
CROSS BORDER TRADEMARK INFRINGEMENT: A STUDY OF INDIAN AND USA'S LAWS, REMEDIES, CASES, AND PROTECTION

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ABSTRACT

Cross-border trademark infringement is a growing concern for businesses operating in India and the United States. Trademark infringement occurs when a trademark is used without authorization that is confusingly similar to another trademark registered in another nation. This issue can have a significant impact on a brand's reputation and financial performance, as well as its ability to protect its intellectual property rights effectively. In India and the United States, trademark infringement cases are heard in the courts, and the legal framework for the registration and protection of trademarks is provided by the Indian Trade Marks Act, 1999 along with Lanham Act in the United States, respectively. To prevent cross-border trademark infringement, businesses should conduct proper clearance searches, seek legal advice, and monitor for potential infringement of their intellectual property rights. Additionally, there should be better coordination and cooperation between the legal systems of both countries to combat cross-border infringement. In this paper, we shall discuss the above topics and try to analyze them.

Keywords: Intellectual Property Rights, Trademarks, Cross-Border Trademark Infringement, Indian Trademarks Act 1999, USA Lanham Act, Legal Framework.

INTRODUCTION: GLOBALIZATION AND INTERNATIONAL TRADING

Before globalization, trade of goods and services was area bound as providing goods and services across that specific area or to the world was a very difficult and long way, thanks to "GLOBALIZATION," which opened various avenues for trading making by making the entire world one global market, liberal policies for encouraging trade between countries which not only leads to the economic growth of the country but also culture, ethnicity, literature, philosophy, etc. of each other. Globalization has been facilitated by many international agreements and organizations, including:

- 1) The GATT was established in 1947 with the aim of decreasing tariffs as well as other trade obstacles between countries. In 1995, GATT was superseded by the WTO (World Trade Organization)¹.
- 2) IMF (International Monetary Fund) along with World Bank was created in 1944 to encourage global economic coordination and growth.²
- 3) NAFTA (North American Free Trade Agreement) is an agreement that was signed in 1994 between Canada, Mexico, United States of America to decrease tariffs as well as other trade obstacles that existed between the three nations.
- 4) The European Union (EU) is a group of member nations that have worked together economically and politically since its founding in 1993.

These agreements and organizations have helped to reduce trade barriers and increase economic interdependence among nations, leading to increased globalization.

With the help of the open market, any brand was able to ship its products or services to any customer living in any part of the world; Now, here, trademarks play a very important role in creating a brands influence in a new place and gaining it goodwill, economic benefit, making it an international brand. Nowadays, there are multiple brands around us; hence, distinguishing a brand's product and services from others is a key feature of the trademark. So when it comes to International Trading, it has its share of profit and loss.

¹ Understanding the WTO - intellectual property: Protection and enforcement, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (last visited Dec 25, 2022).

² The IMF and the World Bank, IMF, <https://www.imf.org/en/About/Factsheets/Sheets/2022/IMF-World-Bank-New#:~:text=The%20International%20Monetary%20Fund%20%28IMF%29%20and%20the%20World,concent rates%20on%20long-term%20economic%20development%20and%20poverty%20reduction.> (last visited Dec 25, 2022).

India and the United States have many agreements to protect and promote intellectual property rights between the two countries. Some of the key agreements include:

- **The United States-India Intellectual Property (IP) Framework:** This agreement, established in 2016, provides a framework for cooperation between the two countries on a wide range of IP-related issues, including patent and trademark protection, copyright enforcement, and IP-related trade issues.
- **The United States-India Joint Statement on IP Cooperation:** This agreement, signed in 2015, commits the two countries to work together to improve IP protection and enforcement and to combat IP-related trade barriers.
- **The United States-India Memorandum of Understanding on IP Cooperation:** This agreement, signed in 2008, commits the two countries to work together to improve IP protection and enforcement and to combat IP-related trade barriers.
- **India-United States Intellectual Property Rights (IPR) Cooperation:** This agreement, signed in 2016, provided cooperation and coordination between the two countries on IP-related issues, including IP protection and enforcement and trade barriers.

These agreements have helped improve IP protection and enforcement between the two countries and provided a framework for cooperation and coordination on IP-related issues.

India has joined the World Intellectual Property Organization (WIPO¹) and has ratified a number of international treaties pertaining to intellectual property. These include the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works³.

WHAT IS A TRADEMARK?

Any term, name, device, or symbol used to differentiate one manufacturer's or seller's products or services from those of others, even if the origin of those products or services is unknown, may be considered a trademark.

Trademark protection is required because trademarks represent the owner's goodwill and the benefits of the owner's promotional efforts and serve as evidence of quality to the buying

³ Understanding the WTO - intellectual property: Protection and enforcement, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (last visited Dec 25, 2022).

public. A trademark law's primary goal is to protect the interests of the buying public. Making informed decisions about what to buy is simplified, and customers are less likely to have any uncertainty.

TRADEMARK: REGISTRATION PROCESS IN INDIA

The Trade Marks Act, 1999 as well as Trade Marks Rules, 2002 outline the procedures for registering a trademark in India. The process generally involves the following steps:

- 1) Search: Before submitting a trademark application, it is important to do a trademark search to ensure the proposed mark is distinct from any already registered trademarks and is not confusingly similar to them.
- 2) Filing of application: Trademark applications are submitted to the Trademarks Registry. The application should involve the following details: the applicant's address as well as the name, a trademark illustration, a list of the products and services, and a description of any prior trademark registrations and pending applications.
- 3) Examination: The Trade Marks Registry checks the application for conformity with the Act and the Rules.
- 4) Publication: Trade Marks Journal publication for opposition reasons follows acceptance of the application. Anyone has four months from the trademark's date of publication to register an objection to the registration.
- 5) Registration: Trademark registration will occur if there is no resistance or if the opposition is without merit. A certificate of registration will be issued by the Trade Marks Registry.
- 6) Renewal: A registered trademark has to be renewed every 10 years from the date of registration.
- 7) It's crucial to remember that the time it takes to register a trademark may range from a few months to a few years, depending on the specifics of the application and any third-party challenges.

SECTION 28 TRADEMARK ACT 1999 – RIGHTS CONFERRED BY REGISTRATION

- 1) The registered owner has the only authority to use the trademark with the offered products and services.
- 2) To receive remedies in the manner specified by the act in the event of an infringement.

- 3) The exclusive rights are subject to conditions and limitations as per the registration.
- 4) If 2 or more people are registered, and their goods are identical, they do not get exclusive rights for each other but get exclusive rights against other persons.

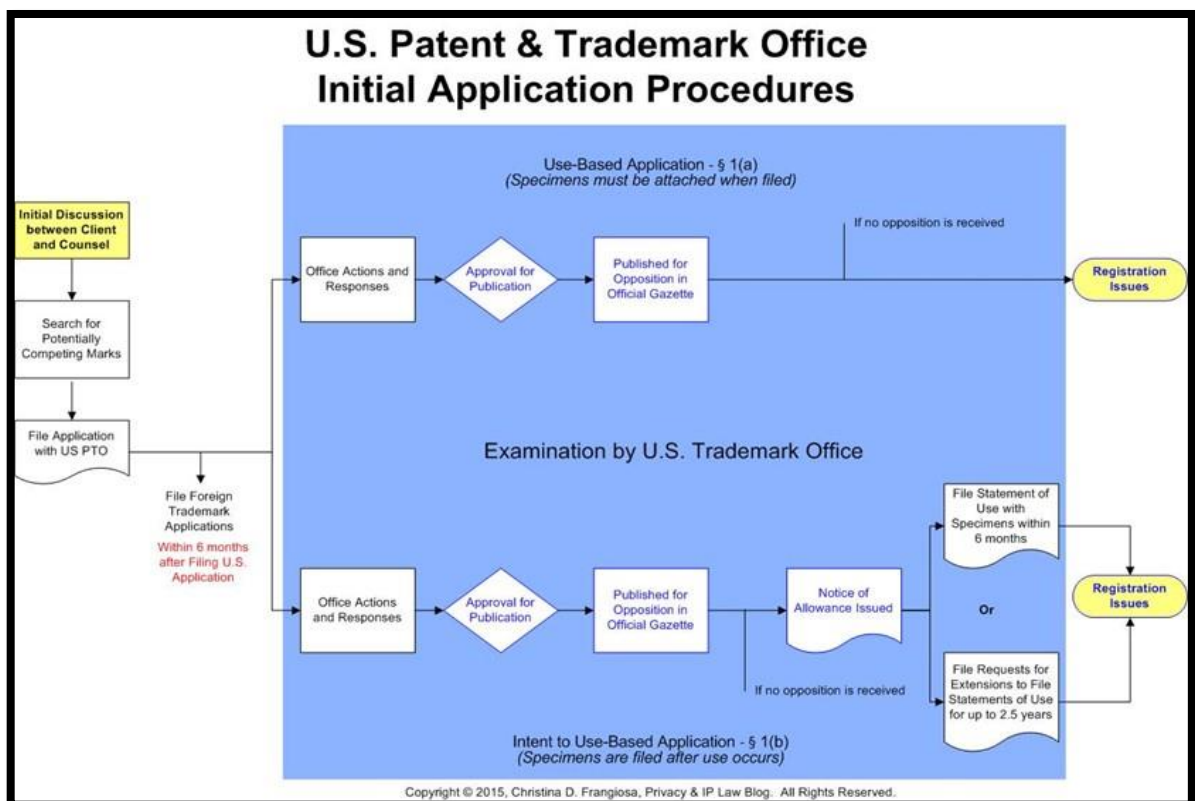
- **SECTION 27(1) – STATES THAT NO ACTION FOR INFRINGEMENT CAN BE TAKEN FOR AN UNREGISTERED TRADEMARK**

- **SECTION 27(2) – REMEDY FOR UNREGISTERED TRADEMARK INFRINGEMENT IS PASSING OFF,**

3 CONDITIONS OF PASSING OFF ARE,

- 1) TRADEMARKS SHOULD HAVE A REPUTATION
- 2) THERE IS MISREPRESENTATION
- 3) INJURY OR LOSS INCURRED

THE REGISTRATION PROCESS IN THE UNITED STATES IS GOVERNED BY SEVERAL SECTIONS OF FEDERAL LAW, INCLUDING:



- 1) The Lanham Act (15 U.S.C. § 1051 et seq.): In the U.S., this is the fundamental federal statute concerning trademarks. It provides for the registration of trademarks, as well as the enforcement of registered trademarks.

- 2) The Trademark Act of 1946 (also called as Lanham Act): This law establishes the procedures necessary for federal trademark and service mark registration. It also establishes the rights of trademark owners and sets out the procedures for registering and enforcing trademarks.
- 3) The Trademark Rules of Practice (37 C.F.R. Part 2): These rules provide the procedures for filing a trademark application, responding to office actions, and appealing decisions made by the USPTO (United States Patents and Trademarks Office).
- 4) TMEP (Trademark Manual of Examining Procedure)⁴: This manual provides guidance for examining attorneys at the USPTO on the proper examination of trademark applications, including the requirements for registration and the criteria for refusing registration.
- 5) 15 U.S.C. §1115: This section provides the remedy for trademark infringement, including the ability to obtain injunctions and monetary damages.

All of these laws and regulations are administered by USPTO “United States Patent and Trademark Office”.

WHAT IS INFRINGEMENT?

When a trademark is used without the owner's consent and is either identical to or confusingly similar to an already registered trademark, trademark infringement has occurred. This applies to any mark used in commerce, including logos, slogans, and brand names. The trademark owner can take legal action to stop the infringing use and may also be entitled to monetary damages. Furthermore, it is illegal to use a trademark in a manner that might lead to consumer misunderstanding regarding the origin of the products or services.

CROSS-BORDER INFRINGEMENT: Cross-border trademark infringement occurs when a trademark is used without authorization in a country other than the country where it is registered. This may occur if a business or person in one nation uses a trademark that is similar to, or confusingly identical to, a trademark registered in another country.

When a foreign corporation or person uses a trademark in the United States which is confusingly similar or identical to a registered trademark in the United States without the

⁴ Guides, manuals, and resources TEMP, United States Patent and Trademark Office - An Agency of the Department of Commerce (2022), <https://www.uspto.gov/trademarks/guides-and-manuals/manuals-guides-official-gazette> (last visited Dec 26, 2022).

owner's consent, this is considered cross-border trademark infringement. The Lanham Act allows trademark owners to sue in federal court in the United States for monetary damages, injunctions, and attorneys' costs if they can prove their trademarks have been infringed upon.

In the same way, a foreign corporation or person may be accused of cross-border trademark infringement in India if they use a trademark in India which is confusingly similar or identical to a trademark registered in India. The trademark owner can take legal action in Indian courts to stop the infringing use and may be entitled to the remedies provided by the Indian Trade Marks Act, 1999, including injunctions, monetary damages, and attorney's fees.

It is important to note that each country has its trademark laws and regulations, and the process of enforcement and remedies may vary depending on the country. It is also important to conduct proper clearance searches and seek legal advice before using a trademark in a foreign country to avoid cross-border trademark infringement.

When dealing with cross-border trademark infringement, it is important to have an attorney familiar with U.S. trademark law and the laws of the country where the infringing party is based. Additionally, the U.S. has international agreements such as the Paris Convention, Madrid Protocol, and the TRIPS agreement⁵, which provide a framework for protecting trademarks in multiple countries.

It is important to note that it can also be difficult to bring an action against foreign infringers, depending on jurisdiction as well as specific circumstances of the infringement, so seeking legal advice is crucial.

REMEDIES FOR CROSS-BORDER TRADEMARK INFRINGEMENT

India has several laws and regulations in place to address cross-border trademark infringement.

These include:

- 1) The Trade Marks Act, 1999: Trademarks in India may be registered and protected under this law, and any infringement on such trademarks can be pursued legally.
- 2) The Customs Act, 1962: This act empowers the Indian Customs authorities to seize and detain infringing goods imported into the country.

⁵ Understanding the WTO - intellectual property: Protection and enforcement, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (last visited Dec 25, 2022).

- 3) The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007: Customs officials may refer to these regulations for guidance on how to handle the confiscation and storage of illegal goods.
- 4) The Information Technology (Intermediary Guidelines) Rules, 2011: Under these guidelines, third-party platforms (including online marketplaces) must remove allegedly infringing material when notified of a violation.
- 5) The Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015: To hear and resolve business issues, especially trademark infringement actions, this legislation establishes specialist commercial courts.
- 6) The Paris Convention for the Protection of Industrial Property and the Trade-Related Aspects of Intellectual Property Rights in the Trans-Pacific Partnership Agreement (TRIPS Agreement) are only two of the many international treaties and conventions that India is a member of⁶.

In addition to these laws and regulations, Indian courts have also recognized the principle of "passing off," which allows for legal action against those who utilize a mark, which is identical to an existing mark with the intent to mislead or confuse the general audience.

It's significant to note that in a cross-border trademark infringement case, Indian courts have jurisdiction if the infringing goods are imported into India, if the infringing acts are committed in India, or if the defendant is a resident of India.

In India, there are several remedies available for cross-border trademark infringement, including:

- 1) Injunctions: A court can grant an injunction to prevent the infringing use of a trademark. This can include an order for preventing the importation, sale, or distribution of infringing products.
- 2) Damages: If the trademark owner suffers any harm or loss as a consequence of the infringement, they may be entitled to monetary compensation from the court.
- 3) Account of profits: Profits earned by the infringer as a direct consequence of the trademark infringement might be ordered to be returned to the trademark owned by the court.

⁶Understanding the WTO - intellectual property: Protection and enforcement, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (last visited Dec 25, 2022).

- 4) Seizure and destruction of infringing goods: The Customs authorities can seize and detain infringing goods that are imported into the country, and they can be destroyed upon the order of the court.
- 5) Criminal remedies: The Trade Marks Act 1999 gives for criminal solutions for trademark infringement, including fines and imprisonment for up to three years for infringing registered trademarks.
- 6) Border Measures: Customs officials in India are authorized under IPR (Imported Goods) Enforcement Rules 2007 to prevent the entry of infringing goods.
- 7) Mediation: Indian courts encourage the parties to resolve disputes through alternative dispute resolution mechanisms such as mediation, which can be faster and less expensive than going to trial.

In the United States, trademark infringement is addressed under Section § 1115 of the Lanham Act (15 U.S.C.)⁷. In particular, it establishes the trademark holder's right to sue in federal court for any infringement involving a mark confusingly similar to the registered trademark.

In the United States, there are several remedies available for cross-border trademark infringement, including:

- 1) Injunctions: A court can grant an injunction for preventing the infringing use of a trademark. This can include an order to prevent the importation, sale, or infringing of goods.
- 2) Damages: In trademark infringement cases, trademark owners may seek monetary compensation from the infringer in damages. In the US, damages can include actual damages, profits gained by the infringer and, in some cases, statutory damages.
- 3) Account of profits: Any financial gain from trademark infringement might be ordered to be returned to the trademark owned by the court.
- 4) Seizure and destruction of infringing goods: The U.S. CBP (Customs and Border Protection) can seize as well as detain infringing goods that are imported into the country, and they can be destroyed upon the order of the court.

⁷ Bitlaw, 15 U.S.C. 1115 (Section 33 of the Lanham Act): Registration on the principal register as evidence of the exclusive right to use the mark; defences, Nov. 2015 (BitLaw), <https://www.bitlaw.com/source/15usc/1115.html#:~:text=15%20U.S.C.%201115%20%28Section%2033%20of%20the%20Lanham,-%20General%20Provisions%20Previous%3A%20%2A71114%20%7C%20Next%3A%20%2A71116> (last visited Dec 25, 2022).

- 5) Criminal remedies: Under the Lanham Act, certain trademark offenses, such as counterfeiting, can be punishable by fines and imprisonment.
- 6) Border Measures: The United States has implemented border measures in the form of the Trademark Counterfeiting Act of 1984, which authorizes the CBP to detain and seize infringing goods imported into the country.
- 7) Mediation: US courts also encourage the parties to resolve disputes through alternative dispute resolution mechanisms such as mediation, which can be faster and less expensive than going to trial.

Note that the trademark owner may need to pursue legal action in both the nation of origin and in the United States/India to properly enforce their rights and that the availability and suitability of a particular remedy will depend on the case's specifics.

CASES

India: Pantaloons vs. American Eagle⁸

Pantaloons is a popular Indian apparel label among trend-conscious locals. American Eagle, a clothing store chain based in the United States, sued the company in 2015. Specifically, they were accused of attempting to register a trademark that was confusingly similar to those used by American Eagle Outfitters. I don't see the nastiness, so explain it. This appears to fit the profile of a typical instance of trademark infringement. Well, two factors add complexity to this situation:

1. Both are international brands, and
2. Both have a fair amount of goodwill in the market

Both of these things have contributed to zero movements across the brands. Because of this, the stakes in the case are growing, and one firm may vanish forever once it is resolved.

Louis Vuitton Malletier S.A. v. Rajesh Jalan⁹

Louis Vuitton had filed a suit against the defendant for infringement of their registered trademark. After finding that the defendant's actions in India infringed on Louis Vuitton's

⁸ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

⁹ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

trademark rights, the court imposed an injunction and a monetary judgment against the defendant for damages.

Yahoo!, Inc. v Akash Arora & Anr [1999 (19) PTC 201 (Del)]¹⁰

It is a trademark infringement case that was heard in the Delhi High Court in India. The case involved Yahoo!, Inc. (Yahoo), an American internet company, and two Indian defendants, Akash Arora and another person, operating a website under the domain name "yahooindia.com."

Yahoo had sued the Defendants for utilizing the domain name "yahooindia.com," which Yahoo said was confusingly similar to Yahoo's registered brand "Yahoo" and so might lead to consumer confusion. Yahoo sued the Defendants for trademark infringement and trademark infringement penalties, including an injunction to prohibit the Defendants from using the domain name "yahooindia.com."

The Court also found that the defendant's use of the domain name "yahooindia.com" was identical and deceptively similar to Yahoo's registered trademark "Yahoo" and that Consumers were likely to be confused by the defendant's usage of the domain name. An injunction barring the defendants from operating under the "yahooindia.com" domain was ordered by the court and also ordered the defendants to pay damages to Yahoo.

This case highlights the importance of conducting proper clearance searches and seeking legal advice before using a trademark, particularly in cases where the mark is similar to a registered trademark in another country, to avoid cross-border trademark infringement. Additionally, it also highlights the importance of protecting a brand not only in terms of its name but also in terms of its domain name, as it can be considered as a source identifier.

It is important to note that, in both India and the United States, domain name disputes are resolved through administrative proceedings rather than court proceedings. However, it is also possible to file a suit in a court of law for trademark infringement, passing off or cybersquatting if the domain name is being used in a way, which is likely to cause confusion among consumers.

¹⁰ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

**DM entertainment v Baby Gift House and Ors. [MANU/DE/2043/2010]:
Celebrity Merchandising¹¹.**

Daler Mehndi, the most well-known Punjabi pop artist, has carved himself a sizable fan base among those who like Punjabi pop music. Appellant has been established in 1996 to oversee the musician's rapidly expanding career. The defendants allegedly ran thriving companies selling Daler Mehndi collectible figurines, capitalizing on the artist's fame. The plaintiff corporation was so offended that it sought a permanent injunction to prevent further violations of the artist's right to publicity as well as fraudulent endorsement leading to passing off.

All rights, interests, and titles in the artist's likeness and Daler Mehndi Trademark were transferred to the plaintiff corporation. According to the complaint, consumers would identify the artist's name with the infringing products if the artist's reputation is used without permission. It was argued that this usage constitutes passing off. The plaintiff additionally claimed that the defendant's commercial use of the defendant's likeness without proper consent from the defendant or anyone authorized by him violated the defendant's right to publicity.

The legality of "character merchandising¹²" has yet to be investigated in India. Star India Private Limited v. Leo Burnett India (Pvt.) Ltd. was the first lawsuit to address this issue. Indian courts have hitherto avoided hearing matters involving the right to publicity. The Court here has done so in a very clear and decisive manner. The plaintiff was awarded Rs 1,00,000 in damages by the court. This is the court's intended result.

Milmet Oftho Industries & Ors v. Allergan Inc. [Civil Appeal No. 5791 of 1998] - First to enter the world market/Protecting Trademark Law in India on Established Foreign Brands/Healthcare and medicine¹³.

Milmet Oftho Industries & Ors v. Allergan Inc. is a trademark infringement case that was heard by the Indian Supreme Court in 1998. The case involved Milmet Oftho Industries and others (Milmet), an Indian manufacturer of ophthalmic products, and Allergan Inc (Allergan), an

¹¹ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

¹² Ishan Sambhar, Character merchandising - trademark - India Character Merchandising - Trademark - India (2019), <https://www.mondaq.com/india/trademark/838774/character-merchandising#:~:text=Celebrity%20Merchandising%20Celebrity%20merchandising%20can%20be%20understood%20under,from%20any%20field%20like%20sports%2C%20movies%2C%20music%20etc.> (last visited Dec 28, 2022).

¹³ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

American company that manufactures and sells ophthalmic products under the trademark "BOTOX."

Allergan had filed a suit against Milmet, alleging that Milmet was using the trademark "BOTOX" and similar marks to market their ophthalmic products in India, which was an infringement of Allergan's registered trademark "BOTOX." Allergan sought an injunction against Milmet to prevent them from using the trademark "BOTOX" and also sought damages for trademark infringement.

The Indian Supreme Court found that Milmet's use of the trademark "BOTOX" and similar marks was indeed an infringement of Allergan's registered trademark "BOTOX." The court issued an injunction against Milmet, preventing them from using the trademark "BOTOX," and ordered Milmet to pay damages to Allergan.

The deceptive similarity in a passing-off action.- Cadila Health Care v Cadila Pharmaceutical Ltd [2001 PTC (SC) 561]¹⁴

Is a trademark infringement and passing off case that was heard by the Indian Supreme Court. The case involved two Indian companies, Cadila Health Care (Cadila Health) and Cadila Pharmaceutical Ltd (Cadila Pharmaceutical), that were engaged in the manufacturing and selling of pharmaceutical products.

Cadila Health had filed a suit against Cadila Pharmaceutical, alleging that Cadila Pharmaceutical's use of the mark "CADILA" on its pharmaceutical products was identical and deceptively similar to Cadila Health's registered trademark "CADILA" and that Cadila Pharmaceutical's usage of the mark was likely for confusing consumers. Cadila Health sought an injunction against Cadila Pharmaceutical to prevent them from using the mark "CADILA" and also sought damages for trademark infringement and passing off.

The Indian Supreme Court found that Cadila Pharmaceutical's use of the mark "CADILA" was identical and deceptively similar to Cadila Health's registered trademark "CADILA" and that Cadila Pharmaceutical's use of the mark was likely to cause confusion among consumers. The court granted an injunction against Cadila Pharmaceutical, preventing them from using the mark "CADILA," and ordered Cadila Pharmaceutical to pay damages to Cadila Health. It

¹⁴ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

determined the following standards to be used when making a determination in a passing-off case based on an unregistered trademark:

- The markings' characteristics (word, label, or composite mark);
- The similarity between the markings;
- Their significance concerning the commodities for which they are used as trademarks;
- Identical features and functions across competing vendors' wares;
- Those consumers most inclined to buy products with the marks;
- How orders are placed and items are bought; and
- Additionally, relevant conditions

Torrent Pharmaceuticals Ltd. v. Wellcome Foundation Ltd, 2001 (2) CTMR 158¹⁵

Is a trademark infringement and passing off case that was heard in the Delhi High Court in India. The case involved two pharmaceutical companies, Torrent Pharmaceuticals Ltd (Torrent) and Wellcome Foundation Ltd (Wellcome), that were engaged in the manufacturing and selling of pharmaceutical products.

Torrent had filed a suit against Wellcome, alleging that Wellcome's use of the mark "ZYDUS" on its pharmaceutical products was identical and deceptively similar to Torrent's registered trademark "ZYDUS" and that Wellcome's use of the mark was likely to confuse consumers. Torrent sought an injunction against Wellcome to prevent them from using the mark "ZYDUS" and also sought damages for trademark infringement and passing off.

The Delhi High Court found that Wellcome's use of the mark "ZYDUS" was identical and deceptively similar to Torrent's registered trademark "ZYDUS" and that Wellcome's usage of mark was possible for causing confusion among consumers. The court sided with Torrent and issued an injunction barring Wellcome from utilizing the ZYDUS trademark and also awarded Torrent monetary damages.

WHY INTELLECTUAL PROPERTY PROTECTION IS IMPORTANT?

¹⁵ Posted by admin, 5 landmark judgments in Trademarks Law Talwar Advocates (2018), <http://talwaradvocates.com/5-landmark-judgements-trademarks-law/> (last visited Dec 25, 2022).

Cross-border infringement of a brand can have a significant impact on the brand's reputation and financial performance. Some of how cross-border infringement can affect a brand include:

1. **Loss of revenue:** Cross-border infringement can result in lost sales and revenue for the brand, as infringers may be selling counterfeit or pirated goods at lower prices, which can lead to decreased demand for the brand's legitimate products.
2. **Damage to reputation:** Cross-border infringement can damage a brand's reputation by associating it with low-quality, counterfeit or pirated goods, leading to decreased consumer trust and loyalty.
3. **Legal and administrative costs:** Cross-border infringement can result in significant legal and administrative costs for the brand, as it may have to take legal action to stop the infringement and protect its rights.
4. **Difficulties in enforcing rights:** Cross-border infringement can be difficult to enforce due to differences in legal systems and IP laws between countries.
5. **Loss of control over the brand:** Cross-border infringement can lead to a loss of control over the brand, as infringers may be using the brand in ways that the brand owner does not approve of, such as on counterfeit or pirated goods.
6. **Decrease in brand value:** Cross-border infringement can decrease the value of a brand by diluting its uniqueness, which can negatively impact the brand's ability for attracting new clients.
7. **Confusion among consumers:** Cross-border infringement can also lead to confusion, which can cause them to purchase counterfeit or pirated goods, believing they are buying the genuine product.

Overall, cross-border infringement can have a significant and detrimental impact on a brand's reputation, financial performance, and ability to protect its intellectual property effectively.

Intellectual property (IP) protection is necessary for many reasons. Some of the key reasons include the following:

1. Encouraging innovation and creativity: IP protection encourages individuals and companies to invest time, money and resources into developing new ideas, technologies, and products, as they can be protected from unauthorized use and can be licensed or sold.
2. Facilitating fair competition: IP protection helps to level the playing field for businesses by preventing others from copying and profiting from their innovations without permission.
3. Promoting economic growth: IP-intensive industries, such as technology, entertainment, and pharmaceuticals, play a vital role in driving economic growth. IP protection allows these industries to flourish by providing them with the necessary legal tools to protect their investments and prevent unauthorized use of their products and services.
4. Protecting public health and safety: IP protection can also be used for protecting the public by preventing the sale of counterfeit or substandard products that may be harmful to consumers.
5. Ensuring cultural preservation: IP protection can also be used to preserve and protect cultural heritage, such as traditional knowledge and folklore, by giving legal recognition to the rights of communities that have traditionally safeguarded these cultural assets.

There are several solutions that can be implemented to improve IP protection. Some of these include:

1. Stronger IP laws: Governments can enact stronger IP laws that provide greater protection for intellectual property rights holders and impose harsher penalties for infringement.
2. IP registration: Companies and individuals can register their IP with the appropriate government agency to establish a legal record of their ownership and rights.
3. IP education: Companies and individuals can educate themselves on their IP rights and the best practices for protecting them.

4. IP monitoring: Companies and individuals can regularly monitor for potential infringement of their IP and take appropriate action when necessary.
5. Collaboration with other IP holders: Companies and individuals can collaborate with other IP holders to share information and resources and to jointly combat IP infringement.
6. International cooperation: Countries can cooperate with each other to combat IP infringement and improve IP protection, for example, by sharing information and supporting each other in litigation.
7. IP audit: Companies can conduct an IP audit to identify and protect their IP assets and use it to identify potential IP infringement and take action accordingly.
8. Cybersecurity measures: Companies can implement cybersecurity measures to protect their IP from unauthorized access and cyber-attacks.
9. Use of technology: Companies can use technology such as blockchain, digital watermarking and digital fingerprinting to protect their IP.
10. Alternative dispute resolution: IP problems may be resolved in a way that is more expedient and less expensive for businesses if the parties involved employ alternative dispute resolution procedures like arbitration and mediation.

Implementing these solutions can help to improve IP protection and reduce the risk of IP infringement.
