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# **LAW RELATING TO DILUTION OF TRADEMARK IN INDIA: AN APPRAISAL**

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## **ABSTRACT**

The prevalence of liberalization has marked an enormous change in the evolution of the trading system. It might be rightly pointed out that the evolution has emerged a concept of competitive environment amongst all the traders and the protection of which is quite viable in the protection of brands of superior quality. Those associated with low-quality targets restricting their capacity to effectively trade in the free market while enabling their brand to play for quite less time which further plays a psychological effect on the population at large. With the capacity to deal with private products at large in every domain of the market worldwide comes the idea of safeguarding and protecting the worth of the product. From a trading perspective, it restricts the other users to combine their value with assigned satisfactory product in the name of other brand building, and from a consumer point, it is pertinent to say that safeguarding the trust and delivering expected satisfaction as per the mark and value of the product. Apparently with the long passage of time people connect with not only the product but the value of the faith in that product. To ensure the source of a product and distinctiveness of the product the owner of a trademark must prevent others from using the marks in the course of trade and in order to obtain its greatest protection it is advisable to get the mark registered, further lessening the consumer's search. The repeated assurance in the product with purchase is the incentive force for the owner to build the quality of the product, to attract market and inherent sole authority and related profits. To combat these incentives against fraudsters willing to fool under the guise of well-known marks' protection, preserving the interests of the population becomes crucial. The following paper deals with the emergence and identification of the need to preserve the dilution doctrine by analyzing the significant changes brought by it in the trademark law, aided by various judicial pronouncements.

Doctrinal research methodology has been used in this paper.

## **I. Introduction:**

With the possessed power in the hands of the consumer there rests free choice of selection among various competent products and services that enable the development of the protection of trademark law. When we talk about customer power it is pertinent to say that they hold the majority of selecting the worth of producers by initiating purchase or demand over the products or services offered by them. Concisely, the customer declines or overlooks the unsatisfactory offer of purchase by switching over to some different product and hence, creates a competitive environment among different entities to match the standards. To be concise, trademark law suppresses the chance of being disappointed due to the practice of satisfactory remark that various consumers have achieved while having a definite opinion on the standards delivered under the name, symbol, color, mark and thus, it will be sufficient to say the higher the distinctive character of a product with the satisfactory remark, the higher will be its corporate recognition and similarly to gain profits and stability one needs to protect the ambiance of reputed products so that the trust should not be diluted in the name of lesser quality or say competition. However, today, trademarks themselves have become the driving force, despite the quality of the product, the singularity and uniqueness of the mark is an impact on the public that raises the commodity purchase. With the effect of the **COVID-19 pandemic**, the release of the digital world has enabled various selective platforms for consumers to trade that the relative search engines cause ambiguity or likelihood of confusion wherein certain “keywords” plays a vital role for the sponsored links for the searching platforms that creates duplicity of products and causes unsatisfactory results.<sup>1</sup>

Keeping in mind the ultimate issue of trademark infringement that occupies the consumers’ initial interest even after the purchase has been made, causes a criticism that bears fruits collectively on the reputation of the mark.

## **II. Historical perspective of dilution theory:**

The changing patterns in the business and the effect of globalization had a gigantic impact on extending brand name assurance as now the entities have intense and rapid competition amongst each other.

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<sup>1</sup>[Wimpier, Eli], [INTERNET- RELATED TRADEMARK INFRINGEMENT.][*GPSolo*, vol. 29, no. 3 ][pp. 66–67],[2012]

Dilution is the gradual whittling away or dispersion of the identity and holds upon the public mind of the mark or name. The justification for a trademark is different from the supports for different types of IP as brand name law doesn't empower further innovativeness. Initially, the capacity of the brand name was viewed as source identification and brand name assurance is essentially implied for advancing this capacity.

Apparently, strict adherence to the traditional territorial concept of trademarks, in these circumstances becomes an economic concern, to those big businesses who venture to conquer the entire globe with their ultimate uniqueness of the product.<sup>2</sup>

### What is a Trademark?

Trademark law legally secures the trademark of the actual brand in step with the Trademark Act, 1999, and under the customary law cure of passing off. Statutory insurance of trademarks is directed by the Controller General of Patents, Designs and Trademarks, an administration office which reports to the Department of Industrial Policy and Promotion (DIPP), under the Ministry of Commerce and Industry.

The law of trademark manages the instrument of enlistment, assurance of brand name, and anticipation of the fake trademark that causes difficulty for the consumers yet because the producer to run with the graceful functioning of the entity. The primary law associated with trademarks in India was the Trade Marks Act of, 1940 which had similar provisions to the United Kingdom Trade Marks Act, 1938. The Trade and Merchandise Marks Act, 1958 was repealed by the Trade Marks Act, 1999 and is currently providing the viable provisions. The 1999 Act was enacted to comply with the provisions of the TRIPS. Though some aspects of the unregistered marks have been enacted to accommodate the provisions they are primarily governed by the common law rules supported the principles evolved out of the judgments of the Courts.

Shape, color, symbol, and sound were in use by different companies for quite a decade to indicate brand origins, although their legal protection and registration were subsequent developments. For example, the coca-cola contour bottle that was earlier designed in 1915, got its trademark registration only in 1960. Coca-cola's bottle shape of packaging has achieved iconic status and in itself, it's the only most recognizable brand within the world. Color

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<sup>2</sup>Agatha, T.G, TRADEMARK DILUTION: INDIAN APPROACH, vol. 50, no. 3, pp. 339–366. *JSTOR*, 2008

trademarks are alive since the 1830s. Tiffany maintains a color trademark on its distinctive 'tiffany blue' packages - special blue boxes for its jewelry. Tiffany blue recognize shade of cloudy blue created by the corporate for its products from 1845.<sup>3</sup>

### **The emergence of the doctrine of dilution-**

Legal protection to trademarks was first granted by the courts back within 16<sup>th</sup> century wherein, the first function was to help or enable consumers in identifying the source of origin of a product or service. This function remains fundamental within the Trademark law. The introduction of other functions of the trademark law was exhausted the first 20<sup>th</sup> century. The functions include, inter alia, usage of trademarks as a marketing tool, for advertising purposes, and most specifically as an indicator of the standard of the merchandise or service. All of these usages of a trademark made it inevitably essential for a proprietor or owner to shield their trademarks from fraudulent usage and misuse.

The changing patterns within the business and also the effect of globalization had imposed a powerful impact on extending name assurance as now the entities have intense and rapid competition amongst one another. Now-a-days, non-conventional have inherit existence within the type of Color, sound, taste and smell marks. A number of them are recognized in India through various judicial pronouncements while the others are still waiting within line to be recognized.

### **III. Registration of trademarks:**

A trademark once registered becomes an untouchable holding that can't be further employed by anyone in terms of initiating business. It gets its own exclusive identity of goods/ services that a specific name is offering this distinctive quite that of a merchandise of others.

In India, trademarks get registered by the Controller General of Patents Designs and Trademarks, Ministry of Commerce and Industry, Government of India.<sup>4</sup> Trademarks in India are registered under the Trademark Act, 2016, and authorize the trademark owner with a right to sue for damages when contraventions of trademarks occur.<sup>5</sup>

### **Why consider registration of a trademark?**

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<sup>3</sup> Lukas, Lisa P, *Non- Traditional Trademarks: A Critique*, vol.57 no.2, *Journal of the Indian Law Institute*, pp. 197–215. (2015)

<sup>4</sup> trademark-registration-procedure-india

<sup>5</sup> Naas's, Constantine V, *Scaling Red And The Horror Of Trademark*.

By creating a reliable entity for a customer, it builds an instantaneous link with the merchandise of that customer that initiates purchase with the satisfaction of that color, mark, symbol, or whatever identity he puts his faith into that a selected deliverable are going to be duly given to him therewith particular satisfaction.

One such idol example will be, once we move out shopping, majority prefer wearing brands, they might dolefully twice enter the showroom and initiate purchase regardless of what other product needs to offer. The settled impression of a specific brand creates confidence as a psychological remark that “this has better satisfaction offering .The point being, to safeguard the mark from others and to safeguard this customer satisfaction for an enduring period, it is safe to induce the mark registered and it gives credits to the source of product and guarantees the reliability of the merchandise or service to resist for a extended duration.

#### **IV. Dilution protection:**

For better assurance of exchange marks for labor and products and the counteraction of the utilization of false checks, parliament revoked the 1958 Act and replaced it with the Trade Marks Act, 1999. Under Trade Marks Act, 1999, Trademark dilution was presented. Dilution of brand name is an idea giving the proprietor of a renowned or notable brand name the ability to disallow others from utilizing the mark in a manner that would decrease its uniqueness. To befuddle individuals, an unapproved client makes comparable characteristics of the well-known brandnames. To stop this, Trademark Dilution is the idea to offer the capacity to the renowned proprietor of the brand names.<sup>6</sup>

Dilution of a Trademark is a surface of Trademark encroachment, where the proprietor of a notable brand name can keep others from utilizing their mark on the ground that it kills their uniqueness or decrease their standing. All things considered, No one has the privilege to duplicate a notable brand name or to abuse the notable brand name's standing. All things considered, dilution assurance plans to ensure adequately solid and notable brand names from losing their solitary relationship in the public brain with a specific item.

#### **🚦 Concept of dilution-**

Dilution theory discards the view that the sole function of a trademark is source identification, as archaic. A trademark is said to be diluted when the utilization of comparable or

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<sup>6</sup> Blog pleaders, July , 29 , 2017, available at <https://blog.ipleaders.in/doctrine-dilution-trademarks/> (last visited on 13 July 2021)

indistinguishable trademark other non-contending markets implies that the brand name all by itself will lose its ability to connote a unique source. Dilution varies from typical brand name encroachment in that there is no compelling reason to demonstrate a probability of disarray to secure a mark nor is there any need to show rivalry between the products of the offended party and the respondent. Dilution protection plans to shield adequately famous brand names from losing their particular quality or uniqueness in the public vision. A dilution case can be brought just if the mark is 'famous'. Trademark dilution includes the utilization of a famous brand name so that the utilization decreases the famous mark's ability to recognize the wellspring of the products that the popular mark is related with. Trademark dilution is especially alarming because the strength of the brand name is diminished by another person utilizing the famous mark – regardless of whether that utilization steers clear of the products or administrations that are related to the famous mark.

#### **V. Analysis of trademark dilution:**

##### **Meaning-**

An act that weakens the exclusivity of a well-known trademark, resulting in the tarnishment or blurring of that well-known mark is known as Trademark dilution. Trademark dilution is different from trademark infringement in the way that the former involves the application of a mark concerning the commodities and services that are not in a competing position to those associated with the well-known trademark. For example, a trademark dilution law may prevent a harmonica manufacturer from adopting a 'Ferrari' mark on its goods, even though customers would never be confused in differentiating between both the marks. Trademark dilution, therefore, stands for the proposal that some marks so well-known that they are worthy of protection beyond the standard likelihood-of-confusion study for determining trademark violation.<sup>7</sup> Also, for a mark to be considered and recognized as well known, the mark must necessarily achieve widespread public recognition meaning that the mark should be immediately identifiable by the public at large. For example, Coca-Cola, IKEA, Sony, Nike, Adidas, and soon have emerged as household names in the global society thereby falling under the category of well-known trademarks.

##### **Purpose of trademark-**

A trademark serves the following four purposes:

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<sup>7</sup> Dirk Willem Reek Hertzog, *Functional Theory in Trademark Law*, Vol. 4, Series B, No.1, 10-45, at 10-12, (1981)

1. It serves as the reason for identifying the origin of the goods.
2. It represents a product and therefore, advertises it.
3. It creates a brand image in the minds of the consumers or prospective consumers.
4. A trademark proposes to guarantee the quality of its product.

The primary function of trademarks is to promise and signify the badge of origin and characteristics of products and services and to enable an individual to distinguish them from other goods and services available in the marketplace, and the same was first affirmed by the European Court in the case of Canon. Therefore, it is right to say that the assurance of the badge of origin of produce and individuality makes sure that the interests and benefits of both, the owner and customers are duly met. Trademark protection excludes any indistinguishable use of the protected mark by any of the competitor's in the marketplace who wish to take wrongful advantage of the situation or reputation of the proprietor's public image.

#### **Forms:**

1. **Blurring:** Dilution of a renowned brand name by blurring happens when the well-known mark and the weakening mark are comparative and the utilization of the weakening mark impedes the peculiarity of the famous mark. As a rule, a well-known brand name is related to a solitary item or a line of items or says the delivery of satisfaction. At the point when a comparative brand name is utilized on an assortment of different items, the comparative mark weakens the well-known mark by meaning to buyers that the comparative mark is related to the more extensive assortment of items. To think about this another way, utilization of the comparable mark on a more extensive scope of items obscures the lines between a genuine item bearing the famous brand name and an item sold under the comparable brand name.

For example, Adidas is a famous trademark and it is well known that Adidas is used for athletic shoes and apparel. If a competitor uses a stylized "checkmark" symbol that is similar to Adidas on a range of cooking utensils, the competitor could be sued by Adidas for trademark dilution by blurring.

2. **Tarnishment:** Dilution of a popular brand name through tarnishment includes somebody utilizing the well-known brand name such that it represents the danger of discoloring the standing of the famous mark. Tarnishment of a brand name regularly includes utilization of the popular brand name shamefully or offensively. The unflattering relationship of a popular brand name can be terrible for business.

For example, a well-known mark famous for children's diapers would sort of tarnished if it will be further used for cigarettes.

#### **Elements of Trademark dilution-**

- 1. Fame-** It is a prerequisite that the trademark should be a well-known trademark in order to avail the protection of trademark dilution. Different jurisdictions have different requirements to avail trademark dilution, for example, in the United States, a mark shall necessarily be acknowledged by the Universal overriding public in order to be considered as well known. Whereas, in the European Union, being well-known is a secondary requirement and the courts determine the width of the necessary reputation of that mark to avail dilution of that trademark. While in various other jurisdictions, the question of whether a trademark is a well-known mark or not is determined on a case-to-case basis. 'Fame' is not a stationery subject and therefore, a proprietor must show that the trademark in question is famous at the time of making an application for trademark dilution.
- 2. Protection of the strength of the mark for the owner-** To defend the consumers from getting confused between the source of alike, related or opposing goods or services due to the similarity of marks, the trademark dilution acts as its substitute and protects the proprietor of a well-known mark from any individual that is likely to reduce the ability to recognize and differentiate the goods and services of the authentic mark.
- 3. Necessary showing-** It is not required that the proprietor shall necessarily showcase that there exists a dilution of trademark authentically and it is sufficient that the proprietor can prove that there is a probability of dilution to be awarded assistance. This means that proving that there is the likelihood of dilution rather than the essential happening of dilution is sufficient to avail the benefit.

#### **The doctrine of Dilution in India-**

With the incorporation of the Trademarks Act in 1999, the concept of 'Dilution' was first inscribed in any Indian statute. Section 29(4) of the Act talks about the Doctrine of Dilution stating further that a trademark shall be registered and shall have a reputation in India and the underlying requirement for such registration is that it needs to be a well-known mark.<sup>8</sup>

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<sup>8</sup>The Trademarks Act, 1999, s 29(4) (c), No. 47, Acts of parliament, 1999 (India).



According to this section, a trademark infringement is to be constituted as dilution only when a person uses:-

1. A mark that is similar to an already registered trademark having a reputation in India.
2. A mark on different goods and services other than those covered by the already registered mark.

The use of the offending mark usually results in the following:-

1. Taking up an unfair advantage of the reputed mark by the person using the offending mark.
2. Bringing harm to the goodwill of the distinctive/reputed mark.

## **VI. Case laws:**

### **1. ITC v. Philip Morris Products SA &Ors.<sup>9</sup>**

This is a famous case that provides an upright understanding of the cause of action relating to trademark dilution in the Indian Scenario. Herein, by referring to Section 29(4) of the Trademarks Act, 1999, the High Court of Delhi held that a trademark dilution cause of action will be established only after the satisfaction of the following essential elements:

- The impugned mark shall be either similar or identical to the well-known trademark in question.
- The said well-known mark shall have a reputation in India that has been injured.
- The use of the injured mark shall be done without due cause.
- The said use of the injured mark shall be detrimental to its reputation or distinctive character or shall amount to the taking up of its unfair advantage.

In the said case, the use of the 'Namaste' logo by ITC on the cigarettes<sup>10</sup> manufactured by it became the whole sole reason for its loss against Philip Morris. The Delhi High Court stated that the use of the 'Namaste' logo alongside the Welcome Group trademark as well as the non-use of such logo on the cigarette packets brings out the claim of the ITC group as unsustainable in the court of law. The court also stated that there was no such use of the trademark on the cigarette packs by ITC and the same cannot be extended to mid and high-priced cigarettes packs thereby, making the trademark dilution cause of action as unsustainable in the following case.

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<sup>9</sup>ITC v. Philip Morris Products SA &Ors. 2010 (42) PTC 572 (Del.).

## **2. Daimler Aktiengesellschaft & Anr. v. Eagle Flask Industries Ltd.<sup>11</sup>**

Herein, the Hon'ble Delhi High Court stated that Trademark law does not intend to protect a person who deliberately sets out to take benefit from someone else's reputation concerning the goods, especially when the reputation extends worldwide. It can in no way be justified that the use of the name 'Mercedes' for any period cannot be objected to. In the given case, the name 'Mercedes' has been given to a very highly-priced and extremely well-engineered product. It was held that the defendant is not empowered to dilute the name 'Mercedes' concerns a product like a thermos or a casserole.

This was the first case in India dealing with the concept of dilution of well-known trademarks. This landmark judgment has, therefore, limited the respondent from utilizing the offended party's well-known trademark on the ground of free-riding without involving the context of the likelihood of confusion or deception into the image.

## **3. Daimler Benz Aktiengesellschaft v. Hybo Hindustan.<sup>12</sup>**

The judgment was passed by a single bench judge of the Delhi High Court in which the issue was whether the defendant could use the mark 'BENZ' as the brand name for the sale of undergarments? The court granted an injunction to the plaintiff ignoring the defense of 'honest and concurrent use' and stated clearly that the replication or duplicity of a mark such as 'BENZ' by anyone would amount to infringement of the trademark law in India and further observed that, 'such a mark is not up for grabs and that 'the name is well-known in India and Worldwide, with respect to cars, as its symbol a three-pointed star.'<sup>13</sup>

## **4. Caterpillar Inc. v. Mehta Ahmed and Others.<sup>14</sup>**

Herein, the Delhi High Court held that the doctrine of dilution is an independent and distinct doctrine and the underlying object of this doctrine is that there lies a presumption that states that the relevant customers start associating the mark with a new and different source. The result is that the descriptive link between the mark and the goods gets blurred. It, therefore, not only reduces the force or value of trademark but also gradually tapers the commercial value of the marks piece by piece. Thus, making such kind of dilution an unfair practice in trade and commerce.

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<sup>11</sup> ILR (1995) 2 Del 817.

<sup>12</sup> AIR 1994 Del. 239.

<sup>13</sup> Ibid.

<sup>14</sup> 25 PTC 438 (Delhi), 2002, 441-42.

## VII. Comparative study:

There lies a distinction between the description and requirements for a dilution of trademark cause of action in India and other countries like the USA and UK. In India, the underlying requirement is that a trademark needs to have a reputation in India and should be well-known among the masses. Whereas, in the USA, the mark needs to fulfill the requirement of being 'famous' among the masses. The standard of fame attached to the trademark shall be high as well, meaning that the mark needs to be highly distinctive; otherwise, it shall not be diluted.

In India, the Trade and Merchandise Marks Act 1958 did not contain any provisions relating to trademark dilution. It was only in 1999 with the administration of the Trademarks Act, that provisions were incorporated identifying trademark dilution. Section 29(4) of the Act<sup>15</sup> contains arrangements regarding globally accepted measures about the need to ensure well-known trademarks. A comparison arises between Section 11(2) of the Trademark Act 1999 and Section 10(3) of the U.K. Trade Marks Act 1994.

The Lanham Trademarks Act governs the registration of trademarks in the United States. This Act particularly grants exclusive rights to the seller or producers to register a trademark and to restrain the competitors from any use of it, further precluding various activities like trademark encroachment, false promoting, and trademark weakening. Trademark encroachment refers to the unapproved use or multiplication of a trademark, raising the possibility of disarray in the minds of purchasers with regard to the wellspring of merchandise or administrations. It becomes difficult to set up a 'probability or perplexity' at the time when marks, items, or administrations are comparable. Certain popular trademarks being well on the way to fit the bill for weakening assurance like Google and Coca-Cola are the marks that unexpectedly require weakening insurance the least. It is to be observed that their popularity among the masses protects them from weakening and makes it hard to move.<sup>16</sup> These marks convey the most potential for expressive use and their sheer universal application makes it even easier to contend that notwithstanding any circumstance, the utilization of either the equivalent or comparable mark by any other entity will result in trademark dilution.

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<sup>15</sup>The Trademarks Act, 1999, s 3, No. 47, Acts of Parliament, 1999 (India).

<sup>16</sup> Barton Beebe, A defense of the New Federal Trademark Anti-dilution Law, 16 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 1143, 1162-63 (2006).

In the UK, The concept of dilution doctrine was first discussed in the TMA 1994. In one such case<sup>17</sup>, the makers of a non-alcoholic drink endeavored to utilize the term ‘champagne on one of their items. Now the French makers of champagne had developed a peculiarity and restrictiveness about their product with caution. Herein, the court held that the item in question already had the affiliations, notoriety, and generosity and if in any case, any other item was to be allowed to portray itself with the same name, it would disintegrate the peculiarity and elite nature of ‘champagne’. After this case, UK incorporated the scheme of dilution protection under the Trade Mark Act 1994 under Sections 5(2) and 10(3). These sections were further revised by the Trademark Regulations 2004, forthwith; the extent of security was extended to cover indistinguishable, comparative, and non-comparable products under its ambit. With continuous developments, the doctrine of dilution protection was formally perceived by including pertinent segments under the Trademark Act for the assurance of the uniqueness of the trademark.

#### **VIII. Conclusion:**

Though, the doctrine of dilution of trademark derives its roots from the common law regime yet, the execution of it remains impeccable as can be seen in the majority of rulings given by the Indian Judiciary. Moreover, the wide use of Section 24 of the Trademarks Act 1999 can cause a prompt abuse of a provision by the users of well-known marks which makes it risky considering the fact that the users of well-known marks are usually corporate mammoths who may even utilize this protection granted to them under S 24 to menace smaller businesses as well. There is no denying the fact that the user of a well-known mark has to prove the happening of dilution or likelihood of dilution in order to gain this protection under the Indian Trademark Law, meaning that the burden of proof always lies upon the user of such mark.

Though, the Trademarks Act 1999 is a step forward in order to avoid dilution of marks, at the same time the contemporary Indian situation requires a staunch, different, and careful lawful order for the prevention of such dilution of trademarks and to meet and fulfill the global standards of protection relating to the same. Even though the Indian Courts have been dealing with dilution cases for nearly three decades now, the knowledge of protecting and curbing dilution of marks is still in the initial and growing age in the Indian scenario. Certain changes are required under Section 29 of the Trademarks Act 1999 such as Clause 4 of the section which talks about infringement of a mark in case it is used by someone else. The Indian law vests the

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<sup>17</sup>Taittinger v. Albee [1993] FSR 641.

power of dilution doctrine in the owners of well-known trademarks in order to safeguard their trademarks from fraudsters. These well-known trademarks and owner companies very well contribute to the GDP of the country and therefore, needs to be protected against fraudulent activities and vicious claims.

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