delay, estoppel, acquiescence.
- vi. Totally different words used by the defendant.
- vii. No presence of Goodwill.
- viii. Plaintiff himself given the consent

## 7. Distinction Between Passing Off and Infringement

Passing Off action was developed in accordance with the Common Law principles affiliated to the Law of Torts. No one has the right to claim someone else's goods as their own. Claims can be made for both registered and unregistered trademarks, but claims of infringement can only be made for registered trademarks.

Passing-off may be used where the infringing activity cannot prevent the defendant from using the registered mark, but not vice-versa. For example, if a claim

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<sup>17</sup> 2001 (2) PTC 541 SC.

of infringement fails to deter an infringer because of a different classification of goods or services, the claimant may issue a warning even if the product is different.

In the case of infringement, an injunction is issued against a trademark in an infringement action, but in the case of passing off, the defendant may not use the mark, but may use the mark in a manner that assigns the plaintiff's goods. However, one cannot do that as well.

### **7.1. Infringement Action**

- i. Mark User not relevant based on property acquired by registration of trade mark.
- ii. Further proof is not required if similar marks.
- iii. Injury or damage not compulsory.
- iv. Use of Mark similar to registered is necessary.
- v. Based on statutory rights.
- vi. Use of additional matter indicating a different trade source is not material.
- vii. Infringement action is a statutory remedy.

### **7.2. Passing Off**

- i. Registration of trademarks is not relevant.
- ii. Goods of the defendant need not be the same, it may be different.
- iii. Must cause injury or damage to the plaintiff's goodwill.
- iv. Use of plaintiff's trademark not essential.
- v. Based on violation of Common Law rights.
- vi. Objection may be set-off by added matter clearly distinguishing the defendant's goods from the plaintiff's.
- vii. It is a Common Law remedy.

## **8. Remedies for Infringement and Passing Off**

Business in India has developed very exponentially so the cases of trademark infringement. The legislature has tried to provide the various remedies under civil law and the criminal law for the trademark infringement. Without the relief for trademark infringement & passing off the business will affect very badly among the whole globe in the era of globalization and it will discourage the true trademark owner.

In *Novarits AG & Anr v. Dr Mukundakam Sharma*,<sup>18</sup> the Honourable Court stopped the defendant from selling pharmaceutical products under the name NOVERAN considering it the same as the name of plaintiff's VOVRAN by way of passing an injunction order.

The above case clearly shows that even the medical health services are not barred from such practices. So, it becomes very necessary to have provisions for providing relief to the plaintiff to encourage good practices in the market and public as well.

Following are the various remedies for trademark infringement & passing off action:

- i. Civil Remedy
- ii. Criminal Remedy
- iii. Administrative Remedy
- iv. Other Remedies

### 8.1. Civil Remedies

Civil remedy for trademark infringement has been provided under the Sections 135 & 27(1) of the Trademark Act, 1999. Section 27 (1) of the Trademark Act 1999 prevents the infringer from infringing the trademark and also provides the right to claim damages. Section 135 of the Trademark Act 1999 states about the remedies and reliefs the trademark owner can avail in the case of trademark infringement or passing off.

#### 8.1.1. Injunction

Injunction is the most important relief which a trademark owner usually seeks as a remedy to stop infringement of his trademark by the infringer.

- i. *Perpetual Injunction*: It is a kind of injunction which is permanent and it stops the defendant permanently to use the trademark. It is usually provided after the final decision only.

In *Intel Corporation v. Divakaran Nair and Ors.*,<sup>19</sup> the Court passed a perpetual injunction against respondent for using the ART INTEL as the trademark as INTEL already had a world-wide reputation, so the defendant

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<sup>18</sup> 2003(26) PTC (226) Madras.

<sup>19</sup> 2006 (33) PTC (345) DEL.

cannot just use the suffix ART before the word INTEL and use the mark for its own purposes.

- ii. *Interim Relief*: It is also called as temporary relief. The relief sought is not permanent, it is just temporary in nature. When it seems, the suit will go for a longer period in the court to follow the principles of natural justice & considering the merit and case facts so the plaintiff usually seeks for the interim relief from the court to stop the further damages.
- iii. *Mareva Injunction*: When court thinks that defendant is likely to dispose, destroy and dissipate its own assets to eliminate the costs or damages to be recovered from him then court may pass the above-mentioned injunction in plaintiff's favour.

#### 8.1.2. *Anton Piller Order*

It is an ex-parte order against the respondent to inspect the premises of the defendant so that he cannot dispose-off the infringing goods.

#### 8.1.3. *Discovery Orders/Norwich Pharmacal Order*

The purpose is to disclose information or disclose required documents. The court may issue such an order if the information is out of the plaintiff's reach.

In *Bridgestone Corp v. Tolins Tyres*,<sup>20</sup> the Honourable Court ordered Norwich Pharmacal Order and asked the Customs Officer to provide the information regarding the exports made by the respondent to Nepal by infringing the BRIDGESTONE plaintiff's trademark.

#### 8.1.4. *Damages*

In case the defendant uses the trademark registered by the plaintiff for himself without his permission then the Court can pass an order to provide damages to the appellant. Damages are usually of two types:

- i. *Punitive Damages*: Whenever a defendant makes a Criminal Propensity, Punitive damages are given to the plaintiff. It is usually awarded in the cases where the defendant disobeys or contempt the previous judgement of the court.

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<sup>20</sup> CS (Comm.) No. (375) 2016 DEL.

- ii. *Compensatory Damages*: It is awarded as the compensation to the plaintiff for the loss suffered by him due to the infringing act of the defendant. It can be even more than the actual profits earned by the defendant as it is the measure of loss of plaintiff.

In *Yahoo Inc. v. Sanjay Shah*,<sup>21</sup> the honourable court provided damages of rupees Five Lakhs Five Thousand along with the cost to the appellant by the defendant.

#### 8.1.5. *Account of Profits*

In this type of remedy, the Court orders the defendant to hand over the profits earned by him by using the trademark of the plaintiff. Here the loss made to the plaintiff is irrelevant as it is only concerned with profits made by the defendant.

## 8.2. Criminal Remedies

Criminal Remedy has been provided by the legislature under all trademark acts passed since 1889. Along with the civil & the administrative remedy legislation has made penal provisions as well in the act.

### 8.2.1. *Penal provisions under Trademark Act 1999*

Chapter XII of the Trademark Act 1999 deals with the penal provisions related to trademark infringement.

- i. Section 101 – It provides for the meaning of applying a mark or trade description to Goods or Services.<sup>22</sup>
- ii. Section 102 – It provides for the Falsifying and falsely applying the trade mark.<sup>23</sup>
- iii. Section 103 provides for the penalty for applying false trademarks, trade descriptions, etc.<sup>24</sup>
- iv. Section 104 provides for the penalty for selling goods or providing services to which false trade mark or false trade description is applied.<sup>25</sup>

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<sup>21</sup> 2006(32) PTC (157) DEL.

<sup>22</sup> The Trade Marks Act,1999, s.101.

<sup>23</sup> The Trade Marks Act,1999, s.102.

<sup>24</sup> The Trade Marks Act,1999, s.103.

<sup>25</sup> The Trade Marks Act,1999, s.104.

- v. Section 115 provides for the cognizance of certain offences and the powers of police officers for search and seizure.<sup>26</sup>

#### 8.2.2. *Police Action*

Police can take action under the Section 156 of Code of Criminal Procedure 1973 when cognizable offence.

#### 8.2.3. *Filing of Complaint to Magistrate*

A complaint can be filed to the magistrate under section 190 CRPC where the offences are cognizable in nature and not mentioned in TMA 1999 which is punishable up to 3 years.

#### 8.2.4. *Indian Penal Code*

There are many provisions under the IPC to stop the infringer from infringing or passing off the trademark such as:

- i. Cheating
- ii. Forgery
- iii. False Property Mark
- iv. Counterfeited Property Mark

### **8.3. Administrative Remedies**

In case of trademark infringement, a trademark proprietor can avail the administrative remedy of two types:

#### 8.3.1. *Opposition*

The trademark registrar conducts and administers the proceeding. Opposing applications can be filed by the true trademark owner so that person who is infringing his mark does not get registered.

In *Group Pharmaceuticals v. Alkem Labs*,<sup>27</sup> the Trademark Registrar refused to register the trademark METRO-D as it was opposed by the trademark owner of METRO-N in the same classification of medicine pharmaceutical business.

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<sup>26</sup> The Trade Marks Act, 1999, s.115.

<sup>27</sup> 1996 PTC (16)117.

### 8.3.2. *Earlier Remedy Provided by Intellectual Property Authority Board (IPAB)*

Even if the trademark infringer is successful in getting his trademark registered then also the trademark proprietor could earlier file proceedings in IPAB. But now IPAB has been dissolved by the notification of the central government in April, 2021 so now only the judicial option is left.

In *Sarda Plywood Industries Ltd. v. Tac Construction Materials Ltd.*,<sup>28</sup> the IPAB rejected the decision of the Registrar to register the trademark DURACEM in class nineteen which consists of building materials and which was causing infringement of the trademark DURACEM which is almost the same.<sup>29</sup>

## 8.4. Other Remedies

### 8.4.1. *Companies Act, 2013*

Companies act 2013 provides the provisions to safeguard the interests of the trade mark owner in case of trade mark infringement & passing off. Section 4 & 16 of Companies Act deals with the provision related to trademark infringement.

- i. Section 4 of the act states that before accepting the name of any company to be registered under companies act 2013 or wants to change existing name the registrar must confirm the same with the trademark register search engine that it should not be similar.
- ii. Section 16 of the act states that a company registered under companies act 2013 can seek remedy in case of trade mark infringement against the infringer within 3 years by applying to the Government.

### 8.4.2. *Customs Act, 1962*

Prohibits the import and export of goods infringing a trademark in India and empowers the authorities to seize and detain such goods.

### 8.4.3. *Domain Name Resolution Policy*

It is an Organisation related to “National Internet Exchange of India” (NIXI) which registers the domain name *.in*. This organisation also deals with the dispute resolution of the domain name.

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<sup>28</sup> 2003(27) PTC (391) DEL.

<sup>29</sup> 2003(27) PTC (391) DEL.

In *Gulshan Khatri v. Google Inc.*,<sup>30</sup> the Court held that the appellant cannot make use of the domain name *googlee.in* as it is the same as the respondents' trademark *google.in* and upheld the arbitral order of NIXI.

### 9. Conclusion

The present trademark laws are very well designed and settled. The trademark legislation is entirely serving its purpose regarding the infringement & passing off and providing remedies to the trademark owner to curtail the fraudulent use of mark. New rules & principles have been evolved by the courts by applying jurisprudence. The interests of previous users are also protected under the Act and under Common law as well. Judicial authorities have played a major role in safeguarding the interests of the previous users. IPAB being an administrative authority has passed various judgements from time to time but has failed to fulfil its objectives as a result it got dissolved in April 2021 by the notification of the Central Government. Even if someone gets a mark registered and another user is the previous user then also the legislation has tried to safeguard the interest of the previous user. Under trademark infringement only the owner of registered trade mark can file the suit whereas unregistered trademark users can also make passing-off action under Common law. The trademark legislation has very well achieved the objectives mentioned in the preamble of TMA, 1999.

Lastly, from the above it is suggested that it is better if one gets his mark registered as it provides advantage and prima facie evidence as otherwise it becomes very difficult to prove the same if the mark is not registered. As usually said "*Prevention is always better than cure*" applies here also - If one already gets his trademark registered then it can be considered as a prevention and filing a trademark infringement suit can be considered as a cure. So, although trademark registration is not a mandate, even then also it becomes a necessity to get the trademark registered so that the hardships to prove that he himself is the true owner of the trade mark gets reduced in today's globalised world.

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<sup>30</sup> OMP (COM)497/2016.