NAVIGATING THE SEAMS: RECONCILING TRADEMARK RIGHTS WITH CIRCULARITY IN INDIA'S UPCYCLED FASHION ECONOMY

Ms Aishwarya J & Mr Poornesh M, St Joseph Engineering College, Vamanjoor, Mangaluru

ABSTRACT

The intersection of intellectual property rights (IPR) and the circular economy presents a critical legal challenge in India, particularly for the burgeoning upcycling sector. This article examines how Section 29 of the Trademarks Act, 1999, inadvertently stifles sustainable fashion initiatives by failing to distinguish between transformative reuse and trademark infringement. Focusing on Dharavi's upcycling hubs—where discarded branded materials (e.g., Levi's denim, Nike fabrics) are repurposed into new products—the analysis reveals how legal ambiguity jeopardizes livelihoods, environmental goals, and India's informal circular economy. Comparative insights from the EU's "material alteration" doctrine and the U.S. "first sale" principle inform a proposed framework: a statutory exception for substantially transformed goods, coupled with mandatory consumer disclaimers. The article advocates for legislative clarity, industry certifications, and brand-upcycler collaborations to reconcile trademark protection with circularity. By addressing this gap, India can pioneer a legal model that aligns IPR with sustainability, empowering its informal sector while reducing textile waste.

Keywords: Trademark law, circular economy, upcycling, material alteration, Dharavi, sustainable fashion.

1. Introduction

The global economic landscape is undergoing a profound transformation, pivoting from a linear 'take-make-dispose' model to a circular one designed to eliminate waste and perpetuate the use of resources[1]. Within this paradigm shift, the fashion industry notoriously one of the world's most significant polluters, faces a critical reckoning. In response, a vibrant movement towards sustainable fashion has emerged, championing practices that extend product lifecycles and reduce environmental impact[2]. Central to this movement is the concept of 'upcycling': the creative reuse of discarded materials to craft new products of higher quality or value than the originals. In India, a nation with a deep-rooted culture of resourcefulness, this trend is manifesting in a burgeoning ecosystem of local initiatives, where artisans and small enterprises are transforming textile waste into unique, high-value fashion items.

However, this promising surge in circular creativity runs directly into a formidable legal barrier: traditional Intellectual Property Rights (IPR)[3]. Trademark law, in particular, is built upon a linear economic logic. It grants brand owners exclusive rights to protect their identity, ensure quality control, and prevent consumer confusion[4]. The core problem arises when an upcycler transforms a discarded branded product, such as a pair of Levi's jeans, into a new item, like a handbag, while leaving the original trademark visible. While this practice is environmentally virtuous and leverages the cultural cachet of the original brand, it simultaneously raises complex legal questions. Does this constitute trademark infringement by creating a false association with the original brand? Or is it a legitimate form of artistic and sustainable expression? Established trademark laws were not designed to navigate such nuances.

This article argues that India's current legal framework, particularly the infringement provisions under Section 29 of the Trademarks Act, 1999, is ill-equipped to address the

---

[1] Shikha Daga et al., *Beyond the Take-Make-Dispose Model—Unlocking the Power of Circular Economy for an Environmentally Resilient Future*, *in* Circular Economy and Environmental Resilience: Solutions for a Sustainable Tomorrow, Volume 1 1 (Pardeep Singh et al. eds., 2025), https://doi.org/10.1007/978-3-031-93091-1_1.

[2] Debashree Chakravarty, Ipseeta Satpathy & B. C. M. Patnaik, *Embellishing Fashion with Sustainable Goals: Challenges in Fashion Supply Chain*, *in* Illustrating Digital Innovations Towards Intelligent Fashion: Leveraging Information System Engineering and Digital Twins for Efficient Design of Next-Generation Fashion 179 (Pethuru Raj et al. eds., 2024), https://doi.org/10.1007/978-3-031-71052-0_6.

[3] Malaika Gupta, Intellectual Property Rights: A Comprehensive Review of Concepts, Challenges, and Implications (May 27, 2024), https://papers.ssrn.com/abstract=4843444.

[4] Daryl Lim, *Trademark Confusion Simplified: A New Framework for Multifactor Tests*, 37 Berkeley Tech. L.J. 867 (2022).

complexities of the upcycled fashion economy. To foster this vital and sustainable sector without completely eroding legitimate brand rights, a more nuanced interpretation or, ideally, specific legislative clarity is required. The most effective path forward lies in developing and implementing a well-defined "material alteration" exception, which would provide a legal safe harbour for upcyclers who substantially transform branded goods into new and distinct products.

To build this argument, this paper will first explore the foundational principles of Indian trademark law and analyze the specific challenges posed by Section 29. It will then delve into the doctrine of material alteration, drawing on comparative jurisprudence from the EU and US to inform a potential Indian approach. Subsequently, the article will present a case study of the Dharavi upcycling hubs to ground the analysis in the practical realities of India's informal economy. Finally, it will conclude by proposing concrete legislative and policy recommendations to reconcile the goals of brand protection with the urgent environmental and economic imperatives of the circular economy.

2. Understanding Indian Trademark Law: Principles and Protections

To comprehend the legal tightrope walked by upcyclers in India, it is crucial to first establish a foundational understanding of the nation's trademark law. Trademarks serve as powerful identifiers in the marketplace, guiding consumers and distinguishing the goods and services of one entity from those of another[5]. Their fundamental purpose is tripartite: source identification, allowing consumers to reliably trace a product or service to its origin; quality assurance, as marks often become associated with a consistent standard of quality or performance; and an advertising function, by acting as symbols around which goodwill and consumer loyalty can be built. At its core, trademark law is governed by key principles: distinctiveness, meaning a mark must be capable of distinguishing the goods or services; use, as rights are primarily acquired through actual use of the mark in commerce; and the overarching goal of prevention of consumer confusion, which aims to protect the public from being misled about the source or affiliation of goods[6].

[5] Sonia Katyal & Aniket Kesari, *Trademark Search, Artificial Intelligence, and the Role of the Private Sector*, 114 Trademark Rep. 910 (2024).

[6] J. K. Pappalardo, *Economics of Consumer Protection: Contributions and Challenges in Estimating Consumer Injury and Evaluating Consumer Protection Policy*, 45 J Consum Policy 201 (2022).

The primary legal framework governing trademarks in India is the Trademarks Act, 1999. The pivotal provision concerning infringement is Section 29, which outlines various scenarios under which a registered trademark is infringed[7]. This section is particularly relevant to upcycling due to its broad scope.

Section 29(1) states that a registered trademark is infringed by a person who, not being a registered proprietor or a permitted user, uses in the course of trade a mark which is identical with, or deceptively similar to, the trademark in relation to goods or services in respect of which the trademark is registered, and in such manner as to render the use of the mark likely to be taken as being used as a trademark[8]. This subsection targets direct use of an identical or similar mark for identical or similar goods.

Section 29(2) extends this protection further, delineating three specific types of infringement where confusion is presumed or likely:

- Section 29(2)(a) covers the use of an identical mark for identical goods/services[9].
- Section 29(2)(b) addresses the use of an identical mark for similar goods/services, or a similar mark for identical goods/services, where there is a likelihood of confusion on the part of the public[10]. This is a critical point for upcycling, as even if the upcycled item is functionally different (e.g., a bag from jeans), the use of the original brand's mark might still cause confusion about endorsement or affiliation.
- Section 29(2)(c) deals with the use of an identical or similar mark for non-similar goods/services, where the registered trademark is well-known in India, and the use of the mark would take unfair advantage of, or be detrimental to, the distinctive character or repute of the registered trademark[11]. This introduces the concept of dilution, where a famous mark's distinctiveness or reputation is eroded or unfairly leveraged, even in different product categories. While less direct, an upcycled product might, in certain

[7] Vanshika Oberoi, *Advertising and Trademark Infringement in India*, 3 Indian J.L. & Legal Rsch. 1 (2021).
[8] Shohini Roy & Srishti Sherpa, *Analysing the Conflict between a Prior User and a Registered User in a Trademark*, 4 Issue 6 Indian J.L. & Legal Rsch. 1 (2022).
[9] Wathsala Ravihari Samaranayake, *Well-Known Marks: Jettisoning the 'Domestic Registration Requirement' Vis-à-Vis Dissimilar Goods and Services*, 74 GRUR Int 507 (2025).
[10] Wathsala Ravihari Samaranayake, *Well-Known Marks: Jettisoning the 'Domestic Registration Requirement' Vis-à-Vis Dissimilar Goods and Services*, 74 GRUR Int 507 (2025).
[11] Amir Friedman, Trademark Dilution: The Protection of Reputed Trademarks Beyond Likelihood of Confusion (2022).

contexts, be seen as taking unfair advantage of a famous brand's repute without its authorization.

Crucially, these provisions hinge on concepts such as "use in the course of trade," which means the mark is used commercially, and "likelihood of association," implying that consumers might mistakenly link the upcycled product to the original brand or believe it is endorsed by them.

While broad, trademark law does recognize certain defenses to infringement, though their applicability to upcycling is limited. Fair use is a recognized defense, typically divided into descriptive fair use (using a mark to describe the goods themselves rather than as a source indicator) and nominative fair use (using another's mark to refer to the mark owner's goods, where it's necessary to identify the product)[12]. However, the significant transformation inherent in upcycling often moves beyond simple description or necessity, making these defenses difficult to invoke without clear legislative guidance.

A more relevant defense is the exhaustion of rights, also known as the first sale doctrine. This principle dictates that once a trademark owner sells a product, their rights to control its subsequent resale are "exhausted." This allows for a robust secondary market, permitting consumers to resell, donate, or otherwise dispose of their legitimately purchased branded goods. However, the first sale doctrine generally permits resale *as is*, and does not necessarily extend to significant alteration, repackaging, or remanufacturing that could affect the product's original characteristics or imply a new endorsement from the trademark owner. The critical distinction lies in whether the resale involves the *original* product or a *transformed* one.

This legal landscape poses a significant challenge for upcyclers. Many upcyclers intentionally utilize original branded materials (e.g., denim with visible brand patches, vintage t-shirts with iconic logos). This is not merely accidental; it is driven by a desire for authenticity, leveraging the inherent aesthetic appeal of vintage items, and tapping into the brand recognition and established goodwill of the original manufacturer. The irony is that this very practice, essential to the appeal and economic viability of many upcycling ventures, can inadvertently trigger

[12] *Reclaiming Fair Use: How to Put Balance Back in Copyright - Patricia Aufderheide, Peter Jaszi - Google Books*, https://books.google.co.in/books?hl=en&lr=&id=Q5VQDwAAQBAJ&oi=fnd&pg=PR5&dq=Fair+use+is+a+recognized+defense,+typically+divided+into+descriptive+fair+use&ots=LpKz7kOTUX&sig=NU3GZZ0qs_mMAHi8UVLr3JT3DQs&redir_esc=y#v=onepage&q&f=false (last visited Aug. 31, 2025).

infringement claims under existing law, placing sustainable and creative businesses in a precarious legal position.

3. The Doctrine of Material Alteration: A Critical Lens

The concept of "material alteration" emerges as a crucial lens through which to examine the legality of upcycling under trademark law[13]. It serves as a limit to the exhaustion doctrine, providing grounds for a trademark owner to oppose the continued marketing of their branded goods post-sale if those goods have undergone significant changes. The underlying rationale is clear: once a product is materially altered, the original trademark no longer accurately represents the goods' quality, characteristics, or source, thereby negating the original trademark owner's control over quality and reputation, and potentially misleading consumers. This is particularly relevant when the alteration could damage the brand's goodwill. The debate often centers on whether a change affects the fundamental "character" of the product, moving it beyond mere aesthetic or functional "form" modification.

A. What Constitutes "Material Alteration"?

While there is no universally adopted, precise definition, the concept of material alteration generally refers to any modification to a branded product that could affect its composition, quality, performance, or even its perceived value in a way that the original trademark owner did not intend or approve. Such changes could lead to consumer confusion or dilute the brand's reputation. For instance, repackaging medicines, re-bottling perfumes, or significantly repairing electronic devices often raise material alteration concerns[14]. The key inquiry is whether the alteration is so substantial that the product sold under the original mark is no longer genuinely the same as that originally put on the market by the trademark owner. This distinction is vital for upcycling, where the transformation is often profound, intentionally creating a "new" product from the old.

B. Judicial Interpretation in India

Lack of Explicit Guidance: A significant challenge for the burgeoning upcycling sector in India

---

[13] Hamad Raheem, Bernadette Craster & Ashwin Seshia, *A Comparison of Calculation Methods for the Diffusion Coefficient as a Potential Tool for Identifying Material Alteration with Time*, 132 Polymer Testing 108356 (2024).

[14] *Recent Advanced Supercapacitor: A Review of Storage Mechanisms, Electrode Materials, Modification, and Perspectives*, https://www.mdpi.com/2079-4991/12/20/3708 (last visited Aug. 31, 2025).

is the conspicuous absence of explicit definitions or comprehensive guidelines for "material alteration" within the Trademarks Act, 1999, specifically in the context of circular economy practices[15]. While Indian courts have occasionally grappled with post-sale alterations, these instances have primarily concerned issues like repackaging, re-bottling, or parallel imports, rather than transformative upcycling.

Case Law Analysis (Tangential Relevance): Indian jurisprudence on alteration of goods in the context of trademark infringement has largely focused on preventing unauthorized alteration of pharmaceuticals or consumer goods that could compromise product integrity or consumer safety. For example, cases involving the unauthorized repackaging or re-labelling of imported goods have seen courts upholding trademark owners' rights where such actions could lead to consumer deception or quality control issues. In cases like *Hamdard National Foundation v. Abdul Sattar* (dealing with a modified formulation), courts have generally sided with the trademark owner when the identity or quality of the product under the mark has been affected[16]. Similarly, in cases concerning parallel imports where the product has been tampered with or modified, Indian courts have shown a willingness to intervene to protect the integrity of the brand. However, these rulings typically pertain to the *same* product being sold in an altered state, not a *new* product created from components of a branded item. There is a discernible lack of specific rulings directly addressing upcycling, where the branded original component (e.g., a denim patch) is integrated into an entirely new article (e.g., a handbag or jacket). This creates substantial legal uncertainty for upcyclers, leaving them vulnerable to infringement claims even when their transformations are beneficial for the environment and the economy.

C. Comparative Jurisprudence on Material Alteration and Upcycling

The global discourse around circularity has prompted more developed legal systems to explicitly address or reinterpret trademark principles in light of product alteration.

European Union: The EU presents a robust framework for understanding material alteration. Article 15(2) of the EU Trademark Regulation (EU 2017/1001) (formerly Article 7(2) of Directive 2008/95/EC) stipulates that the exhaustion of rights does not apply where there are "legitimate reasons" for the proprietor to oppose further dealings in the goods, "in

[15] Vansh Tayal, THE EXHAUSTION GAMBIT: WHEN GLOBAL TRADE EXHAUSTS TRADEMARK RIGHTS IN INDIA (Apr. 9, 2025), https://papers.ssrn.com/abstract=5223368.
[16] *Indian Institute Of Islamic vs Delhi Wakf Board on 23 December, 2011*, https://indiankanoon.org/doc/95314655/ (last visited Sept. 1, 2025).

particular, where the condition of the goods is changed or impaired after they have been put on the market"[17].

- Key Cases: The jurisprudence originating from the Court of Justice of the European Union (CJEU) provides critical guidance:
    - *Hoffmann-La Roche v. Centrafarm* (1978)[18]: This landmark case established that a trademark owner can oppose repackaging and relabeling of pharmaceutical products if it affects the original condition or repute of the goods, or if the repackaging poses a risk to the integrity of the product and consumer safety.
    - *Bristol-Myers Squibb v. Paranova* (1996)[19]: This judgment refined the *Hoffmann-La Roche* principles, outlining specific conditions under which repackaging for parallel import would be permissible (e.g., necessity, clear indication of the relabeler, no damage to reputation).
- Application to Altered Goods & Upcycling: While these cases primarily concern pharmaceuticals, their principles are often extended by analogy. The CJEU consistently emphasizes preventing any "damage to the reputation of the trademark" or "deception of the consumer." More recently, as circular economy practices gain traction, there's a growing recognition within EU policy and some legal discussions that "re-use" and "re-manufacturing" might require a flexible interpretation of material alteration, particularly if the new product is clearly presented as such and does not mislead[20]. Legislative proposals and industry guidelines are beginning to explore how to enable these activities without unduly undermining brand rights, often emphasizing transparency for consumers regarding the origin and transformation of the product.

---

[17] *Regulation - 2017/1001 - EN - Eutmr - EUR-Lex*, https://eur-lex.europa.eu/eli/reg/2017/1001/oj/eng (last visited Sept. 1, 2025).
[18] *HOffman La roche 27 - Hoffman- La Roche v. Centrafarm [102/77], p. 191 Facts Hoffman La Roche*, Studocu, https://www.studocu.com/fr/document/universite-paris-1-pantheon-sorbonne/droit-de-la-concurrence/hoffman-la-roche-27/6693686 (last visited Sept. 1, 2025).
[19] *Bristol Myers Squibb Co v Paranova A/S (C-427/93) EU:C:1996:282 (11 July 1996)*, Practical Law, https://uk.practicallaw.thomsonreuters.com/D-004-0600?transitionType=Default&contextData=(sc.Default)&firstPage=true (last visited Sept. 1, 2025).
[20] Francesca Bassi & José G. Dias, *The Use of Circular Economy Practices in SMEs across the EU*, 146 Resources, Conservation and Recycling 523 (2019).

United States: The U.S. approach to altered goods is largely framed by the "first sale doctrine" (codified in Section 109(a) of the Copyright Act and implicitly recognized for trademarks), which allows a purchaser to resell or distribute a copyrighted or trademarked item without permission from the copyright or trademark owner[21]. However, this doctrine has clear limits when goods are materially altered.

- *Champion Spark Plug Co. v. Sanders* (1947)[22]: This seminal Supreme Court case is highly instructive. It held that while a seller of reconditioned spark plugs could use the original "Champion" trademark, they had a duty to clearly disclose that the plugs were "repaired" or "used." The Court emphasized that the critical test is whether the reconditioning creates a "new product" that no longer genuinely represents the original. If the alteration is so significant that the product is no longer the same, the trademark owner's rights are revived.

- "New Product" vs. "Reconditioned Product": U.S. courts routinely distinguish between minor repairs that restore a product to its original condition and substantial alterations that create a fundamentally "new product"[23]. The latter typically revokes the exhaustion doctrine and opens the door for infringement claims unless the new product is clearly identified and does not mislead.

- "Right to Repair" Influence: Current legislative discussions and movements around the "Right to Repair" in the U.S. indirectly influence this space[24]. These initiatives, particularly in electronics and automotive sectors, challenge manufacturers' control over repair information and parts, implicitly pushing for a more flexible interpretation of IPRs to enable product longevity and reuse, which aligns with circular economy goals. While not directly about trademarks on upcycled fashion, they reflect a broader societal and legal trend towards empowering post-sale product interventions.

---

[21] Kanchana Kariyawasam & Royal Raj Subburaj, *Importance of the Doctrine of Digital Exhaustion in Copyright Law*, 33 Int J Law Info Tech eaaf009 (2025).

[22] *Champion Spark Plug Co. v. Sanders, 331 U.S. 125 (1947)*, Justia Law, https://supreme.justia.com/cases/federal/us/331/125/ (last visited Sept. 1, 2025).

[23] *The Right to Repair Versus Reconstruction under U.S. Patent Law: An In-Depth Analysis – IP & FDA Lawyers*, https://ipfdalaw.com/the-right-to-repair-versus-reconstruction-under-united-states-patent-law-an-in-depth-analysis/ (last visited Sept. 1, 2025).

[24] *Can We Fix It? No We Can't. The Right-to-Repair and Emerging Legislative Responses to Electronics Repair the United States and the European Union - University of Otago*, https://ourarchive.otago.ac.nz/esploro/outputs/graduate/Can-we-fix-it-No-we/9926755640501891 (last visited Sept. 1, 2025).

D. Lessons for India

The comparative jurisprudence offers invaluable insights for India. Both the EU and U.S. systems recognize that material alteration can override trademark exhaustion, but they also highlight the importance of consumer information and the degree of transformation. The EU's "legitimate reasons" and the U.S.'s "new product" distinction provide clear precedents for when trademark owners can legitimately object. For India, these lessons synthesize into a strong argument for:

1. Clearer Definitions: The need for the Trademarks Act, 1999, or its interpretive guidelines, to explicitly define what constitutes "material alteration" in the context of circular practices like upcycling.

2. Balancing Test: The development of a balancing test that weighs the trademark owner's interest in protecting brand reputation against the public interest in promoting sustainability and waste reduction.

3. Transparency: Emphasis on transparency from upcyclers through clear labeling and disclaimers to prevent consumer confusion.

4. Enabling Framework**:** The creation of an explicit framework that acknowledges and permits the use of original trademarks on genuinely "new" upcycled products, provided such use is non-misleading and proportionate to the transformation achieved.

By carefully considering these comparative approaches, India can construct a more robust and explicit legal framework that supports circular practices without unduly compromising legitimate brand rights, paving the way for sustainable innovation.

4. The Indian Upcycling Landscape: A Case Study of Dharavi Hubs

To move the discussion from legal theory to lived reality, one need only look to Dharavi in Mumbai. Far from its common media portrayal, Dharavi is a vibrant, complex, and highly efficient ecosystem of informal industry, and it stands as one of India's most significant, albeit unorganized, hubs of circularity. For decades, it has been the nerve center for recycling a vast array of materials, from plastics and metals to paper and textiles. Within this industrious landscape, a sophisticated network of upcycling initiatives has emerged, particularly in the fashion and textiles sector. Here, the abstract principles of the circular economy are put into daily practice, transforming what the city discards into valuable, marketable goods.

A. Operational Models and Business Practices

The upcycling hubs in Dharavi operate through a well-established, intricate supply chain. They source their primary raw materials, discarded branded textiles, from a network of collectors and segregators who gather fabric scraps, cutting-room waste from garment factories, and post-consumer clothing[25]. Materials like denim, leather, and high-quality printed fabrics are particularly sought after. The transformation process that follows is a testament to ingenuity and skilled craftsmanship. A pair of torn Levi's jeans is deconstructed, with its durable denim fabric cut and stitched into a new backpack. A discarded leather jacket is repurposed into wallets and passport holders, and a collection of colorful fabric scraps is artfully patched together to create a unique jacket.

A crucial aspect of this business model is the intentional incorporation of visible elements of the original brand. The iconic red tab from a pair of Levi’s jeans is often carefully preserved and stitched onto the new bag; the Nike "swoosh" might be prominently featured on a newly created pouch; or the distinctive pattern of a luxury brand's fabric scrap becomes the centerpiece of a new garment. This is not an act of deceit intended to pass off the new item as an original product. Rather, it is a strategic choice to enhance the new product's aesthetic appeal, signal its quality and authenticity (of material, not of make), and increase its market value by leveraging the cultural resonance of the original brand.

B. Legal Vulnerabilities and Economic Realities

This reliance on visible branding, while commercially savvy, places these micro-enterprises in a state of extreme legal precarity. Their business model directly intersects with the prohibitions under Section 29 of the Trademarks Act. The use of a recognizable mark on a new product, created without the brand owner's authorization, exposes them to potential claims of trademark infringement. A brand could argue that such use creates a likelihood of confusion, suggesting an affiliation or endorsement that does not exist, or that it dilutes the distinctiveness of their

[25] Circolife Team, *Dharavi: A Circular Economy Success Story*, Circolife (Jan. 22, 2025), https://circolife.com/blog/dharavi-a-circular-economy-success-story/.

famous mark.

The vast majority of upcyclers in Dharavi are small-scale artisans or micro-entrepreneurs who operate with limited resources and possess little to no formal legal knowledge[26]. They lack the capacity to navigate the complexities of trademark law or to defend themselves against infringement claims from large, well-resourced corporations. The threat of legal action, even if it never materializes in a courtroom, can be enough to disrupt their operations. This legal ambiguity creates a chilling effect, discouraging investment and hindering the potential for these businesses to scale up and formalize.

The economic and social impact of this legal uncertainty cannot be overstated. These upcycling hubs are pillars of the local economy. They create thousands of jobs, provide livelihoods for marginalized communities, and contribute significantly to waste reduction by diverting tons of textile waste from landfills. They embody the very principles of sustainability and resource efficiency that national policies aim to promote. However, the current legal framework, by failing to provide clarity, inadvertently threatens the very existence of these vital circular enterprises. The law, in its current state, acts not as a facilitator of a sustainable economy but as a potential impediment to its most effective grassroots practitioners.

C. The Urgent Need for Clarity

The case of Dharavi starkly illustrates why the ambiguity in India's trademark law is not a minor theoretical issue but a pressing real-world problem. The informal sector constitutes a massive and essential part of India's circular economy. These are the businesses doing the crucial work of on-the-ground recycling and upcycling. By leaving them in a state of legal limbo, the law fails to protect the most vulnerable yet valuable players in the sustainable economy. Providing clear legal guidelines and safe harbors for legitimate upcycling is therefore not just a matter of refining IPR jurisprudence; it is a necessary step to secure livelihoods, support sustainable innovation, and empower the informal sector to continue its vital contribution to India's circular future.

[26] Editor, *Earth5R's Dharavi Model: Community-Driven Plastic Recycling Initiative*, Earth5R (Mar. 22, 2025), https://earth5r.org/dharavi-community-plastic-recycling/.

5. Towards a Balanced Approach: Recommendations for India

The inherent conflict between India's trademark law and its burgeoning circular economy is not insurmountable. Resolving this tension requires a multi-pronged approach that combines targeted legislative reform with pragmatic policy-making and market-based solutions. Such a balanced strategy can create a legal environment that not only protects the legitimate rights of brand owners but also actively fosters the innovation, economic growth, and environmental benefits offered by the upcycling sector. This section outlines a series of actionable recommendations designed to achieve this crucial equilibrium.

A. Re-interpreting or Amending Section 29 for Circularity

The most direct and impactful solution lies in clarifying the law itself. While courts could develop a more nuanced jurisprudence over time, the urgency of the environmental crisis and the precarious position of informal upcyclers call for a more definitive legislative intervention.

- An Explicit Material Alteration Exception: The most effective reform would be to amend the Trademarks Act, 1999, by introducing a specific exception for upcycled goods. This could take the form of a new sub-section, perhaps within Section 30 (which outlines limits on the effect of a registered trademark), clarifying that infringement under Section 29 does not occur when a trademark is used on goods that have been "substantially transformed" or "materially altered" from the original branded product. This would create a clear legal safe harbour for legitimate upcyclers.

- Defining "Substantial Transformation": To prevent such an exception from being misused, the legislation or accompanying rules should provide courts with a non-exhaustive list of factors to consider when determining if a "substantial transformation" has occurred. Drawing lessons from comparative jurisprudence, these factors could include:

    1. The Degree of Physical Transformation: The extent to which the original product has been deconstructed and re-formed into a new item. For example, using a small patch from a pair of jeans on a new jacket is a greater transformation than simply adding embroidery to an existing shirt.

    2. Change in Essential Function or Purpose: Whether the upcycled item serves a

fundamentally different purpose from the original product (e.g., transforming a t-shirt into a tote bag).

3. Creation of a New and Distinct Identity: Whether the final product possesses its own unique aesthetic and identity, distinct from that of the original branded item.

4. The Proportionality of the Mark's Use: Whether the use of the original trademark is incidental and proportionate, rather than being the dominant feature of the new product.

- Mandating Clear Disclaimers: A crucial component of this exception would be the mandatory use of clear, conspicuous, and unambiguous disclaimers. Upcyclers should be required to inform consumers that the product has been created from repurposed materials and is not produced, endorsed by, or affiliated with the original brand owner. This directly addresses the core purpose of trademark law, the prevention of consumer confusion, and provides a practical way to balance the interests of all parties.

B. Legislative Guidance on "Upcycled Goods"

Beyond a statutory amendment, targeted administrative guidance can provide much-needed clarity for businesses and enforcement agencies.

- A Policy Framework for Upcycled Goods: The Department for Promotion of Industry and Internal Trade (DPIIT) could issue a comprehensive policy or set of guidelines specifically for "upcycled goods." This framework would not have the force of law but would serve as a powerful interpretive tool for courts and a practical guide for the industry. It could elaborate on the factors constituting substantial transformation, provide examples of acceptable disclaimer language, and set out best practices for upcyclers.

- A "Third-Party Use" Provision: This framework could also define a "third-party use" provision tailored for circularity. This would clarify that using a brand's mark to truthfully describe the origin of the materials used in an upcycled product (e.g., "This bag is crafted from authentic repurposed Levi's denim") constitutes a permissible form of nominative fair use, provided it does not create a likelihood of association or confusion.

C. Promoting Collaboration and Licensing

A purely adversarial approach between brands and upcyclers is counterproductive. A more constructive path forward involves fostering collaboration and exploring market-based solutions.

- Encouraging Licensing and Partnerships: The government and industry bodies should encourage established brands to view upcyclers not as infringers but as potential partners. Brands can develop official licensing programs that allow upcyclers to use their materials and trademarks in exchange for a fee or adherence to certain quality standards. This creates a new revenue stream for the brand, enhances its Corporate Social Responsibility (CSR) profile, and provides it with valuable brand visibility within the growing sustainability-conscious market. For the upcycler, it provides legal certainty and a stamp of legitimacy.

D. The Role of Industry Standards and Certifications

To build consumer trust and create a self-regulatory mechanism, the development of industry standards is essential.

- A "Certified Upcycled" Mark: An industry association, in collaboration with the Bureau of Indian Standards (BIS), could develop and promote a certification mark for "upcycled" products. To earn this mark, products would need to meet specific criteria regarding the percentage of repurposed material used, quality of craftsmanship, and transparency in labeling (including proper disclaimers about brand affiliation). This certification would act as a reliable signal to consumers and could serve as a de facto defense against infringement claims, as it demonstrates a commitment to ethical and transparent practices.

E. Awareness and Education

Finally, any legal or policy reform will be ineffective if the stakeholders it is meant to benefit are unaware of it.

- Targeted Legal Awareness Programs: Government agencies, legal aid organizations, and NGOs should conduct targeted awareness campaigns for artisans and micro-entrepreneurs in hubs like Dharavi. These programs should explain, in simple and accessible terms, the nuances of trademark law, the protections offered by any new exceptions or guidelines, and the importance and proper use of disclaimers. Empowering upcyclers with legal knowledge is a critical step in ensuring they can operate their businesses sustainably and confidently within the bounds of the law.

By implementing this comprehensive suite of recommendations, India can thoughtfully adapt its intellectual property framework to the realities of a 21st-century circular economy, transforming a point of legal friction into a catalyst for sustainable innovation and inclusive economic growth.

6. Conclusion

The journey towards a sustainable future necessitates a fundamental re-evaluation of established legal frameworks, particularly those governing intellectual property rights. As this article has demonstrated, the burgeoning circular economy, with upcycling at its forefront, presents a critical juncture for Indian trademark law. There is an urgent and profound need to balance the legitimate interests of trademark protection with the imperatives of a circular economy. While trademarks serve indispensable functions in consumer protection and brand integrity, their rigid application, conceived in a linear economic paradigm, inadvertently stifles innovative and environmentally beneficial practices like upcycling. The current lack of explicit clarity and comprehensive guidance under Section 29 of the Trademarks Act, 1999, regarding materially altered goods, places the vibrant and growing Indian upcycling sector in a precarious legal position, hindering its full potential.

Fostering upcycling, particularly in a country like India, is more than just an environmental imperative; it represents a significant dual imperative and an economic opportunity of immense proportions. The informal sector, exemplified by the resourceful and industrious upcycling hubs in Dharavi, stands as a testament to India's inherent capacity for resourcefulness and innovation. These small and informal enterprises not only divert substantial waste from landfills but also generate livelihoods, empower local communities, and contribute to a resilient, decentralized economy. A well-defined legal framework, one that thoughtfully incorporates provisions for material alteration and other circular practices, can unlock this immense potential, fostering innovation, reducing waste, and creating new economic value from what was once considered refuse. Without such clarity, these vital economic and environmental contributions remain vulnerable to legal challenge and uncertainty.

Therefore, this paper issues a compelling call for progressive jurisprudence and legislation in India. It is time for Indian courts and lawmakers to adopt a forward-looking stance that actively supports circular practices. Drawing lessons from the evolving international legal landscape, particularly the more nuanced approaches seen in the European Union and the United States, can provide a valuable roadmap. However, any adaptation must be firmly rooted in India's unique local realities, recognizing the significant role of the informal sector and the distinctive characteristics of its upcycling ecosystem, as vividly illustrated by Dharavi. It is crucial to emphasize that facilitating material alteration exceptions and providing legal certainty for upcyclers is not about undermining brands or eroding legitimate IPRs. Rather, it is about adapting the law to the urgent new economic and environmental realities of the 21st century. It acknowledges that a transformed product, clearly presented as such, does not inherently confuse consumers or damage brand reputation, but rather contributes to a broader societal good.

In final thought, India stands at the precipice of an unparalleled opportunity. By proactively addressing the current legal ambiguities and forging an innovative, adaptive intellectual property framework, it can transcend being merely a participant in the global circular economy. Instead, India has the immense potential to lead in sustainable fashion and broader circular practices, setting a global precedent for how a nation can harmoniously integrate economic growth, environmental stewardship, and social equity through intelligent and progressive legal reforms. The seams of its trademark law must now be re-stitched to weave a more resilient, equitable, and sustainable future.