
NON-CONVENTIONAL TRADEMARKS IN FASHION: A COMPARATIVE ANALYSIS

Maansi Ahuja & Anubhuti Sharma, LLM (IPR) at University School of Law and Legal
Studies, GGSIPU, New Delhi

ABSTRACT

The expanding importance of non-traditional trademarks, which extend outside traditional logos and symbols to encompass colours, forms, sounds, fragrances, textures, and holograms, is examined in this paper. In industries like fashion and luxury goods, wherein product identification is strongly linked to unique aesthetically and sensory components, such markings have grown in importance. The overview draws attention to the various worldwide strategies used for trademark registration and protection, although an extensive description of trademarks is provided by global agreements such as TRIPS, national applications have been inconsistent due to the voluntary necessity for visual representation. By eliminating the need for pictorial depiction, streamlining the application procedure, and bringing it into line with contemporary marketing standards, the European Union has gradually increased the acknowledgement of non-conventional trademarks. The approach used in the United States is particularly adaptable, emphasising a mark's uniqueness and origin-identifying purpose over its aesthetic depiction. This has made it possible for unconventional trademarks, such as those with conceptual and sensory components, to benefit from wider protections. India's trademark law, on the other hand, still places a strong emphasis on graphical representation, restricting the use of trademarks that are fundamentally non-visual, like textures or fragrances. In order to facilitate the filing of non-traditional trademarks worldwide, the paper argues for the harmonisation of trademark laws. An increasingly comprehensive and useful trademark structure can be facilitated by standardised regulations, global collaboration, and wider treaty recognition, which will promote creativity and safeguard brand identification in ever-changing commercial conditions.

Keywords: Non-conventional trademarks, fashion, aesthetic depiction, visual representation, European Union, United States, India.

I. Non-Conventional Trademarks

When we speak of the term "trademark," people think of a visually noticeable symbol, mark, logo, or word that has historically been used by businesses as their trademark. However, as a result of globalisation, evolving marketing strategies, and studies on consumer behaviour in contemporary business patterns, trademark execution also adopts some novel developments regarding the mark's visual appeal and attributes in order to draw customers to a specific product. Adding a distinctive scent, a special touch, a unique package, a shape, a moving image, a distinctive sound, or a specific colour as a trademark was started in this course in order to draw in "modern customers."¹ For instance, the shape of the Coca-Cola bottle, the purple shade of the immensely popular Cadbury chocolate, or the four-string musical tone of a Britannia biscuit. Furthermore, Louboutin shoes, Burberry's Checkered Pattern, Bottega Veneta bags, Rubik's Cube and Lego mini-figurine toys, Toblerone, and Kit-Kat chocolates are some of the prevalent non-conventional trademarks. The terms "non-traditional trademarks," "non-conventional trademarks," or even "modern marks" refer to these markings that are not often utilised as trademarks in the ordinary course of businesses².

It goes without saying that over the past few decades, both the field of trademark law and the extent of the protection of trademarks have expanded rapidly. Any symbol can be recognised as a mark these days. Single colours, shapes, noises, fragrances, video clips, holograms, and even gestures are all included in this. The 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) established a fairly comprehensive definition of trademarks, which affirmed that all of these marks, often referred to as non-conventional or non-traditional marks could be protected globally. Furthermore, TRIPS only permits, but does not mandate, that members provide that signs should be "visually detectable" to be protected as trademarks³. The registrability of these indications was further enhanced in subsequent years by the introduction of the Singapore Treaty on the Law of Trademarks and the Trademark Law Treaty.

¹ Rituparna Sarmah, *NON-CONVENTIONAL TRADEMARK WITH SPECIAL REFERENCE TO INDIA AND U.S.A- AN ANALYSIS*, 2018.

² Vatsala Sahay, *Conventionalising Non-Conventional Trademarks of Sounds and Scents: A Cross-Jurisdictional Study*, 9 NALSAR Student Law Review 128–141 (2011).

³ Irene Calboli, *Chocolate, fashion, toys and cabs: The misunderstood distinctiveness of non-traditional trademarks*, 49 IIC - International Review of Intellectual Property and Competition Law 1–4 (2018).

According to the definition of Trademark under the Trademark Act, 1999⁴; a trademark in order for it to be get registered should be distinctive in nature and should be capable of being represented graphically. These two requirements cause difficulty to an extent in registering some of the significant forms of non-conventional trademark in India. The subject of whether or not non-conventional trademarks, particularly single-color, smell, taste, or touch marks, are unique in nature frequently comes up. It is said that sounds and smells are not distinctive because they are frequently an outcome of the product's features or are actually necessary. For instance, Asian paint's scent cannot be patented since it is a feature of all paints and results from their formulation. However, customers may link a particular scent to a product, for example, rose scent to Sumitomo tires and as a result, they may be held accountable for trademark protection. This conflict can only be resolved on a case-to-case basis and it is not likely to make a general conception that non-conventional trademark should not be registered as a trademark on account of lack of distinctiveness or graphical representations⁵.

Single Colour as a Trademark

There are two types of colours that can be used as trademarks: single colours or combinations of colours. Few national laws address the issue of using a single colour as a trademark whereas, combination of colours is commonly recognised across countries⁶. Businesses have traditionally used a distinctive colour to distinguish their products, whether they are in any kind of clothing, accessories, pharmaceutical industry, packaging for products or machinery for industry. Across various countries including India, combination of colour is accepted as a trademark, the problem of single colour as a trademark is yet not solved in most of the countries. In the contemporary trends of business, corporations are continuously making effort to register single colour as a trademark, as these colours itself becomes the face of the product, for instance, the Delhi High Court in the case of *Christian Louboutin Sas v. Nakul Bajaj*⁷ recognised the red colour sole used in popular Christian Louboutin shoes as a distinctive feature of the product and recognized that colour as the trademark of the Christian Louboutin

⁴ The Trade Marks Act, 1999, No.47 OF 1999, s.2(1)(zb) (India)

⁵ Vatsala, *supra* note 4.

⁶ Arka Majumder et al., *The Requirement of Graphical Representability for Non-Conventional Trademark*, 11 Journal of Intellectual Property Rights 316 (2006).

⁷ 2014 (60) PTC 8 (Del).

shoes, thus recognising single colour trademark in India. The purple shade of Cadbury chocolate or the dark blue colour of Nivea cream were also registered⁸.

Touch marks

Another very rare mark in the field of non-conventional trademark is the 'Touch mark' which is also acknowledged as 'Tactile marks' or 'Haptic' marks. For e.g. the Louis Vuitton Malletier's tactile marks for their luxury lines of luggage and other leather products which are registered in the USA⁹.

II. European Perspective

Europe has set up a system for trademark registration across the entire EU in the form of Community Trademark Regulations which is managed by the Office of Harmonization in the Internal Market (OHIM). The 2009 regulation had provided a unitary character to the community trademark¹⁰. It further had defined community trademark to encompass different forms capable of graphical representation including namely the words, numerals, letters and shape & packaging of the goods¹¹.

A major precedent for the registration of non-conventional was set by the European Court of Justice which had set a very strict standard for registration of scent or olfactory marks in *Ralf Sieckmann V. Deutsches Patent und Markenamt*¹². Herein the subject matter of the trademark application was scent of methyl cinnamate which was described as “balsamically fruity with a slight hint of cinnamon”. The Court denied the trademark protection to the mark in question on the following grounds: - firstly, the chemical formula provided by the proprietor described the substance itself and not the scent to be trademarked, secondly the written description provided did not describe the scent in precise manner and thirdly, the physical deposit of a sample shall not fulfil the requirement of graphical representation and was also neither lasting nor durable. Further, there were issues about change in scent due to the presence of different gases in different atmospheres.

⁸Rituparna *supra* Note 3.

⁹ U.S.A Reg. No 2,263,903.

¹⁰ Council Regulation, 2009 (EC) No 207/2009, Art. 1

¹¹ *Id.* Art. 4

¹² Case no. C-273/00

Subsequent to this however, a major step in development of non-conventional trademarks was taken by the European Parliament of the Council in the form of European Directive no. 2015/2436 by removing the requirement of graphical representation from the definition of trademark¹³. This directive aimed to harmonize the trademark legislation across the EU member states and simplify the process of registration.

Europe is home to the most luxury fashion houses in the world many of which occupy a large share of the fashion market. Such fashion houses have acquired their goodwill and reputation over the years by providing high quality and innovative products and thus, protection of trademarks for these designers and brands is crucial to combat fashion piracy and counterfeit products and require a dynamic trademark system for the same. Efforts to reconcile the trademark law with increasing market requirements has been made by the OHIM and CJEU by granting more and more trademark protection to non-conventional marks.

In case of smell or olfactory marks, a comparatively stricter standard is applied in EU than US with only two trademarks being registered in the said category¹⁴. However, none of the two trademarks relate to the fashion, cosmetics or perfumery industry due to the pre-requisite that the scent shall not be the main function of the product and is an inherent attribute of the cosmetics and perfume products.

The other aspect of non-conventional marks prevalent in fashion industry is the single colour trademarks. While registration of a combination of colours or combination of colours with words and logos is quite prevalent, single colour registration is sparse due to the fact that it might be difficult for a single colour to achieve distinctiveness and become associated with goods of the proprietor in the minds of the consumers, Yet, brands like Tiffany's and Christian Louboutin have acquired the same through decades of use¹⁵. Especially the protection of red sole in shoes produced by Christian Louboutin which has been a subject of various legal disputes all over the world. In Europe the protection was granted by the CJEU which observed that the investment made by the proprietor over the years has led to the mark being commercially associated with the proprietor. It also observed that the protection was sought for

¹³ Directive (EU) No. 2015/2436 of the European Parliament and of the Council, Art.3

¹⁴ Anjali Raj, *The Invisible Trademark: Smell Mark*, 8 Journal of Intellectual Property Studies 27–46 (2024).

¹⁵ Antonella Barbieri & Federica De Santis, *Color Trademark Protection in the Fashion Industry* 42–43 (2013).

a specific colour as designated by an internationally accepted code and fulfilled all the requirements of a colour mark¹⁶.

Trademark protection in shape of the fashion goods has also been granted in the recent years. A major example of the same is the iconic Birkin bag by the Hermes which has been granted protection not merely with respect to the entire shape of the bag but also certain elements associated with. In a dispute where the accused argued that the trademark of the complainant was not infringed because the padlock design in the accused's bag bore different initial as compared to the "H" engraved in the complainant's padlock, the court rejected the contention. It observed that the protection was granted to the shape of padlock as attached to the complainant's bag and a copying the same would infringe upon his trademark¹⁷. As long as the shape is not functional to the use or purpose of the good and can be distinguished from the other products available in the market, the trademark protection would be extended, for instance, the shape of Guerlain lipsticks which resemble a ship's hull¹⁸.

Another non-conventional mark relevant in fashion industry is the tactile or texture mark. Fashion goods have a lot of scope for embossing innovative patterns on the textiles. For instance, the *intrecciato* pattern developed by the Italian designers Bottega Veneta in 1960s wherein super fine leather was put under the needle of a specialized sewing machine developed by the designers. The pattern was weaved into the bags and other artisanal leather goods produced by the designers and after the products gained popularity all over the world, a trademark for the pattern was sought in multiple jurisdictions. EUIPO granted the protection to this woven leather pattern in 2008, subsequent to which other European countries followed suit¹⁹.

Hologram marks which protect the optically variable element of the mark which means that the mark changes shape or colour depending upon the viewing angle have been used by the major luxury brands like Gucci and Fendi since 2000s to differentiate their products from the counterfeits²⁰. However, registration of these hologram marks is subject to the prerequisite of

¹⁶ Christian Louboutin and Christian Louboutin SAS v. Van Haren Schoenen BV, C-163/16, 2018

¹⁷ S.A.S. Blao & Co v. Société Hermes International and S.A.S. Hermes Sellier, Case RG 22/09210

¹⁸ Guerlain v European Union Intellectual Property Office, T-488/20, 2021

¹⁹ Irene Calboli, *Hands off "My" Colors, Patterns, and Shapes! How Non-Traditional Trademarks Promote Standardization and May Negatively Impact Creativity and Innovation*, in *The Protection of Non-Traditional Trademarks: Critical Perspectives* 287–308 (1 ed. 2018).

²⁰ V. Michael Bove & Nicole A. Reader, *Holography and the luxury industry*, 8 *Photonics* 217 (2021).

graphical representation. The guidelines by the EUIPO state that an application for hologram marks must be accompanied by a video file or photographic reproduction that sufficiently captures the entire holographic effect. Only one hologram trademark has been registered in the EU for the fashion apparels and accessories by the Trends Season SARL²¹.

III. United States Approach to Non-Conventional Trademark in Fashion

In contrast to other nations like the EU and India, the US takes a totally distinct stance on unconventional trademarks. The Lanham Act establishes the rules for registering trademarks and protection in the United States. According to the Act, *“protection can be granted to any words, symbols, name or any combination if they are used to identify and distinguish goods or services of one undertaking from those of other undertaking”* and thus the need to be graphically represented is not compulsory in the country²². The case of *Qualitex Co. v. Jacobson Products and Co.*²³ demonstrates the Supreme Court's lenient approach to the registration of unconventional trademarks. The Supreme Court emphasised in this judgement that a trademark's principal purpose—its distinctiveness, is what makes it necessary for registration and protection, not its ability to be graphically depicted²⁴.

According to Article 1, Section 8, Clause 8 of the U.S. Patent and Trademark Act, the United States Patent and Trademark Office (USPTO) is the federal organisation that oversees registration of trademarks and patent licensing. According to a constitutional provision, the legislative branch advances the arts and sciences by giving writers and inventors the temporary, sole authorisation to protect their creations. It serves as the trademark's primary proof of validity and offers nationwide protection²⁵.

In the past, the only trademarks used in commerce in the United States were drawings and symbols used for recognising jewellery, armour, and pottery. Likewise, the early trademark laws in the United States of America primarily applied to trademarks in their visible or traditional forms. Only aesthetically pleasing trademarks may be registered under the United States' original trademark law, which was passed in 1870. Following that, in 1905, Congress

²¹ EUIPO: eSearch, <https://euipo.europa.eu/eSearch/> (last visited Apr 7, 2025).

²² Linda B. Samuels & Jeffrey M. Samuels, *Color trademarks: Protection under U.S. law*, 15 Journal of Public Policy & Marketing 303–307 (1996).

²³ *Qualitex v. Jacobson Products Co.*, 514 US 159 (1995)

²⁴ Brinks Hofer Gilson & Lione, *The Sound of Unconventional Marks in the United States*, WORLD TRADEMARK REVIEW 94 (2007).

²⁵ *Supra* Note 1.

changed the legislation to restrict registration of trademarks to just those marks that are fundamentally unique. This stipulated that descriptive marks or marks that are not instantly recognisable by customers could not be registered. However, the Lanham Act gave the US trademark system an entirely new direction. It expanded a trademark's authority, trademark that is not naturally distinctive will not be prohibited from being registered under the Act if it gradually becomes distinctive. Most significantly, by providing an encompassing definition of marks and without specifically barring non-conventional trademarks like sound, smell, or taste, the act expanded the reach of a trademark to safeguard non-conventional trademarks. As a result, the Lanham Act might be considered a turning point in both the United States' trademark system and non-traditional trademarks. In reality, the many ways that consumers embrace products led to commercial organisations altering the product's labelling or promotional approach, which in turn led to a change in the legislation²⁶.

In the U.S.A trademark legislation, including non-conventional trademarks, the trademarks can be represented in two forms i.e., drawing requirement and detailed description. However, it is important to keep in mind that in the case of non-traditional, invisible trademarks, such as those in sound, smell, and taste, the drawing is not necessary. A thorough description in writing that clearly explains the mark is necessary in order to submit an application for registration of this mark. If the mark involves sound, a digital file, such as an MP3 recording or a DVD or CD variation, is also needed. If a mark consists of both visual format and non-visual format of the mark then the applicant has to provide a drawing for the visual part and a full textual explanation of the non-visual mark.

A trademark that does not fall under any standard or legally recognised marks, such as numerals, letters, emblems, or combinations of these elements is considered non-conventional. Colour, form, scent, sound, and pattern marks are examples of non-traditional marks. For instance, the luxury company *Michael Kors* has effectively used colour markings to set itself out in the marketplace, the company has established a unique and easily identifiable aesthetic by combining black, white, and brown elements with its recognisable monogram. This distinctive colour palette has helped *Michael Kors* build a solid reputation in the premium

²⁶ Amanda E. Campton, *Acquiring a Flavor for Trademarks: There is No Common Taste in the World* 8 Northwestern Journal of Technology and Intellectual Property 343 (2018).

market and has come to symbolise the brand²⁷. The Pantone shade system, a globally recognised colour standards in the United States, serves as a global language that facilitates colour-critical selections at every level of the process. Thus, just like *Michael Kors*, a brand can get a substantial competitive edge if it is able to establish a certain colour or set of colours as a distinguishing feature and term of its well-known trademark.

Furthermore, the touch mark must be portrayed through a drawing and an explanation in writing in order to submit an application for registration in the United States. The "*distinguished man-made textured pattern utilised as a surface feature*" found on *Louis Vuitton Malletier's* premium luggage and associated leather goods in 1996 is the first touch mark registered in the United States. During the same year, *Dooney & Bourke* sought to register the "*pebble-grained texture*" of their leather purses. *Christopher Krahenmann* filed a "*raised Braille characters*" as a touch mark for jewellery in the fashion industry²⁸.

Moreover, in the case of *Christian Louboutin v. Yves Saint Laurent*²⁹, it was held that due to its legal protection, the courts determined that the red sole was, in fact, a distinctive trademark. It decided that the red sole had taken on a secondary connotation in the marketplace, pointing to Louboutin, the site of origin. As a result, this established a precedent that protects unconventional trademarks, like colour, when they are used to identify a brand. Another case of *Hermès v. Rothschild*³⁰, where Hermès effectively defended its distinctive handbag designs from a designer producing "fake" Hermès goods. The court determined that these duplicates would probably lead to confusion among consumers, underscoring the need of trademark protection in preserving luxury companies' uniqueness and distinctive designs. These examples show how trademark protection has changed over time in reaction to issues such as uniqueness, non-functionality, and customer confusion, particularly with regard to unconventional marks like colours, names, and shapes. They draw attention to how important these markings are for maintaining trust among consumers in the fashion industry and building brand identification.

²⁷ Laird Borrelli-Persson, *Michael Kors at 40! A celebration of the designer's life in fashion* Vogue (2021), <https://www.vogue.com/article/michael-kors-40-anniversary-a-timeline-of-the-designer-s-life-in-fashion> (last visited Apr 10, 2025).

²⁸ Christina S. Monteiro, "A Non-traditional Per-Spectrum: The Touch of Trademarks", <http://www.inta.org/INTABulletin/Pages/ANontraditionalPerSpectrum.aspx> (May 26, 2018).

²⁹ *Christian Louboutin SA v. Yves Saint Laurent America Holding*, 696 F 3d 206 (2d Cir 2012)

³⁰ *Hermès International v. Rothschild*, 590 F Supp 3d 647 (SDNY 2022).

IV. Position in India

The Indian legislation dealing with trademark has laid down the prerequisite of distinctiveness and graphical representation for a mark to be registered³¹. Mark as per the legislative definition includes “device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof” within its ambit³². This explicit requirement for graphical representation poses an obstacle in registration of non-conventional trademarks which may not always be capable of visual representation. This is most dominantly visible in India’s stance with respect to olfactory or scent marks. The Draft manual on trademarks which provides a set of guidelines for practice and procedure of registration of trademarks has taken a negative position on registration of olfactory marks in India³³. The draft manual, that delineates the requirements for registration of different kind of marks, specifies that olfactory marks are not only inherently invisible and intangible, they are also fleeting and subjective in nature and thus, are incapable of being represented graphically. Presently, no olfactory or smell mark has been granted trademark protection in India.

Another obstacle in India for protection of non-conventional trademark has been arise in the form of inconsistent and contradictory position taken by the Indian Courts especially with respect to single colour marks. At the centre of this contradiction has been the iconic red sole of Christian Louboutin which is represented by the use of designated Pantone code referring to a specific shade of red at the sole of heels produced by Louboutin. The company has been able to successfully register their red sole in India and various other jurisdictions. The same was also recognized by the courts in various case laws, namely *Christian Louboutin Sas v. Ashish Bansal*³⁴ and *Christian Louboutin Sas Vs Mr. Pawan Kumar & Ors.*³⁵. The plaintiff in these cases had alleged infringement of trademark in the red lacquered sole against the defendants respectively before the Delhi High Court. The Court had observed that the plaintiff had extensively promoted and used their mark over the years due to which it has been associated with the plaintiff in the minds of consumers of luxury products in India and across the globe.

³¹ Trademarks Act, 1999, Act 47 of 1999, s 2(1)(zb) (India)

³² *Ibid.* S.2 (1)(m)

³³ GOVERNMENT OF INDIA: MINISTRY OF COMMERCE & INDUSTRIES, DRAFT OF MANUAL OF TRADEMARKS PRACTICE & PROCEDURE 86 (2017).

³⁴ 2018 SCC OnLine Del 10205

³⁵ 2017 SCC OnLine Del 12173

However, the bench of the same High Court in the case of *Christian Louboutin Sas v. Abubaker*³⁶ had ruled that the decision in the *Pawan Kumar* case had no binding value and the decision therein did not pertain to the recognition of single colour trademarks. It observed that a combined reading of the section 2(1)(m) along with the section 2(1)(zb) would reveal that the legislature only intended to protect “combination of colours” and thus, no protection could be granted to a single colour mark within the Indian Trademark legislation. Due to these inconsistencies, the position of single colour marks in India remain ambiguous.

Despite this, it cannot be ignored that the Indian Courts have taken some positive steps as well when it comes to non-conventional trademarks especially those pertaining to fashion goods and accessories. A recent example has been the recognition granted to the three-dimensional mark to Hermes’ iconic ‘Birkin’ bag in *Hermès International & Anr. v. Macky Lifestyle Private Limited & Anr*³⁷. The plaintiff had filed a suit against the defendant for infringing its word and shape mark by producing, selling and marketing handbags which closely resembled the Birkin bag produced by the plaintiff and was using the Birkin word mark to describe it. The Court while granting an injunction against the defendant had observed that the bag manufactured by the plaintiff may be “characterized by its unique shape, pattern, and contouring, which is widely recognized throughout the world, including in India”. In this case, a legal protection was granted to both word and shape mark of the proprietor.

Protection has also been extended to tactile or texture marks in India in case of fashion products. Sensory branding scored major victory in the case of *Louis Vuitton v Malik*³⁸ which sought to protect its trademark in EPI style pattern. EPI pattern is a distinct grain like texture wherein the leather used for making the handbags was embossed with small, ridge like pattern which created a visual effect that is unique to the plaintiff. The Court had observed that the mark was being used by the plaintiff since 1980s, has been heavily promoted and provided a distinct tactile experience to the consumers. An injunction was ordered against the defendant restraining him from reproducing the said pattern along with an Anton Piller order to collect more evidence against the defendant. The Indian Courts have also recognised a proprietor’s trademark in unique stitching patterns as applied to Jeans and other clothing apparels³⁹. The Court had observed that ‘Arcuate Stitching Design’ used by Levi’s was not part of the product

³⁶ 2019 SCC OnLine Del 8028

³⁷ CS(COMM) 716/2021

³⁸ CS (OS) 1825/2003, DHC

³⁹ Levi Strauss and Co. v. Imperial Online Services Pvt. Ltd. C.A (COMM.IPD-TM) 110/2022, DHC

design or essential for the use of product. Rather it served the purpose of trademark by helping the consumer identifying the product as emanating from the said producer even in the absence of any logo or word mark.

Therefore, for non-conventional marks to be adequately protected in India, the legal restriction of graphical representation has to be done away with. Despite this, steps are being taken by the Indian Courts to keep pace with the dynamic market practices especially in case of shape and tactile marks which can be read into the definition provided in the Act. However, the judicial precedent available is far from perfect especially when the same is marred by contradictions and inconsistencies.

V. Conclusion

Trademarks play a pivotal role in marketing and building a brand reputation in the minds of the consumers. Fashion industry over the years has heavily relied on trademark to protect their intellectual property with non-conventional trademarks helping protect certain products due to their unique shape, texture or patterns. Non-Conventional Trademarks are the new development in the field of trademark, developed to compete effectively in a dynamic and ever-changing market.

It is in the interest of global trade and free flow of investment across the countries that the trademark system is harmonized and the non-conventional trademark are protected across all jurisdictions. However, there are two major obstacles with respect to protection of these marks: *firstly* there is a need for harmonization of the criteria of registration since the pre-requisite of “graphical representation” as followed by some countries like India, automatically exclude certain non-conventional marks from the purview of protection and; *secondly* the issue arises as to what constitutes appropriate representation of the mark especially in case of olfactory marks as to how they should be adequately described in registration application.

Presently, the registration of non-conventional trademarks is being done in an ad hoc manner with the Courts and the registries developing the examination technique as the applications come up. A wider acceptance of the Singapore treaty can facilitate the conciliation of law on non-conventional trademark and bring in the developing countries within the fold as well. Further, studies and policy discussions may be undertaken by the WIPO to lay down the examination techniques to be followed as well as address the issue of overlap of non-traditional

trademarks with other IPRs like design and copyright as well as the economic impact on the developing markets and the relationship of the same with public benefit. A more uniform approach internationally may also motivate the companies to venture out and invest in developing markets which shall have the desirable effect on the economy.