

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

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Difference between Passing off and Infringement with Special Mention of Trans-Border Reputation

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ABSTRACT

The origin of trademark dates back to ancient times when early craftsmen carved their signatures or “marks” on their artistic or utilitarian products. Over the years these marks have evolved into today’s system of the trademark. Trademark protects the owner of the mark by conferring him the exclusive right to use, to identify goods or services, or to authorize another to use it for commercial benefits. In addition to the right of exclusive dealings, the Act also confers him right to file a suit for infringement of his right. Sections 27, 30, 34, 35 of the 1999 Act, and several other common law principles and WIPO rules help the owner of the trademark to seek relief in case of infringement of his rights. In this paper I would go into details regarding infringement of trademarks, reliefs available against such infringements, passing off vs infringement and where does Trans-Border reputation fray in the equation. I will also be discussing national, international, and comparative safeguards available for protection against infringement. I also aim to canvass on other relevant questions such as why not registration has been made compulsory and what is the future of Intellectual Property in India.

I. INTRODUCTION

Under the Trade Marks Act 1999 (*hereinafter referred as the Act*) The proprietor of the Trademark has been conferred with exclusive right to use the trademark for goods and services in respect of which the trademark was obtained. Specifically, Section 28 of the Act, which states that ‘*the registration of a trademark shall, if valid, give to the registered proprietor of the trademark the exclusive right to the use of the trademark in relation to the goods or services in respect of which the trademark is registered and to obtain relief in respect of infringement of the trademark in the manner provided by this Act.*²’ In Addition to conferring the right of exclusive use, he proprietor also has a right to file a suit for *infringement* of his right. However,

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² Trade Marks Act, 1999

it is to be noted that no action shall lie in case of an unregistered trademark. But as the popular maxim goes *Umbi Jus ibi remedium*, which means Where there is a right there is a remedy, following the same principle the action of Passing off goods, which is also a common-law remedy, is available to the proprietors of unregistered trademark. In a broad sense Infringement, Means taking unfair advantage or being detrimental to the distinctive character or goodwill of a trademark. Passing off on the other hand means a deceitful representation of the goods by a person as someone else goods.

The TM or ® sign often follows the registered trademark to notify to people that it is registered and hence any infringement might follow the action.

In India, before the Act, an action against Infringement could only be brought in respect of the same goods or goods of the same description. However, now infringement action is also possible in relation to similar, associated and cognate goods. This is a very important evolution for the infringement actions as a definition with respect of similar, same or different goods changes and with that change, the evidence needed to establish wrong of Infringement also changes. The Infringement action is a statutory remedy available to the owner of a registered trademark, but even this action comes with the riders or limitations as mentioned in Section 30, 34, 35 of the 1999 Act.

If at the time of registration of the trademark certain limitations conditions have been imposed, in that case, the exclusive rights have to be evaluated within the terms of such registration.

II. WHAT CONSTITUTES INFRINGEMENT?

According to Section 29(1) of the 1999 Act, a registered trademark is infringed by a person who is neither the proprietor himself nor the registered person to use the trademark and if he uses the same in course of trade, a mark which is identical or deceptively similar to the trademark, concerning any goods or services of which trademark is registered and in such manner that renders the use of the mark likely to be mistaken as that of another registered trademark. Certain essential elements as per section 29(1) for infringement are as follows;

- When the person using the trade mark complained of, is *other than* the registered user of the mark.
- Plaintiff's trademark is registered.
- The defendant's mark is identical with, or deceptively similar to the plaintiff's trademark.
- The defendant's use of the mark is in the course of trade, in the relation of goods

and services covered by the registered trademark.

- Use is in such a manner that it confuses being mistaken for the registered trademark
- It goes against the definition of 'permitted user' as per section 2(1)(r)

In addition to the above-mentioned essentials, a couple of more questions are needed to be answered before determining that there is an infringement of trademark as per the provisions of this act.

- Whether or not the defendant's act comes within the scope of essentials laid down in Section 29 and,
- Whether the defendant's act comes within the exception mentioned in section 30 of the Act.

When there is a likelihood of confusion of Association with registered mark [Sec. 29(2)]

This subsection provides additional ways in which an action for infringement may arise. It states that a registered trademark is infringed by a person who not being the proprietor of who isn't permitted to use the same, uses it in the course of trade.

- Trademark is identical and is being used in respect of similar goods and services
- The mark is similar to the registered trademark and there is identity or similarity of goods and services covered by the trademark
- The trademark is identical and is used concerning identical goods or services

The Delhi High Court in **Essco v. Mascot, AIR 1982** laid down several more guidelines when deciding the question of Likelihood of deception or confusion arising out of usage of two trademarks. The court further was of the opinion that such a question is not to be decided in *vacuo* but the background and circumstances are also needed to be considered.³

The Trade Marks Act 1999 has enlarged the meaning of infringement as more action shall be taken as to constitute infringement. Example, the use of trademarks as trade names, or use of trademarks in advertisements and business papers. Thus, further widening the exclusive rights enjoyed by the proprietor of a registered trademark. **Infringement of Well-known Marks [Sec. 29(4)]**

This clause postulates that if a trademark has a reputation in India, the use of a mark identical with or similar to it, even on the goods or services that are categorically different shall constitute

³ Essco Sanitations vs Mascot Industries (India) on 15 April, 1982 AIR 1982 Delhi 308

infringement as such use, without due cause, would mean taking unfair advantage of the goodwill of the registered trademark or to harm its distinctive character. Essentials are as follows,

- Is identical or similar to the registered trademark
- May or may not trade in relation to goods and services for which the trademark is registered
- The trademark is well known in India, and its use in any sense would mean taking undue advantage of its reputation

A further study of Section 29 provides a long list of other manners in which a registered trademark may be infringed upon, they are as follows

- When the registered mark is used as Trade Name [Section 29(5)]
- Affixation of the registered trademark to goods or packaging [Section 29(6)]
- Sale-Purchase or Import-Export of goods under the Trademark [Section 29(6)]
- Usage of Trademark in business papers or advertising [Section 29(6)]
- Unauthorised use of the registered trademark for Labelling [Section 29(7)]
- Infringement by Advertising [Section 29(8)]
- Infringement by using distinctive elements [Section 29(9)]

III. EXCEPTIONS WHEN A REGISTERED TRADEMARK IS NOT INFRINGED

As per Section 30(2),⁴ some circumstances or actions do not lead to infringement,

- If, use is such that it indicates to the customers the kind, quality or quantity of the goods
- If it indicates geographical origin, the time of production of goods or other such characteristics
- If the trademark is borne on such goods and services in relation to which it is registered, and such goods or services are exported outside India, or in any other condition which may be subject to restriction or limitations and registration doesn't extend same rights.
- If the trademark is used by a person who in course of trade is connected with the

⁴ Trade Marks Act, 1999

proprietor of trademark and When the proprietor has given his implied or explicit consent to such person to use the trademark

- If in relation with services where the intended purpose of the use of the trademark is to indicate to others that such services are being provided by the proprietor or authorised user of the trademark

In a very important judgement by the Delhi High Court in case of **Hawkins Cookers Ltd v, Murugan Enterprises 2012 (50) PTC 389 (Del) (DB)**⁵. The court laid down guidelines as to when would it be a case of the use of the trademark reasonably necessary to indicate that the goods are so adopted. The case dealt with the issue of Murugan Ent. using the trademark of HAWKINS on their pump sets to indicate that these pump sets are attachable or compatible with Hawkins Pressure cookers as well. The single bench of Delhi Court believed that the use of “Hawkins” on the gasket falls under the gambit of honest use and thus isn’t a case of passing off or infringement. But the division bench reversed the order of the single bench and held that though the learned Single Judge has taken the right approach of law, that is if in the sale of a product it becomes necessary for the manufacturer of adaptable goods, to refer to the trademarks of related goods such reference would not amount to infringement of the trademark. However, the Division Bench held that the evidence on record has been misapplied. The court held that the gaskets being manufactured by the respondents were suitable for all types of pressure cookers and not just of Hawkins, and therefore it would mean that it was not necessary to indicate that the adaptable goods relate to only Hawkins pressure cooker. The court further highlighted that the printing used by respondents has given undue prominence to the words “Hawkins” by putting it in distinct red colour and the remaining words of the sentence are printed in black.

IV. PASSING OFF

An action for passing off is based on common law of tort and it is based on the principle that no one is entitled to represent their goods as being that of some other persons, and none shall be permitted to use any mark, sign or symbol, whereby by the means of deceit, fraud, trickery make a false representation to the customers.⁶

The Trade Marks Act, 1999 reserves in a person a right to file an action against any person for passing off goods notwithstanding anything contained in the Act. It is to be noted the term **passing off** has not been defined anywhere in the Act, but certain references can be found of

⁵ Hawkins Cookers Ltd v, Murugan Enterprises 2012 (50) PTC 389 (Del) (DB)

⁶ James L.J, Singer Manufacturing Co. V. Zoog (1880) 18 Ch.D 397, P. 412

the same in Section 27(2), 34 and 135. According to Winfield the law of passing off arose to prevent unfair trading and protects the rights of the proprietor.

Action for Passing Off

The word *Passing Off* itself indicates that its purpose is to “pass-off” or in other words represent your goods as that of someone else to lure the customers into availing your goods and services. The action of Passing-off is an action to preserve the reputation, goodwill of the proprietor of original goods and to safeguard the public. The action can be brought by the owner of a distinctive trademark, and by the person who perhaps has invented a word. In case of a dispute, it is essential for the claimant of the trademark to prove not only prior usage but also prove the reputation by volume of sales and advertisements.

The plaintiff also must prove misrepresentation to the public, by the respondent, to bring an action for passing off. It is to be noted that the question of whether the misrepresentation was with an innocent one or done with a mala fide intention would only be relevant when deciding the grant of relief or damages to the plaintiff.⁷

For a successful passing-off action it also has to be established that there is the likelihood of confusion in the minds of the customers or public that the goods or services being offered by the respondent are same as that of the plaintiff. In addition to that, the court must assess the quantum of loss by the misrepresentation to the plaintiff. In assessing the likelihood of such confusion, the courts must allow for the “imperfect recollection of a person of ordinary memory.”⁸

Three essential elements also sometimes referred to as “classical trinity” that are necessary for the tort of passing off as laid down in the **Harrodas v. Harrodian School (1996) RPC 698**⁹ are as follows:

- Reputation / Goodwill
- Deception/ Misrepresentation
- Damage

Position in India

In **Cadila Health Care Ltd. Vs Cadila Pharmaceuticals**¹⁰, the full bench of Supreme Court held that “Principles laid down by English courts cannot be applied in India in their entirety.”

⁷ Warnik v. Townend, 1980 RFC 31

⁸ Aristae v. Rysta 1945 AC 68

⁹ Harrodas v. Harrodian School (1996) RPC 698 to 713

¹⁰ Cadila Health Care Ltd V. Cadila Pharmaceutical, AIR 2001 SC 1952

This finding of the court was based on the notion that the minds of customers or the public in India are not the same as that of the public in England.

In this case, the issue was that the trademarks 'Falicigo' and Falcitab' are deceptively similar or not. The trial court refused an interim injunction, the appeals were also dismissed and subsequently the matter went to the SC and it was held by the court that in matters of passing-off action in relation with deceptively similar marks the following facts would be relevant: -

- The type or nature of the mark
- The degree of resemblance. Phonetically similar or similar in idea
- The goods or services in relation to which the trademark is being used
- The class of customers who are likely to buy the goods, their awareness or intelligence when going to purchase the goods
- The mode of purchasing
- Any other relevant facts to ascertain the dissimilarity between the marks

V. DIFFERENCE BETWEEN PASSING OFF AND INFRINGEMENT

We have already discussed that Passing Off action is based on the common law principle that nobody has any right to falsely represent his goods as somebody else's. Such action is recognised as of right for both unregistered and registered trademark owners. On the other hand, an action for infringement is a right acquired by registration of the trademark under the Act of 1999 and is exclusively available against registered trademarks.

Action for Infringement is a statutory right, its maintainability depends upon the validity of registration of the mark and subject to other restrictions laid down in the Act. On the other hand, the gist of passing off is that e.g. 'X' is not entitled to represent his goods as goods of Y, one peculiar thing to note here is that Y doesn't have to prove that whether the act by X was intentional or not. It is enough that getting Y's goods has become distinctive of them and that there is a probability of confusion between goods of Y and X. No case of actual damage or deception may be proved

A proprietor of an unregistered trademark cannot sue for infringement of trademark his only remedy lies in bringing an action for passing off. In infringement, the issue is that whether the defendant's trademark is identical with or shows a deceptive similarity to the plaintiff's trademark, while in passing off the defendant's conduct or false statements are likely to result in goods which are not those of the plaintiff's but are being passed off as that belonging to the

plaintiff.

The statute law of infringement is based on the same fundamental idea as the law relating to passing off, but it differs from that law in two particulars, Firstly it is concerned only with one method of passing off, namely the use of trademark and secondly the statutory protection is absolute in the sense that once a mark is shown to offend, the user of it cannot escape by showing that y something outside the actual mark itself he has distinguished his goods from those of the registered proprietor. In an action of Infringement, the court is not concerned with the question of deceiving or confusion, but whether the mark is similar or same as that of the registered proprietor. The relief in tow actions is also different. An injunction is issued against infringement action and in passing off the defendant is not prohibited to use the mark, but instructed not use to use the mark in such a manner which shall create confusion in the mind of the purchaser.¹¹

VI. REMEDIES AVAILABLE

To protect the registered Trade Marks, the following remedies can be resorted to,

1. Civil Remedies

When instances of infringement and passing off occur, the court of competent jurisdiction, not lower than district court can be moved for grant of interlocutory injunction, Anton Pillar Orders, which allows the plaintiff and his legal representative to enter the premises of defendant to collect evidence, assert the damages and account of profits.

2. Criminal Proceedings

The complaint may be made against the person causing infringement. Both the proceeding, civil and criminal law can be initiated simultaneously. Under criminal law proceedings, the complainant seeks an award of punishment to the infringer while in civil seeks damages.

3. Administrative Remedies

Opposing the registration of a deceptively similar trademark when the Trade Marks registry is in the process of considering the grant of a trademark. The registry can also be moved for the removal of a deceptively similar trademark if registered.

VII. TRANSBORDER REPUTATION

The concept of transborder reputation finds its origin in some of the developed and highly industrialised countries and the crux of the concept is that even if a well-known trademark is

¹¹ Rustom R. Dadachanji, *Law of Trade and Merchandise Marks*, in a nut shell, First ed. 1962

widely used in one or more countries and in other countries the product with the trademark in question is not available or is unheard of by the consumers, despite this if someone adopts the similar trademark, the owner of the well-known trademark can bring an action based on transborder reputation. However, this concept is not expressly enacted in our statute.

In the era of globalisations and internet, anything which is sold or produced in one part of the world can be purchased by someone sitting thousands of miles away. E-commerce has made orders between countries virtually redundant; recognition of your brand name is directly proportional to the success and sales of your business. Let's take the example of Google, a company and a name worth a trillion dollars, the name "Google" now transcends the definition of a household name, it's much bigger than that. We have to understand that now brand names or trademarks don't just serve the textbook function of ensuring the quality of goods or services but in present times the brand names command a reputation that is beyond one product, one service or one class. This new idea of a global brand brings with it complexities, lacunas in existing laws. With the existence of brands like McDonald's, KFC, Apple, ZARA there have to be measures in place to protect these brand names from being misappropriated by others. Another question which now arises is whether the reputation of such brands by itself without physical presence or existence of goods can be considered as a factor in a passing-off action against local traders who might have adopted names of such foreign brands. The term reputation ideally should be used differently than goodwill however in intellectual property literature these two words are often used interchangeably. By definition, reputation means beliefs or opinions that exist about a particular brand name, trademark, or company. The knowledge of goods or services among a large number of people. Goodwill on the other hand exists in the minds of the customers of goods or services, who are aware of its quality, the durability of the goods or business concerned.

Though brands are protected from infringement of their Trademark in the countries or territories they are registered, they often struggle to enforce their rights in countries where they are not registered. In many cases, it was even seen that proprietors of trademarks have to fight against counterfeiters, not only this but had to prove their ownership over their trademarks. What was shocking that it was observed in at times some brands were outrightly prohibited from practising in a country because their trademarks have been misappropriated and owned by third parties. In these cases, the argument or defence of Transborder reputation and goodwill of their companies came in handy. The companies here rely on an action of passing off to combat misappropriation.

VIII. DEVELOPMENT OVER THE YEARS

As we have read above, to combat misappropriation of their trademarks or brand name, in territories other than in which the trademark in question is registered, companies depend on the action of passing off rather than bringing an action for infringement. This is so because according to laws only registered trademark proprietors can bring an action for infringement and because their trademarks are registered elsewhere and not in said territory, there lies no action for infringement.

Traditionally, the foreign proprietor of a trademark could claim rights or protection in India only if the trademark is registered or used in India. If the mark has been used for goods or services of Indian manufacturer or imported goods and services being sold in the course of business in India, the mark would enjoy rights in India as a trademark either registered or unregistered. Foreign trademarks can have a reputation and resultant protection in India, without necessarily being registered in India or not. This protection was not given to foreign trademarks in the trademark act of 1999 or any other legislation rather these rights were recognised by the precedents set by the judiciary through their plethora of judgements in which the courts recognised the transborder reputations these brands carried.

It is to be noted that recent decisions by High Courts which have received approvals of Supreme Court that transborder reputation in India can be taken into consideration as one of the factors in favour of the plaintiff. But there appears no case in India, UK or commonwealth countries where a plaintiff has been successful in bringing a passing off the action by the virtue of trans border reputation alone i.e. without presenting relevant goods or services.

Legal Precedents

The doctrine of Transborder reputation has established or recognized by Judicial actions, some important case laws to be highlighted are,

Haw Par Bros, Rangoon V. Tiger Balm Co, Madras¹², the facts of the case were that Haw Par broshad been marketing Tiger Balm all over the world. The word 'TIGER' with the device of a leaping had been exclusively identified with Haw Par. When the company started importing their goods in India, they also applied for registration of their trademark, but their application was opposed by and ultimately rejected because a prior trademark of same names was already registered in India. When the plaintiff approached the court for the relief, they found out that Tiger Balm Madras had applied for registration in 1961 and were subsequently

¹² Haw Par Bros Intl. Ltd., Rangoon V. Tiger Balm Co. Pvt. Ltd., Madras and ors 1996 PTC 311

granted same. When Haw Par petitioned for interim injunction and the action of passing off, their petition was rejected by the single judge. The single judge gave a cogent reason for refusing their claim of trans border reputation. Ultimately when Haw Par appealed, the division bench held reversed the findings of the single judge and granted the interim injunction against Tiger Balm Co. The reasoning given by the court for this decision was;

- Registration of respondent's trademark was subject to suit for infringement under common law principle because the Haw Par was prior in existence
- In these fast-growing times of globalization, international exchange of information. Increase in tourism, the doctrine that so far had sway can no longer be the case. Trans-Border reputations will need to be kept in mind while deciding a matter of infringement or passing off.

The court not only granted the interim injunction but also asked the Tiger Balm Co Madras to specify wherever they use the trademark 'TIGER BALM' that they have no association with TIGER BALM which is the property of Haw Par Pvt Ltd.

The similar approach was taken by Delhi High Court in the case of **William Grant & Sons Pvt Ltd Vs McDowell & Co Ltd**¹³; This case was very different from other cases as in this case the question was not of the similar trademark but rather was of deceptively similar trade dress. Here the defendant was using a different trademark for its liquor, "McDowell's single malt whisky" which was in no manner similar to that of the plaintiff's brand "Glenfiddich". However, the label of both the bottles had a similar print and design. This case is also important because it was here that Justice Narain laid out that Trade Dress formed part of a trademark. The Court further held that the plaintiff's brand of whisky namely "Glenfiddich" held trans-border reputation, the court based their findings on two key pieces of evidence, one that there were advertisements of Glenfiddich here in India and Second the Bottle was being sold at The Delhi Duty-Free shop. Another key Observation by Justice Narain here was that since Liquor Bottles are potable products, it is the label which creates distinctiveness in the product and thus would amount to misappropriation of the plaintiff's trademark. This decision by the court extends the protection of the transborder reputation of trademarks. In a sense, the court recognised the even dilution of foreign trademarks may attract action of passing off.

One of the biggest cases related to Transborder reputation has to be **N.R. Dongre v. Whirlpool, 1996**¹⁴ it was not only monumental in understanding the concept of trans border reputation but

¹³ William Grant & Sons Ltd. Vs. McDowell & Company Ltd. [1994 (30) DRJ 105

¹⁴ NR Dongre v Whirlpool Corporation ((1996) 5 SCC 714)

was one of the earliest cases decided by the Supreme Court on this matter. In this case, the respondents were manufacturing washing machines with the trademark “WHIRLPOOL” and had registered their trademark in several countries. In India, their registration was expired in 1977 and subsequently, an Indian company in 1997 got the trademark registered. When the respondents came to know of this, they filled for a suit of passing off. The division bench of high court restrained the appellant from using the trademark “WHIRLPOOL”. They appealed against the order to SC.

The SC upheld the decision of the Delhi High Court and further explained the position while deciding the case. The court explained that **WHIRLPOOL** washing machines were already being sold in India before the registration of the same by the appellant. Moreover, their presence in over 90 countries comes under the doctrine of transborder reputation. The court also held that prima facie it seems that the appellant was attempting to pass off their goods as that of Whirlpool Co.’s by creating confusion in minds of customers. The fact it is intentional or unintentional confusion is immaterial in this case. The court further helps that rights granted under Section 27(2) are not affected by Section 28(3) And Section 30(1)(d) of the 1958 Act. Therefore, the registration of a trademark is irrelevant in an action for passing off.

It appears by reading various case laws that one of the most relied upon, convenient method for establishing reputation by knowledge is through advertisements. Advertisement from any source is it. Television, radio, internet that are circulation in India are taken into consideration by the Indian Courts. However, this must not be taken for granted, interestingly in a fairly recent judgement of Supreme Court delivered in December 2017, of **Toyota vs Prius Auto and Ors**¹⁵, the supreme court decided differently than in Century 21 case and highlighted a very important detail in deciding the question of reputation. First let’s see the facts of the case, in this case, the plaintiff contended that defendant’s use of the word “PRIUS” as their company name, is misappropriation of one of their trademarks. The Plaintiffs manufactured a car under the trademark of “PRIUS” which was first launched in Japan in 1997, and the company in India was registered in 2001. The court observed that in deciding whether the trademark enjoys a transborder reputation or not. The knowledge of its existence among people is a very important factor, and a single advertisement in Economic times at the time of the launch of the said car will not necessarily mean that people knew of its existence in 2001 when the Indian company registered its trademark.¹⁶

¹⁵ *Toyota Jidosha Kabushiki Kaisha v. M/S Prius Auto Industries Ltd. & Ors*, CS (OS) No. 2490 of 2009

¹⁶ GAUGE SOLUTIONS PVT LTD, *CASEMINE.COM*, available at :

<https://www.casemine.com/judgement/in/56090a3ee4b0149711171b79> (Last visited on September 9, 2020)

Therefore while deciding the case in favour of Prius Auto Co. the court also laid down a very important precedent that, despite the prior use of the trademark by the plaintiff and prima facie evidence of slavish imitation on the part of the defendant, a foreign trademark will not be protected by Indian courts unless foreign claimant could prove that the knowledge of its trademark has trickled down amongst the relevant section of the society.

IX. WHY NOT MAKE TRADEMARK REGISTRATION COMPULSORY?

After reading several case laws and research papers on the right against Infringement of both registered and unregistered trademark. One question comes to the mind, why not make the registration compulsory and avoid the confusion while deciding the question of an action for passing off. Before dwelling into the above question let's see what purpose will it solve and whether there will be advantages of the same.

Many countries give protection to both registered and unregistered trademarks but unregistered trademarks are offered less protection. In some countries, there is very limited ground for shielding of unregistered trademarks. In India, an action of passing off can be brought but it is often difficult to prove. With registration becoming compulsory the proprietors will enjoy the full legal protection granted under respective domestic laws. In a suit for infringement, the burden of proof is not as high as it is in the case of a suit for passing off. In a suit for infringement one may only prove deceptive similarity and it shall be enough ground for a successful suit, but in a suit for passing off, over and above proving deceptive similarity between trademarks, creation of confusion in the mind of customers and likelihood of causing injury to goodwill also has to be proven. Establishing reputation and goodwill in case of the unregistered trademark becomes a really difficult and therefore evident advantage of suit for infringement over passing off is clear.

Having said that, there is a need for change in National and International process of registration of trademarks, to make the registration compulsory, some of the suggestions are as follows;

- A faster and more efficient system of registration of trademarks
- Need for more digital infrastructure for regular and real-time updating of trademark registry
- Decrease in Fees for registration to make it more affordable
- Simplifying the process by reducing the number of forms to be filled to maybe 1 or 2 forms

- Allowing applications for trademark by individually directly online
- Integration of Madrid Protocol database with Indian Trade Mark registry
- Creating awareness about the registration process

With the process becoming simplified, affordable, and quick, there will be enough incentive for all the businesses to get their trademark registered. It will not only save the time and money spent in litigation for passing off or infringement but also increase the awareness of the value of intellectual property assets.

X. CONCLUSION

In a world where there are no boundaries, where social media, television and soft power tactics of diplomacy by nations has cultivated a multi-cultural population. Today, when Apple launches a product, its keynote address is telecasted not only in the USA but globally, it can be watched on news channels or simply live streamed through YouTube or Apple.com. With the lightning-fast exchange of information, traditional safeguards against infringement are no more sufficient. With more and more brands going global the complexities are increasing expeditiously. Intellectual Property Assets have become more valuable than physical assets for some companies and in such cases misappropriation of their trademarks can lead to damages amounting millions of dollars. Globalisation has had its advantages, but on the other hand, have given birth to more and more counterfeiters and parallel import. Knock off by petty trades in local markets lead to loss of billions of dollars. One such example can be of Bisleri, arguably 100s of knock offs exist confusing the customers so much that, it has reduced trust in the brand and people often refrain from buying Bisleri water bottles because of the fear that whether it is the genuine product or not, leading to huge losses in sales and customers for Bisleri. The dangers for infringement of a trademark is real and, in several cases have dire consequences for a company. There is a need for more advanced legislation to tackle all such issues. Apart from legislation increasing awareness about the benefits of intellectual property rights and their safeguards is the need of the hour. There is a need for an ombudsman to regulate the matters related to trademark infringements. Alternative methods of Dispute resolution like mediation, arbitration and conciliations should be promoted to settle infringement and passing off disputes.

An action for infringement and passing off can be brought against anyone using a deceptively similar trademark. Before the 1999 Act we had a very narrow approach of what constitutes trademark infringement, Indian Courts often relied upon rulings and jurisprudence laid down by courts of other countries, however that is not the case anymore. The enactment of Trade

Marks Act 1999 and with the establishment of international organisations like WIPO and adoption of various treaties and conventions, like Madrid Protocol has brought out a considerable change in approach towards Intellectual Property Rights.

The Intellectual Property Rights are an ever-evolving stream of laws, with the advancement in technologies more and more rights are created, and that would continue to be the case for the future as well. The only important thing is that we must keep an open mind and learn to cope with the dynamic ecosystem of Intellectual Property Rights.
