
TRADE DRESS PROTECTION FOR SOFT TOYS: AN ANALYSIS OF ITS SCOPE AND CHALLENGES UNDER INDIAN INTELLECTUAL PROPERTY LAW

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ABSTRACT

One of the major concerns in today's marketplace is protecting a product's unique visual identity, commonly referred to as trade dress. This research paper observes the scope and challenges for trade dress protection for soft toys under Indian intellectual property legislation. Though the manufacturers rely on these characteristics to create their brand image, the legal framework for protecting the unique shapes, colour combinations, and textures of soft toys is uncertain. The Trade Marks Act of 1999 and the Designs Act of 2000 overlap, resulting in this confusion. In contrast to packaging trade dress, which has been subject to significant litigation, protecting product configuration, especially for soft toys, remains a grey area. This paper seeks to address this legal gap by examining how Indian courts have interpreted trade dress and its relevance to soft toys. It will critically analyse the challenges posed by the functionality doctrine, which denies protection to features necessary for a product's use, and also the overlap of IP rights, which often coerces manufacturers to choose among different forms of protection. Additionally, the paper will examine the effectiveness of current enforcement mechanisms in combating counterfeit soft toys. The paper provides an analysis of important key legal statutes and a review of critical judicial precedents. This research shall discuss some of the key questions, such as whether the existing trade dress framework could effectively protect the appearance of soft toys and whether manufacturers can overcome the complexities of overlapping IP laws. The paper will also suggest solutions for resolving these issues and propose reforms to increase the protection.

Keywords: Intellectual Property Law, Trade Dress, Soft Toys, Trade Marks Act, Designs Act, Distinctiveness, Brand Identity, Functionality Doctrine, Counterfeiting, Enforcement, Legal Overlap, Product Configuration.

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Introduction

In today's competitive marketplace, visual identity is of great importance to product branding. Trade dress, the overall "look and feel" of a product, is an important asset which allows customers to identify products and avoid confusion. Although protection of packaging trade dress is firmly established, the legal approach to a product's configuration remains unclear. This is particularly true for products where physical appearance is the primary brand identifier, such as soft toys. This paper examines the legal scope and challenges of trade dress protection for soft toys under Indian law. The form, shape, and texture of plush toys lie at the heart of commercial success and evoke an emotional bond with consumers. Therefore, their distinctiveness is a valuable IP asset. The present legal situation in India is made complex by the overlapping provisions of the Trademarks Act, 1999, and the Designs Act, 2000. This creates a problematic environment for manufacturers to protect their brand equity. The paper will analyse how Indian courts have interpreted trade dress in relevant cases, applying these interpretations to the unique characteristics of soft toys. It will critically examine the functionality doctrine and the conflicts that arise from the overlap of different IP rights. Ultimately, this research seeks to propose reforms to enhance the protection of soft toys' trade dress, safeguarding brand integrity and mitigating consumer confusion.

Literature Review

This research paper provides a focused examination of the soft toy sector, using India's legal framework, including the Trademarks Act 1999, Designs Act 2000, and the common law of passing off. While existing literature provides a broad overview of trade dress, this study is unique because it emphasises the challenges of protecting product designs in a market driven by consumer tastes and visual appeal. The paper acknowledges foundational works that outline the legal structure and evolution of trade dress protection under the Trademark Act and common law. However, it advances the discussion by explicitly focusing on soft toys, addressing complex issues that broader analyses may overlook. For example, it considers how the emotional and aesthetic qualities of a toy's design present distinct legal hurdles, where features such as shape and colour are key to identifying the product's origin. A significant aspect of this paper is its exploration of the intersections between different IP regimes, highlighting the ambiguities at the convergence of the Trade Marks Act and the Designs Act, specifically within the soft toy industry. It also examines the functionality doctrine, using a case study from the Rubik's Cube dispute to differentiate between utilitarian and aesthetic

functionality. Ultimately, this paper fills a gap in the literature by tailoring legal principles to an underexplored area and proposing actionable improvements.

Statement of Research Problem

The legal framework for protecting unique shapes, colour combinations, and textures in soft toys under Indian intellectual property law is unclear. Additionally, there is no specific provision regarding Trade Dress. While trade dress for packaging has seen plenty of litigation, product configuration for items like soft toys stays in a grey area.

Research Objectives

The objectives of this research paper are to:

- Address the legal gap in trade dress protection for soft toys.
- Examine how Indian courts have interpreted trade dress and its relevance to the soft toy industry.
- Critically analyse the difficulties of the functionality doctrine and overlap of intellectual property rights.
- Investigate the adequacy of existing enforcement measures in addressing spurious soft toys.
- Suggest solutions to resolve these issues and propose reforms to enhance protection.

Research Hypothesis

The existing legal framework in India for Trade Work, which relies on an ambiguous combination of legislations like the Trademark Act,1999, the Designs Act,2000, and the doctrines such as the common law of passing off, the functionality doctrine, is inadequate for effectively protecting the trade dress of soft toys, which consequently leads to significant challenges for manufacturers and contributes to consumer confusion.

Research Questions

The paper aims to answer several key questions:

- Can the existing trade dress framework effectively protect the appearance of soft toys?
- Can manufacturers overcome the complexities of overlapping intellectual property laws?
- How does the functionality doctrine apply to the unique features of soft toys?
- What are the specific challenges for soft toy manufacturers in proving distinctiveness and combating counterfeiting?
- How can legislative reforms enhance trade dress protection for soft toys in India?

Scope and Limitation of Study

The scope of the study is an analysis of existing trade dress protection for soft toys under Indian intellectual property law. The research focuses on the intersection of the Trade Marks Act, 1999, and the Designs Act, 2000. It considers important legal enactments and court precedents to present a clear picture of the legal environment and ascertain major legal and practical loopholes. The research is associated explicitly with the challenges faced by soft toy manufacturers, legal professionals, and policymakers.

Research Methodology

The research method used is a doctrinal analysis. The paper critically analyses the legal frameworks and key legal statutes, and reviews essential judicial pronouncements. This involves a detailed examination of legal doctrines, case laws, and scholarly articles to understand the current state of trade dress protection in India. The analysis and interpretation will focus on how the functionality doctrine and the overlap of intellectual property rights create complexities for the soft toy industry.

Trade Dress

Trade Dress means the overall ‘look and feel’ of a product, including its size, shape, colour, configuration, and packaging.

Essential Requirements for protection of a trade dress:

- Non-functional nature
- Distinct from other products
- Likelihood to result in consumer confusion.³

Trade Dress Legal Framework in India

India's legal framework for trade dress is primarily based on the Trademarks Act, 1999, and the common law remedy of passing off. Unlike the U.S., the Act does not explicitly define "trade dress" but implicitly recognises it.

The Trademarks Act, 1999

Implicit Recognition: Section 2(zb)⁴ of the Act provides a wide and extensive definition of a 'trademark'. According to this, "the shape of goods, their packaging, and a combination of colours" can all be considered 'marks'. The statutory definition of a trademark is expanded to include the idea of trade attire in this terminology.

Standards for Registration: These components must satisfy the normal standards of non-functionality, graphical representation, and distinctiveness in order to be registered as a trademark. The registration of a mark that only includes the shape that is necessary for the goods to function or that adds significant value to the items is expressly forbidden under Section 9(3).⁵

Exploring the Overlap with the Designs Act, 2000

The overlap between India's Trademark Act, 1999 and the Designs Act, 2000 with regard to trade dress is one of the key issues in intellectual property law. Both protect the visual look of a product, but for different purposes and with other conditions. The overlap primarily occurs when the shape, configuration, or overall look of an article serves both an aesthetic i.e design function and a source-identifying i.e trademark function.

³ Nithila Kova, Trade Dress Protection: Concept, Importance, and Legal Framework, Intepat IP, (Jan. 17, 2025), <https://www.intepat.com/blog/trade-dress-protection-concept-importance-and-legal-framework?hl=en-GB>.

⁴ The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999.

⁵ Arijit Mishra, Trade Dress Protection in India and the US, ipleaders, (Feb. 12, 2020), <https://blog.ipleaders.in/trade-dress-protection/?hl=en-GB>.

Difficulty as to Dual Protection: In general, Indian law forbids the concurrent statutory protection of the same visual characteristic under the Trademarks Act and the Designs Act. The purpose of the law is to keep a proprietor from obtaining perpetual trademark protection for a design that the Designs Act intends to have a limited monopoly on.

The 'Something Extra' rule: To settle this dispute, courts have frequently implemented a 'something extra' rule. According to this theory, a design ought to be protected by the Designs Act if it is only employed for its visual appeal. The Trademark Act may, however, protect a design if it has gained a secondary importance as a trademark, meaning that customers now identify it with a certain brand or source in addition to the product's appearance.

Aesthetic vs. Source-Identifying Purpose: The fundamental difference is seen in the purpose of the protection.

1. Designs Act: It preserves a product's decorative or aesthetic features that 'appeal to the eye'. The protection lasts for a set amount of period (10 years initially, with a 5-year extension). The design may no longer qualify for design protection the instant it is employed as a source identifier.
2. Trademark Act: It provides protection for characteristics that serve as a source identification, setting one product apart from another. If a trade dress has established a reputation, it may be protected under the common law of passing off as an unregistered trademark. Trademark protection may be extended forever if it is registered.

Judicial Clarification: Through a number of rulings, Indian courts have attempted to make sense of this overlap.

- Mohan Lal vs. Sona Paint & Hardwares⁶: The Delhi High Court, in this case, established the rule that a plaintiff cannot file a single composite suit for both passing off and design infringement.
- Carlsberg Breweries vs. Som Distilleries⁷: The Delhi High Court has reversed the Mohan Lal case in this landmark decision. The court held that it is possible to file a single composite suit addressing both design infringement, and passing off. This

⁶ AIR 2013 Delhi 143, (2013) 200 DLT 322, 2013 (55) PTC 61 (Del) (FB).

⁷ AIR 2019 Delhi 23, (2019) 2 CURCC 238, AIRONLINE 2018 DEL 2599.

decision recognises that a product's "trade dress" (as defined by the Trademark Act) and "design" (as outlined in the Designs Act) can coexist, making it possible to allege both passing off and infringement of one at the same time.

The Role of Section 2(d) of the Designs Act: A provision in the Designs Act itself prohibits the registration of any 'trademark.' Any trademark as defined by the Trademarks Act is expressly excluded under Section 2(d) of the Designs Act. One of the main factors prohibiting the same visual aspect from being protected under both legislations, is the statutory bar. The idea is that once a mark is used as a trademark, it is no longer eligible for a design registration.

Common Law of Passing Off

Primary Avenue of Protection: The common law remedy of passing off has been the most crucial instrument for protection in the absence of a specific statutory provision for unregistered trade dress.

Basis of Action: If a rival uses a comparable get up or trade dress that misrepresents the origin of their goods and is likely to cause confusion among customers, a firm may file a passing off suit against them. This principle has been repeatedly used by Indian courts on numerous occasions to safeguard product's overall aesthetics.⁸

Key Judicial Decisions: Indian courts have rendered a number of significant judgments that have expanded the scope of trade dress protection. According to court rulings, for instance, a plaintiff must prove that their trademark has taken on a unique character and that the defendant's trademark is 'deceptively similar' enough to be likely to cause confusion.

Despite the lack of a precise legal definition, these cases are crucial in developing the idea of trade dress in India. They established the guidelines for safeguarding a product's getup and overall look under the common law of passing off.

- **Playgro Toys India Pvt. Ltd. v. Playwell Impex⁹:** The Delhi High decided the case. In this case, soft toys were the subject of a passing off and copyright infringement suit.

⁸ Monjima Ghosh, Understanding Passing off in Trademark Law, Legalwiz, (Jan. 4, 2025), Understanding Passing off in Trademark Law - LegalWiz.in.

⁹ 2012 (50) PTC 123.

The court demonstrated how trade dress and copyright claims might be merged by granting an injunction based on the toys, and their packaging's visual similarities.

- Cadbury India Limited and Ors. vs. Neeraj Food Products¹⁰: In this case the packaging of Cadbury's Eclairs toffees was at issue. The Delhi High Court held that the product's overall 'get-up' which included its unique twist wrap design and purple and gold packaging, was protected. The court confirmed that a distinctive and one-of-a-kind visual identity might be protected as trade dress by prohibiting the defendant from employing a deceptively similar trade dress.
- Laxmikant V. Patel v. Chetanbhat Shah and Another¹¹: Supreme Court held that even in the absence of official registration, the protection of trade dress and the passing off concept were clearly established. The court emphasized that the trade dress and overall getup are important elements for consumers.
- ITC Limited v. Cadbury India Ltd¹²: The Delhi High Court held that passing off cannot be established by a simply similarity in a single element, such as colour. It is necessary to compare the trade dress and the overall getup.
- Britannia Industries Ltd. v. ITC¹³: The Delhi High Court dealt with the issue of biscuit packaging and colour combinations. It maintained that other distinctive elements on the packaging can prevent a finding of passing off, even when a colour combination may be similar.

The Functionality Doctrine

The 'functionality doctrine' is one of the fundamental principles in intellectual property law, especially when it comes to trade dress and trademarks. Features that have an impact on the product's price or quality, are not protected. By preventing businesses from using trademark protection, which can endure indefinitely, to monopolize a valuable product characteristic that should, if at all, be covered by a limited duration patent, the theory seeks to preserve an

¹⁰ 142 (2007) Dlt 724, MIPR 2007 (2) 269, 2007 (35) PTC 95 Del.

¹¹ (2002) 3 SCC 65.

¹² 2011 (47) PTC 157.

¹³ Ltd2017 (72) PTC 129.

appropriate balance between trademark law and patent law.

The functionality doctrine is particularly relevant to soft toys because their 'trade dress' is often the product itself. The unique features of a soft toy such as its shape, design, and overall appearance—are what make it recognisable to consumers. However, none of these characteristics can be protected if they are deemed 'functional'.

In the context of soft toys, the functionality doctrine can be complex because the design of a soft toy is intrinsically linked to its function as a toy. If a soft toy's feature is necessary for the toy's use or purpose, or if it has an impact on the toy's price or quality, it is deemed functional.

Here's how the functionality doctrine applies to soft toys:

1. **Utilitarian Functionality:** This describes characteristics that are necessary for the toy to perform its intended purpose. The stuffing, stitching, and general shape of a soft toy, for instance, are utilitarian in the sense that they are required for the toy to be considered plush. However, a toy's distinctive colour scheme, ear shape, or body embroidery are all examples of unique, distinctive designs that are typically regarded as non-functional.
2. **Aesthetic Functionality:** Under this more argumentative section of the theory, an attribute is functional if its aesthetic appeal is so excellent that rivals would be irrevocably damaged by its preservation. In case a design in the soft toy market is so popular and attractive that it becomes a "must-have" attribute in the market, it can be considered aesthetically useful. However, the courts generally look into whether competitors have access to alternative designs that would allow them to compete successfully.

When determining whether a soft toy's design is functional, courts consider the following factors:

1. **Existence of Alternative Designs:** Whether competitors have access to other designs is the most crucial consideration. It is possible that the design is non-functional and can be protected if there are other ways to make a soft toy of the same kind without replicating the exact design.
2. **Utility Patents:** If the toy's unique feature is covered by a utility patent, it is strong

evidence that the feature is functional. This is because utility patents are granted for useful inventions, and trademark protection is not intended to be a substitute for the limited term of a patent.

3. Advertising and Marketing: Courts may also consider the soft toy's marketing strategies. It can be interpreted as proof of functionality if the business has marketed the characteristics as beneficial or offering a functional advantage.

Therefore, a soft toy's entire appearance may be protected as trade dress, although the utility doctrine limits its protection.

These cases help to distinguish between a functional design and a protectable trade dress:

- Marico Limited vs. Adani Wilmar Ltd¹⁴: The Bombay High Court examined the functionality doctrine concerning the packaging of edible oils. The court held that a design is functional if it is "essential to the use or function of the article or if it affects the price or quality of the article." This is a principle directly applicable to soft toys, where a manufacturer might have to argue that a specific design feature is not integral to the function of the toy but merely for brand recognition. The original design is more likely to be deemed non-functional and thus protectable if rivals have alternative ways to produce a product that is just as appealing.
- Seven Towns Ltd & Anr vs M/S Kiddiland & Anr ¹⁵: This case, dealing with the trade dress of the Rubik's Cube, is of particular relevance. An interim injunction was granted by the Delhi High Court, recognizing the trade dress of the Rubik's Cube, which consists of six distinctive colours (red, blue, orange, green, white, and yellow) placed on a grid of black. The court rejected the argument that the colours serve a functional purpose, thus distinguishing this case from others where colours were exclusively functional. It ruled that, in the context of a toy puzzle, the particular colour pattern and grid design were not functional but had become highly distinctive. This decision makes a strong precedent for soft toys, where the unique aesthetic look is essential to the appeal of the product and can be protected as trade dress.

¹⁴ 2013 (54) PTC 515 (Del).

¹⁵ (CS (OS) 2101/2010).

- Cipla Ltd. v. M.K. Pharmaceuticals¹⁶: In this case the Delhi High Court dealt with the functionality doctrine. The court held that there could be no monopoly over a single colour or the shape of a tablet, emphasising that a design element must be non-functional to be protected.

Landmark cases which recognise the Trade Dress

- Colgate Palmolive Company and Anr. vs. Anchor Health and Beauty Care Pvt. Ltd¹⁷: This landmark judgment from the Delhi High Court established that a specific colour combination and the overall "get-up" of a product's packaging could be protected as trade dress. The court held that the red and white colour combination of Colgate's toothpaste tube had acquired secondary meaning and was a source identifier.
- S.M. Dyechem Ltd. v. Cadbury (India) Ltd¹⁸: This case is important for its discussion on the principles of deceptive similarity and the test of "overall impression" on an average consumer with imperfect recollection.
- Marico Limited v. Mr Mukesh Kumar & Ors¹⁹: In this case the Delhi High Court dealt with the evolving nature of trade dress. The court granted an injunction, noting that the defendants consistently changed their packaging to mimic the plaintiff's updated trade dress.
- Gorbatschow Wodka KG v. John Distilleries Ltd²⁰: This case is significant for its analysis of the "get-up" of a product's bottle and packaging, and how a unique shape can be a protected trade dress.
- Pidilite Industries Limited v. Fevicol (S.M.N.) Enterprises²¹: The court protected the distinctive shape and colour combination of the 'FEVICOL' adhesive bottle, reinforcing that the shape of a product can be a valid trade dress.
- M/s. Heinz Italia v. Dabur India Ltd²²: The Supreme Court granted an injunction against

¹⁶ 2008 (36) PTC 166.

¹⁷ AIR 2004 Delhi 1, 108 (2003) DLT 51, 2003 (27) PTC 478 (Del).

¹⁸ (2000) 5 SCC 573.

¹⁹ (2000) 5 SCC 573.

²⁰ 2011 (48) PTC 1

²¹ 2017 (70) PTC 21.

²² (2007) 6 SCC 1.

Dabur for using a similar trade dress, including the colour combination and shape of the 'Glutonex' bottle, which was deceptively similar to Heinz's 'Glucon-D.'

- Vini Cosmetics Pvt. Ltd. v. M/s. Venus International²³: This case highlights the protection of a product's overall packaging, including its shape, size, and layout, under the ambit of trade dress.
- Himalaya Drug Co. v. SBL Limited²⁴: The court granted an injunction for the deceptive similarity in the packaging and trade dress of herbal products, reiterating the importance of a holistic comparison of the products.
- N. Ranga Rao and Sons v. Anil Garg and Ors²⁵: This case involved the trade dress of agarbattis (incense sticks). The court issued an injunction, finding that the defendant packaging was deceptively similar in terms of colour scheme and get-up.
- Castrol India Ltd. v. Tide Water Oil Co. (India) Ltd²⁶: The court protected the distinctive shape of Castrol's engine oil container, affirming that product configuration can be a protectable trade dress.
- United Distillers Plc. v. Jagdish Joshi²⁷: The court issued an injunction, holding that the defendant's adoption of a similar two-tone colour scheme and a consciously angled label on their whiskey bottles constituted trade dress infringement of the plaintiff.
- Jolen Inc. v. Doctor and Company²⁸: The case involved a similar trade dress and colour combination for facial bleach. The court reiterated that the overall impression a customer gets from the visual appearance of the product is key.

Key Challenges Faced by Soft Toys as to Trade Dress

Although Indian law affords some protection to trade dress through the Trademarks Act, 1999, the fact that there is no specific, standalone legislation presents distinct hurdles for the business of soft toys. Soft toys tend to depend on their general appearance and feel, such as shape, colour,

²³ 2015 (62) PTC 391.

²⁴ 2012 (50) PTC 1.

²⁵ 2006 (32) PTC 15.

²⁶ 2017 (70) PTC 230.

²⁷ 1994 (14) PTC 118.

²⁸ 2002 (25) PTC 29.

and texture, to secure consumers' attentions and establish brand awareness. The absence of a dedicated law or section for trade dress protection makes it difficult to protect these unique visual elements.

Major issues that soft toys are currently facing because of this legislative shortfall:

1. **It is Difficult to Prove Distinctiveness:** In contrast to a word or a logo, the shape and look of a soft toy tend to be "common" or "functional." To qualify for trade dress protection, the owner has to establish that the appearance of the product has gained secondary meaning, i.e., consumers directly associate that specific design with one source or brand. For young or small toy brands, this is a substantial barrier and may involve years of persistent marketing and usage.
2. **Heavy Burden of Proof of Passing Off:** The principal legal remedy for unregistered trade dress in India is an action of passing off. This requires the plaintiff to prove that the defendant's product not only resembles visually but also causes or is likely to cause consumer confusion. This is a heavy burden of proof often requiring market surveys or cogent evidence of genuine deception, which is both costly and time-consuming. In the case of soft toys, which are often impulse purchases, proving this confusion is particularly challenging.
3. **Intersection with Design Law:** The Designs Act 2000 protects the aesthetic or ornamental qualities of an article. It doesn't offer protection for the long term. A design registration expires after a mere 15 years, after which the design moves into the public domain. This leaves manufacturers with a tricky decision: do they apply for a design registration for a finite period or attempt to build a common law trade dress claim that lasts forever but is much more difficult to establish? The overlap in the law makes this tactical choice more complex.
4. **Extensive Counterfeiting and Infringement:** The soft toy market, particularly the unorganised one, is extremely prone to counterfeiting. In the absence of a transparent statutory regime, counterfeiting is simple, and brand owners have to depend on convoluted and time-consuming legal battles to seek enforcement of their rights. The absence of a transparent legal standard makes it more difficult for law enforcers to quickly act against infringing goods.
5. **Lack of Awareness:** Most small-scale business people and local craft persons are unaware of the existence of trade dress as a concept and what rights they have under prevailing laws. They do not know that their product's distinctive "appearance and essence" is an intellectual property

asset which must be safeguarded.

6. **Functionality Defence:** One of the main defences to a trade dress claim is that the design is functional or essential to the product's functionality. For stuffed animals, this may be a gray area. A basic teddy bear shape may be seen as functional, because it is a generic form for a toy. An owner of a brand will have to contend that certain non-functional aspects—such as a distinctive placement of the eyes or a specific stitching pattern—are what comprise their trade dress, complicating the legal contention.

7. **Litigation Cost and Time:** The litigation process in India can be costly and time-consuming. Legal fees, market surveys, and evidence collection costs may prove to be high hurdles for SMEs. Such a cost factor deters soft toy producers from seeking legal recourse, and infringers get away with little fear of retribution.

Consumer Confusion

Lack of specific trade dress provisions in India contributes markedly to substantial consumer confusion, particularly in the soft toy industry. Consumer confusion is not a trivial matter; it can cause significant economic and reputation-based consequences to consumers and businesses alike.

Some of the major reasons why this legislative deficiency contributes to consumer confusion:

1. **Lack of Differentiation at a Glance:** Trade dress is entirely a matter of overall visual perception of the product. In a fast-moving market, particularly for ordinary consumer products such as soft toys, customers tend to make a decision to buy based on visual impressions and not take the trouble to carefully read brand names. "Holistic Comparison" is a Problem for Consumers: Indian courts readily employ the doctrine of "holistic comparison" to assess whether there is a possibility of confusion. This means they look at the two products as a whole. While this is sound in a legal context, it is exactly the point of confusion for a consumer. A consumer sees the overall look of a product—its shape, colour scheme, packaging—and if it's strikingly similar to a product they know, they may assume it's the same brand, leading to a mistaken purchase.
2. **The High Bar for Proving "Distinctiveness":** In order for a product's trade dress to receive legal protection, it is essential to demonstrate that it is "distinctive." This

requirement poses a considerable challenge in legal proceedings and has a direct effect on consumer recognition.

3. **Failing to Establish Secondary Meaning:** In the case of a soft toy, a basic shape such as that of a teddy bear or an elephant lacks inherent distinctiveness. The brand owner is required to demonstrate that, through significant usage and marketing efforts, this ordinary shape has developed a "secondary meaning" that consumers link to their brand. In the absence of a specific trade dress statute, this situation leads to an unpredictable and extended legal conflict. Throughout this period, numerous imitators may enter the marketplace, resulting in a scenario where no single brand can claim ownership of the "look."
4. **The "Copycat" Culture Flourishes:** In the absence of clear statutory guidelines, a "copycat" culture is allowed to flourish. This is a common issue in India's unorganised sectors, including the soft toy market. **Exploiting Ambiguity:** Manufacturers of counterfeit or imitation soft toys can make minor modifications to a popular design and argue in court that their product is not "deceptively similar." While this may hold up legally, to a consumer, the difference is negligible. The "knock-off" product is visually close enough to confuse the point of sale.
5. **Limited Legal Recourse for Unregistered Brands:** For a small business or a local artisan, registering every aspect of their product's design as a trademark is often not feasible or financially viable. They rely on the common law of passing off to protect their products. **High Cost of Litigation:** Pursuing a passing-off action is expensive and time-consuming. This serves as a deterrent to most small producers. Consequently, most imitation cases go unchecked, and consumers remain exposed to products which are confusingly similar. **No Statutory "Notice":** When a trade dress is openly registered, it provides public notice of the intellectual property right. In the absence of this, an infringer can claim they were unaware of the original product's trade dress rights, making the legal battle more complicated and uncertain.
6. **No Specific Legal Provision for "Initial Interest Confusion":** Indian law has increasingly recognised the concept of "initial interest confusion," where a consumer is confused at the very beginning of their search (e.g., when they first see a product on a shelf or online), even if the confusion is later dispelled. However, the lack of a dedicated

trade dress law makes applying this principle to the visual appearance of a product more difficult. Momentary Deception: A consumer might be drawn to a product because its trade dress reminds them of a trusted brand. Even if they realise the difference before the purchase, the initial confusion has done its work. The original brand has lost the "initial interest," and the rival has unfairly gained an advantage. Without a defined legislative provision, it becomes more difficult to sue on this ground, particularly in the case of a product such as a soft toy, where buying decisions can be spontaneous.

Conclusion

While the Trademarks Act does offer some protection, the common law remedy of passing off is a better solution, but neither one addresses the particular issues of industries like soft toys, where the 'get-up' of the product plays an important role in its identity. In addition, passing off places a heavy burden upon brand owners to show 'acquired distinctiveness' and confusion on the part of the consumers by means of a lengthy and costly judicial process. Such a legislative loophole has promoted a 'culture of copying' and exposed consumers to fraud since they usually judge solely by superficial visual differences between original and fake products, ignoring the underlying distinctions. The meeting of functional design matters with the Designs Act of 2000 presents yet another complication, adding depth to the legal uncertainties that slow innovation and fair competition. It is certain that these matters necessitate the establishment of a stronger legal framework to support the passing of laws that meet these particular demands and drive legislative reform. This is why the new Trademarks Act should include clear provisions of trade dress, which would not only make the laws relating to the registration of the trade dress more transparent but also provide easy registration of trademarks by companies, especially small and medium-sized enterprises. Further, it would strengthen the owners of the brands while protecting the public interest by minimizing consumer confusion and providing market integrity. In the end, the requirement to recognize that an open legal approach to trade dress will encourage innovation, safeguard brand goodwill, and enable consumers to be well-positioned to make a knowledgeable choice within a competitive marketplace.

Future Directions and Recommendations

In order to establish a more robust legal system that benefits enterprises and consumers both, the government can consider the following reforms:

1. Insert a Specific Trade Dress Section: India must amend the Trademarks Act, 1999, by

inserting a specific, distinct section for trade dress. The new section would:

- Define "Trade Dress": Give a clear statutory definition of trade dress, specifying which elements (shape, colour, texture, etc.) are to be protected.
- Streamline Proof of Distinctiveness: Make clear requirements for "acquired distinctiveness" or "secondary meaning" to loosen the onerous burden of proof on brand owners. This could include establishing a simplified registration procedure for trade dress.

2. Simplify Registration of Non-Traditional Marks: The Indian IP office must simplify the procedure for registering non-traditional trademarks like shapes and combinations of colors. This would lead to businesses registering their trade dress and would, in turn, cut down the number of passing off cases.

3. Enact Specific Penalties for Consumer Confusion: Though existing law offers remedies such as injunctions and damages, a dedicated provision for consumer confusion could be an effective deterrent. This may entail:

- Mandatory Consumer Alerts: In instances of established confusion, courts could require infringers to publish public notices explaining the distinction between the products.
- Increased Damages: The legislation may offer greater damages where the main aim of the infringer was the establishment of consumer confusion.

4. Engage in Public Awareness: The government, through the Intellectual Property Office, should undertake campaigns to educate both businesses and consumers on intellectual property rights, including the concept of trade dress. This would empower consumers to make informed choices and encourage businesses to protect their assets.