
THE INTERSECTION BETWEEN THE TRADEMARK AND THE VALUE OF THE COMPANY IN LEGAL CONTEXT: NAVIGATING THE INTANGIBLE ASSETS LANDSCAPE

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ABSTRACT

As times are evolving, the factors which decide the business of a company have also changed. Earlier, it used to be tangible assets such as factories or resources. However, in the present world, intangible assets such as trademarks, copyrights or patents also play an equal part in the valuation of a company or an organization. Trademarks are one of those intellectual property rights which play a vital role in deciding the valuation of the company, which will be discussed deeply in the present paper. A trademark is not only a symbol or a word but assures the customer about the quality of a product or service. This paper will explore the interplay between the valuation of the company and the relationship between trademarks within the legal context. This paper will provide valuable insights into the rules regarding the valuation of the company and its relation with the Trademark of the company. Although a trademark is an intangible asset of a company, the goodwill, reputation and market value of the same depend on it. There are various mechanisms available to companies or organizations to mitigate risks related to trademark disputes such as conducting searches, registration or trademark monitoring etc. These different mechanisms intersect with various corporate risk management strategies such as maintaining brand reputation or financial risk, etc. which are discussed in this paper. Also, the objectives and characteristics of the trademark are deeply discussed in the present paper. By following proper mechanisms and strategies which mitigate the risk of trademark disputes, a company can safeguard its reputation, market value and the trust of customers.

Keywords: Trademark, Valuation, Tangible, Intangible and Company

A. INTRODUCTION

In the present business dynamic, there has been a significant change in the landscape of economic values. Earlier, the traditional matrices for success were measured by tangible assets such as factories and resources, but they have now evolved to include intangible assets. This archetype has been highlighted by Corrado, Haltiwanger, and Sichel¹, who have outlined the paramount significance of intangible assets such as data and innovation knowledge, behind a company's success. Indeed, intangible assets are now recognized as the linchpin of modern enterprise and often exceed tangible assets.

This paradigm shift has a significant impact on both macro and micro economy levels. Often, the investment made in intangible assets exceeds tangible investments² Additionally, the management of Intellectual Property (IP) becomes apparent in a company's financial and economic performance and directly affects the survival of the company in the competitive Market³.

Aimed in this context, the Trademark plays a very important role in defining and protecting the identity of products and services of the company. Apart from logos and symbols, the Trademark also carries the burden of the company's goodwill, reputation, and the trust of the customer accumulated over the years. Therefore, when it comes to the valuation of the company, the Trademark plays an important role in determining the worth and position of the company in the Market.

Trademark is a word, symbol or designs which represent an individual, business organization or legal entity's name in the market and make it different from others. It forms an integral part of intellectual property rights (IPR). According to Section 2(b) of The Trademarks Act 1999, "a trademark is a mark that can be visually represented and distinguishes the goods or services of one person from those of others."⁴

The organization of the paper is as follows: Section I will talk about the rules regarding determining the valuation of the company, Section II is about the relation between Trademark and the valuation of the company, Section III is about the effect of infringement for trademark

¹(2005), OECD (2013), and WIPO (2017).

² (Corrado, Hulten, and Sichel 2009; Dal Borgo et al. 2012).

³ (Schautschick and Greenhalgh 2016).

⁴ Trademark Act 1999, s 2(zb).

suits on the valuation of the company, Section IV will discuss mitigating the risk factors related to trademark infringement, available legal mechanisms, and how they intersect with broader corporate risk management strategies, and finally, Section V will conclude the paper.

B. LEGAL PRINCIPLES TO ACCESS THE VALUATION OF THE COMPANY

The determination of valuation of the company falls at the intersection of law and accounting. In this research, emphasis will be given to the legal aspects which determine the valuation of the company.

Some institutions look after the companies so that they can refrain companies from short-changing their existing shareholders by issuing securities below their fair market value. Under the Foreign Exchange Management Act of 1999, the Reserve Bank of India has issued several guidelines regarding the same.

Company law seeks to ensure that companies do not shortchange their existing shareholders by issuing securities below their fair market value. The Reserve Bank of India has issued several rules and regulations under the Foreign Exchange Management Act, 1999 to prevent foreign currency from leaving the country because non-residents are either paying less for Indian securities or selling them to Indian residents at prices higher than their actual value. This responsibility falls under the jurisdiction of the Securities and Exchange Board of India.

To calculate the valuation of the company India follows the Institute of Chartered Accountants of India (ICAI) standards), these standards are applicable for all valuation engagements under the Companies Act 2013⁵. They cover various aspects of valuation, including Valuation principles and concepts, Different valuation approaches (e.g., comparable sales, income capitalization), and Data collection and analysis. Various provisions of company law come into the picture when it comes to the legal aspect of this. But to calculate the valuation of the company is a very technical process and in the case of *Miheer H. Mafatlal vs. Mafatlal Industries Ltd.*⁶ The Hon'ble Supreme Court ruled that “valuation of shares is a technical and complex problem that can be appropriately left to the consideration of experts in the field of accountancy.” Further, SC, in this case, stated that “even experts may differ in their conclusions

⁵ The Companies Act 2013.

⁶ *Miheer H. Mafatlal vs. Mafatlal Industries Ltd.* [1997] 1 SCC 579.

or even reasoning. Hence, the Court must take notice of this fact and not interfere unless there are compelling reasons to upset the finding of the expert valuer.”

This research will provide the impact of trademarks on the valuation of the company in a legal aspect.

C. RELATION BETWEEN THE TRADEMARK AND THE VALUATION OF THE COMPANY

A trademark is said to be known as the mark symbol of the company, mentioned in section 2(1) of the Trademarks Act 1999⁷. A trademark is defined as a mark that can be represented as a symbol or logo and distinguishes the services and products of one company from another. The purpose of a trademark is to protect the company from parroting and harmful activities of the competitors.⁸ Trademarks serve as important information to customers; they can encourage companies to improve the quality of the service or the products they offer.⁹ Hence this is valuable information for the company, and depending upon this, the investors will invest in the company and influence the valuation of the company in the Market.

This research will establish the link between the valuation of the company and the Trademark of the company from a legal perspective. There is little research that establishes the link between them. When it comes to research and development firms (R&D) the investors use the worth of their intangible assets to develop the worth of the company and the knowledge it holds¹⁰. Firms and companies use trademarks to protect their assets, innovation and legal rights.

Companies in the industry that are related to innovation are more dependent upon the IPR strategies implemented by firms across the sectors. The ability of the company to protect its innovation depends upon the IPR and they decide the value of the company in the Market¹¹.

Another way a trademark helps decide the valuation of the company is by licensing the Trademark. In this way, the company gets direct revenue without engaging in production.

⁷ Trademarks Act 1999, s. 2(1).

⁸ (Sandner and Block 2011).

⁹ (Economides 1988; Cabral 2000).

¹⁰ (Griliches 1981; Griliches, Hall, and Pakes 1991; Toivanen, Stoneman, and Bosworth 2002; Hall, Jaffe, and Trajtenberg 2005).

¹¹ Greenhalgh and Rogers 2006; Castaldi and Dosso 2018).

The term "trademark licensing" is not defined in the Trademark Act 1999. In Laymen's language, it can be said as the permission given to someone to act. Licences like these are granted in remuneration. Even though trademark licensing is not present in the Act, the concept is mentioned in sections 48-55.¹² As per the Act, the agreement for the licensing must be in writing and the trademark owner, "the registered user," i.e., the licensor, has the authority to permit someone else to use his Trademark. The Act only talks about registered trademarks.

Any person will use the Trademark of some other company or firm because of its name in the Market. Adding on, if we talk about the goodwill of the Trademark, it always belongs to the licensor as he is the registered user and the original owner of the Trademark. The value of the company in relation to its Trademark is always attached to the goodwill to the company. As per the case of *Barcamerica International USA Trust v. Tyfield Importers Inc*,¹³ the licensor did not perform the quality check on the licensee leading to the negative reputation of the company in the Market. Consequently, the reputation of the company also tarnished the image of the company in front of customers and shareholders. This will have a direct impact on the valuation of the company.

The goodwill of the company is one of the important factors that help the Trademark to determine the valuation of the company. It can also be said that the intangible value of the business is derived from its brand equity.

The goodwill helps the Trademark of the company to determine the value of the company in the Market. To assess the goodwill of the company the following factors need to be considered:

- a. Brand visibility: The Trademark that is well-known and visible in the Market carries value to the company. The market presence of the brand and the customer awareness about the brand contributes to the goodwill of the company.
- b. Brand equity: The quality and the reputation of the brand in the Market are crucial in determining the goodwill of the company. The positive reputation and customer satisfaction lead to customer loyalty and customer retention, thereby increasing the value of the Trademark, which ultimately will increase the value of the company.

¹² Trademarks Act 1999, s 48-55.

¹³ *Barcamerica International USA Trust v. Tyfield Importers Inc* [2002] 289 F.3d 589.

- c. Market share: The share of total sales in the Market helps in defining the goodwill of the brand. The more the Market share, the more the goodwill.
- d. Length of use and legal protection: How much duration the particular Trademark has been used and how strong its legal protection is, will influence the Market. The older and more well-established the Trademark the stronger the goodwill.
- e. Licensing agreements and partnerships: The stronger the licensing agreement, partnership, and endorsement the more substantial the value of the Trademark. All these arrangements help in expanding the reach of the brand and its goodwill.
- f. Performance of the company financially: The financial performance of a company includes the revenue-generated growth trend and profit of the company associated with the goodwill of the Trademark which will have a direct relation with the valuation of the company.

All these factors affect the value of a trademark and ultimately all these will have a direct impact on the value of the company.

The valuation of a company and its Trademark within the context of their relationship is dependent on legal issues. This was demonstrated in the case of *Kale Khan Mohd. Hanif v. Mohd. Iqbal*¹⁴, where various lawsuits involving trademark valuation highlighted the complex nature of legal aspects.

The litigation initiated under Article 227 of the Constitution delved into the propriety of an order rejecting a commissioner's report on trade mark valuation. Consequently, this led to filing of writ petitions and subsequent appeals which necessitated an examination of finer points of legal principles.

Initially, after hearing the parties' submissions but without going through any formal proceedings that may lead towards litigation, the Commissioner submitted his report to the Court with his opinion that there could be no separate valuation of the Trademark alone, as it is merely goodwill embedded in Trademark what has been valued by him at Rs.5 lakhs only

¹⁴ *Kale Khan Mohd. Hanif v. Mohd. Iqbal* [2009] (40) PTC 210 (M.P.) (DB).

for inclusion in decree and not for any other purpose.

Nonetheless, there were differences between Mohd. Hanif's counsel and that representing Mohd. Iqbal about what could be included in the decree besides whether or not something called "goodwill" amounted to having an independent value from a Trademark registered separately by the same person which could be assigned or transferred?

After deliberation, the Division Bench held that the distinction between goodwill and trade mark should be legally clear. As a result, many forms have been taken up by trademarks when they pass from one owner to another; they can be governed by common law or statute law depending on jurisdiction.

In the case of *Smt. Vindoor Bai v. Controller of Estate Duty*¹⁵, the Allahabad High Court said that the goodwill of the company is an intangible asset, the perk of which is the reputation of the company and customer loyalty (the relation formed with the customer). It is also said that the goodwill associated with the company is the value of attraction, the value the company holds in the Market. The goodwill termed was raised in the Market with the case of *R. C. Cooper v. Union of India*,¹⁶ where the Supreme Court of India also noticed that the goodwill of the company is an intangible asset and consists of a variety of elements.

A company's good name, known as goodwill, is closely tied to its identity. The symbol that marks a company is the primary identifier. So, when the good name linked with a symbol is significant, it raises the value of the company. The bond between a good name and a symbol shows how important is the way people see a brand determines how much a business is worth. A strong good name built on trust, dependability, and content clients makes a symbol more valuable, and this raises how much the whole company is worth. Clients often connect a symbol with good products or services, and this makes it a big asset for the company. So, businesses spend a lot of work making and protecting their brand's good name to lift the value of their symbols, and as a result, their overall value in the Market. Thus, the amount of goodwill linked with a symbol is a big way to tell how much a company is worth, reflecting the trust and faith it gets in the Market.

¹⁵ *Smt. Vindoor Bai v. Controller of Estate Duty* [1981] 132ITR421(ALL).

¹⁶ *R. C. Cooper v. Union of India* [1970] AIR 564.

In the case of *Mr. Sanjay Chadha Trading As M/S Eveready Tools Emporium V. Union Of India & Ors.*¹⁷ the Delhi high court stated that apart from the identification mark, the Trademark of the company also holds investment values, which saves the investment made by the properties of the Trademark to build its reputation in the Market.

The division bench of Delhi High Court Justice Vibhu Bakhru and Justice Amit Mahajan have stated that the company's Trademark holds monetary value even though it is intangible. It keeps the financial value in the Market. "The use of a trademark by other persons, which is identical or similar to the senior mark, would inevitably result in dilution of the senior mark and adversely affect its value," the Court said.

Also mentioned: "Thus, the Trade Marks Act also extends protection to reputed trademarks and does not permit the use of similar or deceptive trademarks notwithstanding that they are not in respect of goods covered by the senior trademark if their use is to take an unfair advantage or is detrimental to the distinctive character or repute of the registered senior trademark".

The good name of the company, also known as goodwill, is always associated with its identity. The company's logo is the company's identity, which is protected by the Trademark. If the Trademark of the company is valued in the Market, then it will automatically increase the worth of the company. Customers and stakeholders will see the reputation of the company and the value of its Trademark to become associated with it. The Trademark is a significant asset for the company; therefore, the company invests heavily to ensure that its Trademark is legally protected and valued in the Market, thereby enhancing the value of the company.

D. HOW DO TRADEMARK INFRINGEMENT LAWSUITS AFFECT THE VALUATION OF BOTH THE PLAINTIFF AND DEFENDANT COMPANIES, AND WHAT FACTORS INFLUENCE LEGAL OUTCOMES IN SUCH CASES

Basically, a trademark can be anything that differentiates and distinguishes a company business from other companies and businesses. It can be a name, logo, or symbol, etc. and if any other company or business or any other person is using trademark of another company without

¹⁷ *Mr. Sanjay Chadha Trading As M/S Eveready Tools Emporium V. Union Of India & Ors.* [2022] LiveLaw (Del) 1022.

informing them or without their permission then that is an offence and it comes under trade infringement.¹⁸

Consequences of trademark infringement: any illegal or unauthorized use of another company's trademark without their permission would lead to trademark infringement. To recover the losses suffered and protect their trademark from misuse the company needs to file a suit.¹⁹

To avoid these trademark infringement companies must register their trademarks and this is important to protect the trademark of the company from any misuse. If any other person or company intentionally uses a registered trademark of company without their permission, they are liable to pay damages.

There have been many cases of trademark infringement, some examples of which are *Apple v. Samsung* and *Adidas v. Skechers*. These cases are some of the most famous and important cases in relation to trademark infringement. Misuse of any trademark without permission leads to legal actions, the owner can file a suit against misuse of infringement and to claim compensations. One such legal action could be injunction. In injunction, the court orders to forbid the other infringing party from misusing the trademark. An injunction order is a very powerful tool in protecting a company's trademark and reputation by prohibiting the other party from further misuse and damage. Companies should take necessary steps to protect their trademarks, just like registration. Registration of trademarks shows that a particular trademark is protected and reserved for a company or person and that particular trademark cannot be used under any circumstances by any other person without the permission of the company.

A. Impact of Trademark infringement

Companies can face serious harm to the finances and reputation of the company due to trademark infringement, which would lead to tarnishing of the brand image, financial loss, harm to reputation and employees, and ultimately legal expenses. If a company is using a similar trademark as some other company that, actually creates confusion among the consumers about the merger of the company, cheating, stealing etc. which results in loss in the

¹⁸ Sreenivasulu, N. S., *Intellectual property law: Dynamic interfaces* (1st edn, Universal Law Publishing 2017) 23-30.

¹⁹ Section 15, Trademarks Act, 1999, Govt. of India.

sales of the original company and their products. The party committing the infringement may occasionally even make money off of the trademarks. Damaging the brand reputation and intensifying the financial consequences on the original enterprise. If any business or company misuses a trademark with the intention to harm the financial status and the reputation of the original company, it can result in losses in the number of customers, as well as in faith of the customers for the brand, thereby leading to a decrease in sales. The original company of the trademark has to put extra efforts in advertising, campaigns etc. to restore the damages that have been caused due to trademark infringement.

B. Damages from trademark infringement

When someone other than the original owner uses a trademark that belongs to another business or company, it tends to confuse the customers and that harms the reputation, sales and finance of the company. In the end this leads to decrease in the customers for the company and affects the future of the company as well.

C. Impact on the plaintiff company

A successful trademark infringement suit can actually benefit the owner company's valuation. When the Court's ruling is in their favour, it asserts the strengths, protection and exclusivity of their brand and its identity, thereby strengthening the consumer's trust in their brand. For example, in the case "Apple v. Samsung," Apple's victory over Samsung, protecting the differentiating element of the Apple products, ensuring the company's reputation, market position and enhancing its brand reputation. These types of positive outcomes in the favour of the owner company might lead to increase in the market shares, sales of the company, and increase in the whole financial performance of the company which positively impacts their valuation. On the other hand, any unfavourable decision for them can tarnish their name, reputation and the brand value of the company. The company will lose trust of the customers over the brand because of fake cases and lack of uniqueness in their products, which will eventually lead to decrease in their value and market share. The company would be on the brink of facing a major financial setback and the future valuation of the company will be impacted negatively.

D. Impact on the defendant company

The impact on the defendant would be similar to that of the plaintiff. A favourable decision can

prevent the financial losses of the company and will also protect the brand's value and integrity. For example, in the same case of "Apple v. Samsung" victory for Samsung would mean protecting their image and protection from the potential damage. A positive outcome from the court could have contributed to maintaining or even increasing the valuation of the defendant's company. On the other hand, any unfavourable decision can impact their financial status severely, resulting in decrease of market shares. The company in the process to restore their market reputation has to do numerous things including product redesign, advertisements etc. and overall, these things will impact the valuation of the defendant company negatively.

Trademark infringement has caused severe reputational damages to many companies like Starbucks, Burberry, Samsung among others. This affects the finances of the company and also the trust factor of the customers. In the *Apple vs. Samsung case*,²⁰ initially Apple had warned the Korean company Samsung for infringing the Apple patents. The legal battle actually started in 2011 when Apple alleged and filed a suit against Samsung for copying the Apple's iPhone design. Then Samsung counter sued against Apple accusing the company of infringing Samsung's software patent. These suits continued to multiple suits with different allegations of infringing the patents. The US court jury ruled in favour of Apple and held that the Korean company Samsung must pay compensation to the Apple of \$1.05 billion for infringement of copyright of certain elements of iPhone and iPad. Later the compensation amount was reduced but in 2014, during a trial the jury found that both Apple and Samsung were infringing upon each other's copyright patents. In the year 2015 Samsung agreed to pay \$548 to Apple to settle the original copyright infringement suit because none of the old Smartphones which had copyrighted features were available in the market. Later in the year 2016 the case reached the US Supreme Court and Samsung challenged the previous judgment of the lower court but the Supreme Court rejected the challenge and returned the case to the lower court. The jury finally ordered Samsung to pay compensation to Apple \$539 million for copyright infringement of the features of the original iPhone.

In the case of *Adidas America, Inc. v. Skechers USA, Inc.*,²¹ the plaintiff in this case i.e. Adidas America, Inc. has a market of athletic shoes and clothes. In other words, it is an America-based Athleisure brand. Their rival company is Skechers USA, the defendant in this case works in the same market of sports shoes, sneakers etc. Adidas filed a suit against the brand Skechers

²⁰ *Apple Inc. v. Samsung Electronics Co. Ltd.* [2011] Case No.: 11-CV-01846-LHK.

²¹ *Adidas America, Inc. v. Skechers USA, Inc.* [2018] No. 16-35204.

claiming that their shoe style “the Onix” has copied the shoe by Adidas named “Stan Smith” sneakers and their trademark which is three strips on the shoes infringes Adidas’s intellectual property and is also affecting their business. After Adidas filed a suit, the court granted a preliminary injunction against Skechers. Later when Skechers filed an appeal, the panel determined that Adidas has the trademark over the particular feature of the product, which was considered as the major or primary symbol of the product which might create confusion among the customers. They further held that Adidas’s argument and the evidence presented makes the similarities between the two products apparent. They further held that the order given by the court was not improperly given when it issued a preliminary injunction. The panel concluded the case and said Adidas’s claim of trademark infringement is not baseless and the decision given by the lower court is correct. Adidas succeeded in the case and the district court made the right decision in this regard.

E. WHAT LEGAL MECHANISMS ARE AVAILABLE TO COMPANIES FOR MITIGATING RISKS ASSOCIATED WITH TRADEMARK DISPUTES, AND HOW DO THESE MECHANISMS INTERSECT WITH BROADER CORPORATE RISK MANAGEMENT STRATEGIES?

It is very important to reduce the risk related to the trademark of the company because it represents the name of the company and majorly the whole business of the organization depends on the trademark as it symbolises the trust or quality of the product or service. There are many legal mechanisms available to companies for reducing the risks associated with trademark disputes which are described below:

A. Trademark Clearance Searches

One of the most important mechanisms to reduce the risk of trademark disputes is ‘trademark clearance searches.’ Basically, this mechanism helps the companies to identify trademarks already in use by other companies or organizations. Examining the pending applications and registrability of a proposed mark are also the main parts of this mechanism. The purpose of this mechanism is to analyse logo design etc. The searched data or information is then compared to various databases containing registered trademarks of the companies. Then if the information provided is real and true, then the trademark will be registered. However, if the information or the data provided by the company related to the trademark matches or is similar to other trademarks, then a fee is required to pay for the further registration process.

In the *McDonald's Corp v. Future Enterprises Pte LTD*²², a restaurant uses "MacDowell's" as its name. The court held that the restaurant cannot use this name because it is infringing right of other party as the name is almost similar to "McDonald." In *Marico Limited v. Argo Tech Foods Limited*,²³ Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice Valmiki J. Mehta of Delhi high court held that companies or organizations conduct searches not only for identical trademarks but also for similar trademarks to avoid customer confusion and it also minimize the chances of dispute related to the trademark. This step is very vital because it will be checked whether the information provided is real or true to avoid disputes related to the trademark. The benefits of trademark clearance searches are:

- *Avoiding legal problems*
- *Expanding your business*
- *Building trust*
- *Avoiding application rejection*
- *Preventing infringement*

B. Trademark Registration

The trademark registration is an important shield to the trademark of the company and also protects the rights related to the company's products or services. This also protects against any violation or infringement of the company's legal rights and gives rights to take action against violator. Registration of trademark is valid for 10 years from the date of filing of registration and it is renewable further for years. In the event of a dispute, registration protects the company's position or standard and reduces the possibility of unintentional or intentional infringement by acting as constructive notice to third parties.

In *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*²⁴ the Supreme court of India highlights the importance of the trademark registration and held that the trademark registration is the primacy evidence and protect the right of the original owner. In another case of *Yahoo*

²² *McDonald's Corp v. Future Enterprises Pte Ltd* [2005] SGHC 76.

²³ *Marico Limited v. Argo Tech Foods Ltd.* [2008] 38 PTC 689 (Del).

²⁴ *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd* [2001] (2) PTC 541 SC.

*Inc. v. Akash Arora & Anr.*²⁵ The plaintiff (yahoo) filed a suit against Akash Arora because he was using name “yahooindia.com” without any authorization. The court held the defendant cannot use trademark without any authorization as per trademark act, 1999.

C. Trademark Monitoring

The responsibility of the individual or the company does not end with the registration of trademark. The company also has the responsibility to monitor the trademark regularly on the trademark databases or other websites to identify unauthorised use of their registered trademark. It can also help the owner to initiate the legal proceeding without any further infringements.

In the *Raymond Limited v. Raymond Pharmaceuticals Pvt. Ltd.*,²⁶ the plaintiff that is Raymond Limited, through trade monitoring got to know that a pharmacy company uses their trademark. The plaintiff filed a case against the defendant and the court granted an injunction restraining defendant from using the mark "Raymond" for pharmaceutical products, as it infringed upon the plaintiff's trademark. In *Bata India Limited v. A.M. Azeez & Ors.*²⁷ Bata which is a renowned footwear brand filed a suit against Mr. Azeez for using the “Bayta” mark. The court in this case highlights the importance of trademark monitoring to mitigate risk of trademark disputes and held that the defendant could not use this trademark for their products.

D. Trademark Licensing or Franchising Agreement

Trademark Licensing is a term which refers to the legal agreement between the ‘licensor’ (the one who is the owner of the trademark) and the ‘licensee’ (the one who wants to use that trademark) to use the trademark for some consideration. The licensor has the right to terminate the agreement if the licensee infringes or violates any condition mentioned in the agreement.

In the *Vikram Bakshi v. Mc Donalds India Pvt. Ltd.*,²⁸ the court said that the licensor can terminate the agreement if the licensee infringes or violates the conditions of the trademark or franchise agreement. In *Satyam Infoway Ltd. v. Sify net Solutions Pvt. Ltd.*²⁹ the plaintiff is the

²⁵ *Yahoo! Inc. v. Akash Arora & Anr.* [1999] SCC Online Del 669.

²⁶ *Raymond Limited v. Raymond Pharmaceuticals Pvt. Ltd* [2016] SCC OnLine Bom 14135.

²⁷ *Bata India Limited v. A.M. Azeez & Ors.* [2006] 2 MLJ 101 (Madras).

²⁸ *Vikram Bakshi v. Mc Donalds India Pvt. Ltd* [2014] SCC OnLine Del 7249.

²⁹ *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.* [2004] 6 SCC 145.

internet service provider and the defendant (Sify net solutions) was using the same trademark as of plaintiff. The court gave the judgement in favour of the plaintiff and held that even if the trademark is identical, it is similar to the plaintiff's trademark and highlights the mechanism of trademark licensing to avoid unnecessary litigation.

E. Alternative Dispute Resolution

The ADR mechanism is one of the best mechanisms to settle trademark disputes. This mechanism is a relatively inexpensive and less time-consuming process as compared to regular court litigation. The organisations or individuals should add clauses related to ADR methods in case there is any violation or infringement of any condition related to the trademark, as it would prove to be an effective mechanism to settle trademark disputes.

In the case of *Golden Tobie Private Limited v. Golden Tobacco Limited*,³⁰ the Delhi High Court said that the present case is arbitrable and held that the cases related to the trademark disputes should be settled by the process of arbitration and highlighted the effectiveness of ADR mechanism. In *Auto Limited v. TVS Motor Company Limited*,³¹ both the parties were using a similar trademark for the motorcycles and went for arbitration to settle the dispute. Therefore, this case also shows the importance of arbitration or ADR to settle the disputes related to trademark results in less time consuming and avoiding costly litigation.

F. Insurance Coverage

It is one of the ways to reduce the risk of trademark disputes. In this mechanism, the companies layer themselves with insurance coverage against the infringement of trademark. So, if a dispute related to trademark surfaces, for which the company opt the insurance, the insurance company is liable to pay the amount for litigation, arbitration or any other way in the settlement of the dispute.

These mechanisms of reducing risk of trademark disputes intersect with broader corporate risk management strategies in many ways:

A. Maintaining Brand Reputation: Trademark is an important asset of an organisation or

³⁰ *Golden Tobie Private Limited v. Golden Tobacco Limited* [2021] SCC OnLine Del 3029.

³¹ *Bajaj Auto Limited v. TVS Motor Company Limited* [2009] 6 SCC 31.

company as the company's image is based on it. The market value and goodwill of the company is based on trademark. Therefore, by minimizing or ending the trademark risk, a company can safeguard the goodwill of the company and customer trust.

- B. *Pare Down Litigation*: By opting and working on several mechanisms to reduce trademark disputes, a company can reduce or minimize the litigation process related to the trademark and hence save the image or goodwill of the company.
- C. *Keeping up Market Position*: Maintaining trademark goodwill in the market plays an important role in helping a company keep a good and strong market position. It will create fair competition in the market and customers would be able to trust a brand easily.
- D. *Mitigate financial Risk*: The trademark disputes take a lot of time and financial expenses to settle. To mitigate financial risk, a company should follow all necessary corporate risk management strategies.

Overall, the companies may protect their intellectual property assets, stay competitive in the market, and reduce the financial and legal risks related to trademark disputes by incorporating trademark management into larger corporate risk management plans.

The companies ought to do proper research before going for the registration process of the trademark. The companies should register their trademark to avoid disputes in the future. Even after the registration process companies or organisations should monitor various trademark databases so as to avoid any dispute or customer's loss. So, as we go through the various mechanisms, it can be concluded that companies or organisations can mitigate risk associated with trademark disputes by following these various mechanisms and corporate risk management strategies.

F. CONCLUSION

In conclusion, Companies should do proper research before entering the trademark registration process and all the legal prospects of trademark and their relation with the company valuation should be given equal importance so a company or organization can protect its intellectual property rights and market value. Additionally, a company or organization should follow various corporate risk management strategies and legal mechanisms to avoid trademark disputes. It can be problematic to utilize someone else's trademark and it could be detrimental

to companies which leads to financial hardships, legal issues, and reputational harm. Companies may assure their future prosperity and protect their brand by registering the brand and pursuing infringement cases against unauthorized users as soon as possible.