COLOR TRADEMARKS AND MARKET POWER IN LUXURY BRANDING VIS-A-VIS COMPETITION LAW: AN ANALYSIS

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ABSTRACT

The current paper examines the dynamic quality of color trademarks recognition under the law and how it would impact upon the market power under the luxury branding to the competition law. Non-conventional trademark color as an element of brand identity has now turned into a potent tool of the brand image, particularly in the luxury markets where a visual symbolism, exclusivity and consumer perception of products exert final power to effect the demand. The paper will explore the evolution of the courts in the United States and the European Union in permitting the protectability of single colors and color combinations, with the exception of distinctiveness, non-functionality and correct representation. On one hand, such forms of recognition support brand differentiation and protect reputation investments, whereas on the other hand, such forms of recognition also cause significant competition law problems. The monopolization of the colors, an inherently limited resource, which means creating entry barriers, restricting the creativity of the competitors, and possibly distorting the market dynamics by imposing disproportionate market power over the old brands, can do so. This pressure has long been exerted in the luxury industry, and color is, in most respects, a brand of provenance, as well as a status icon, which adds even more economic value to it. The paper is a critical review of how the legal doctrines like functionality, acquired distinctiveness and the necessity of keeping competitive markets, seeks to strike a balance between trademark protection and protection of competitive markets. It argues that despite the general trend in the courts to be cautious and subtle, there is the threat of overextension especially when color trademarks are used with tact in order to enforce exclusivity and control. To sum it up, the review identifies the importance of building an integrated framework that can connect the trademark law with the competitive policy to ensure that the security of the brand name will not influence the accessibility of markets and innovation.

Keywords: Color Trademarks, Luxury Branding, Market Power, Competition Law, Brand Exclusivity

INTRODUCTON

Internationally, agreements including the TRIPS Agreement set minimum requirements on protection of trademarks including the protection of non-traditional marks and leave member states some freedom in their interpretation. Within the European Union, the course of action regarding color trademarks has been influenced by the EU Trade Mark Regulation and the case law of the Court of Justice of the European Union (CJEU), which has placed serious weight on the necessity to have acquired distinctiveness and have a clear representation of the color trademark. Equally, in some countries such as United States, courts have accepted color trademarks under Lanham act under the condition of proving that they have secondary meaning and are non-functional.

Although the trademark law forms the foundation upon which color trademarks are recognised and enforced, competition law serves as a much needed control in the canvassing of the trademarks. Even with a valid trademark (a color mark), one is not entirely immune to scrutiny under the competition laws. There can be an increase in the burden on dominant firms, especially in the luxury industry, to make sure that their behaviour does not result in distortion of competition. As an example, when a luxury brand employs its color trademark to lock out its competitors out of the market or to extend its influence beyond the acceptable market boundaries, such behaviour can be considered through the provisions on abuse of dominant position.

Competition laws can evaluate the anti-competitive consequences of the application of a color mark which include market blockage, inhibition of consumer choice or establishment of entry barriers. Certainly, in other situations, one can refer to the doctrines like the principle of essential facilities, especially in the instances when the defended color can be found as an essential one in the context of the adequate competition within a particular market. This doctrine, though used with caution, demonstrates the bigger idea that the intellectual property rights should not be used in such a way that it defeats the competitive process.[1]

The doctrine of trademark exhaustion is another point that is also applicable and that the owners of trademarks are restricted on regulating the distribution of their products after they have

[1] Schechter, F. I. (1927). Rational basis of trademark protection. *Harvard Law Review, 40*(6), 813–833. Brown, R. S. (1948). Advertising and trademark law. *Yale Law Journal, 57*(7), 1165–1183. Landes, W. M. (2002). Trademark protection and competition. *Chicago Law Review*.

entered the market. Although this doctrine is mostly concerned with the matter of parallel imports and resale, it also indicates the larger issue of exclusive rights and market freedom. Also, the competition law can be used to examine the contractual type of arrangements, including exclusive licensing arrangements or selective distribution arrangements, which include the use of color trademarks and which may limit competition.

The connection between the trademark law and the competition law is also complicated by the peculiarities of the luxury goods market. The luxury brands make use of selective distribution, high prices and controlled brand image to preserve its exclusivity. These strategies are reinforced by color trademarks, which make a great impression visual associations and brand recognition. Nevertheless, when these tactics are compounded by forceful application of trademark rights, it can be challenged that it will cause issues over the limitation of intra-brand and inter-brand competition.

The courts and other regulatory bodies should thus proceed on a case-by-case basis whereby the level of market power that the brand possesses, the presence or lack of alternative design alternatives by competitors, the potential of confusion by consumers, and the general effects on competition are considered. It is aimed at making sure that the protection of trademarks does not go further than it is warranted and is used as an instrument of anti-competitive behaviour.

1. OBJECTIVES OF THE STUDY

1. To analyse the concept and legal recognition of color trademarks in various jurisdictions.

2. To examine the judicial approach towards color trademarks through leading case laws, particularly in the context of luxury branding.

3. To evaluate the role of color as a source identifier and its significance in establishing brand identity in luxury markets.

4. To critically assess whether granting exclusive rights over colors leads to the creation of market power or “aesthetic monopolies”.

5. To analyse the intersection between trademark protection and competition law, particularly with respect to abuse of dominance and market foreclosure.

6. To examine the applicability of doctrines such as functionality and acquired distinctiveness in limiting the scope of color trademarks.

7. To study the Indian legal position on color trademarks and assess its alignment with global jurisprudence.

2. RESEARCH METHODOLOGY

The research methodology used in this work is doctrinal and analytical, with a focus on secondary sources of information. The study is based on a thorough examination of statutes, court rulings, and academic publications pertaining to competition and trademark law. To comprehend the legal structure controlling color trademarks in India, important laws including the Competition Act of 2002 and the Trade Marks Act of 1999 have been studied in depth. Leading court rulings from several jurisdictions, including the US, the EU, and the UK, are compared in this study. To comprehend the development of color trademark jurisprudence, seminal cases like Christian Louboutin v. Yves Saint Laurent, Libertel Groep BV v. Benelux-Merkenbureau, and Qualitex Co. v. Jacobson Products Co. have been examined.

A critical and analytical approach is also part of the technique, wherein current legal concepts are assessed in the context of economic ideas about market power, consumer perception, and competition.

3. CONCEPTUAL FRAMEWORK: COLOR TRADEMARK AND MARKET POWER IN LUXURY BRANDING VIS-À-VIS COMPETITION LAW

The research's analytical framework of color trademarks in luxury branding and the competition law has an interdisciplinary notion of the principles of intellectual property law, economics and marketing. It brings together a variety of academic disciplines. Branding today in the market especially in the luxury market has outgrown the organization's conventional identifiable like name and logo and is now including sensory and visual relatedness to brand which is color. The question of color as a trademark is a complex legal and economic question to answer. Will it give you an edge, and is it fair terms of competitiveness? According to this framework, this inter-relation would be analytically discussed and also it gives a systematic design of understanding the inter-relation.

3.1 Luxury Branding: Nature and Significance

Luxury branding is not the same as mass-market branding as the former is more about exclusivity, prestige and symbolism. Consumers buy luxury goods not just because they have some utility which is useful but it also gives the consumers a status and identity. As a result branding in this sector becomes heavily established and more reliant on the intangible.

Color is another important element of luxury branding because it is a visual shortcut to recognize the brand. This creates an emotional appeal, an immediate brand legacy and recognition. Consistent use of a specific color in product, packaging, and in-store retail environment will enhance brand memory and perceived value. Color can be a fairly powerful resource in that regard which can be likewise exploited to establish that overall perception of exclusiveness and uniqueness that luxury brands are accustomed to.

4.2 Trademark Law and Non-traditional marks

Brand identification is a legally protected intellectual property under Trademark law, which ensures that the consumer is able to differentiate the different origin of goods and services. Trademarks come in words, symbols, and logos form. The protection of trademarks has been extended to non-conventional marks, such as colors, sounds, shapes. To meet the requirements of being a trademark, it must be distinctive, it must denote secondary sense and it must be non-functional. The term distinctiveness refers to the ability of a color to determine one source. Initially, colors are not special; therefore, they acquire their specialness through use. This created a second meaning that the consumers will identify the color with a particular brand. A non-functionality requirement ensures that design elements essential for a product's use or function are not monopolized.

4.3 Color Trademarks as Strategic Assets

In this context, color trademarks are nonphysical abstract strategic assets that add considerable value in enhancing brand equity. Brand equity is the capacity of the brand name of a product and other related products to bring use value to the product. When consumer perceptions are key factors limiting differentiation, luxury markets are ones where differentiation using color trademarks is possible.

A color trademark that has acquired distinctiveness is that which helps consumers instantly recognize a brand without any other features. It enhances recollection and loyalty to brand names, enabling firms to charge a premium. Due to color trademarks, brands have other roles, such as marketing and financial roles. [2]

4.4 Market Power: Concept and Relevance

Market power is a basic concept of the competition law and economics. It can be defined as the power of a firm which enables the firm to impact upon the market environment. This impact can either be on the prices or the production but not at the behest of the competitors. The luxury goods sector has a large market power because of good brand awareness, entrenched entry barriers, and lack of substitutes.

Another way of increasing market power is to offer a distinctive color that other players in the market cannot imitate as it is proprietary. This drawback can reduce the effectiveness of the competitors' branding strategy while boosting the strength of the dominant organization. When domination of one color is worsted, some visual monopoly may occur, which may be a particular aesthetic field in the marketplace occupied by a single brand.

4.5 Competition Law Regulatory Concern

The goal of the competition law is to promote health, competition and prevent the abuse of market power. The owner of trademark law provides exclusive powers to protect the identity of the brand but the exercise of the power must not be at the cost of the competitive process. The competition law and color trademarks raise very serious questions regarding length of intellectual protection. The critical issue is whether implementing color trademarks has anti-competitive effects such as foreclosure or barriers to market entry. In an industry where color is essentially important for good competition, exclusivity right to the color can limit possibilities to compete by other companies. Similar to the fact that trademark protection must not impede competition, the conflict must also strike a balance in order to mitigate the legitimate interests.

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[2] L. Nilsson et al., *Color as a Brand: The Case of Tiffany Blue and Other Color Marks*, p. 15 (Lund University Student Paper, Lund, 2020). https://lup.lub.lu.se/student-papers/record/9159333/file/9159334.pdf K. Schmidt-Krause et al., *Protection of a Single Color as a Trademark: Competition-Law Perspective*, p. 32 (TalTech Thesis, Tallinn, 2021). https://digikogu.taltech.ee/et/Download/45a0dcfa-3d2d-4c16-b7d0-4e41cd24dd08

4.6 Doctrine of Functionality

The doctrine of functionality is significant in this regard, as it prevents the misuse of trademark law to create monopolies over those features unlikely to secure patent protection. When a characteristic is necessary to the use or for purpose of a product or it impacts the cost or quality of a product, it is said to be functional.

The function may be contending if they utilise a color in a functional or ornamental meaning. Some color parameters can have colors that are more favourable because of their visibility, safety or even cultural value. Luxury branding often incorporates colors for aesthetic purposes that fulfill their branding purpose. In that case, whether the colors should be patented or not becomes rather hard to identify. This is one of the main issues for the courts and regulators.

4.7 Consumer Perception and Behaviour

Consumer perception plays an essential role in the market strategy. The strength of trademark color is contingent upon the consumer's recognition of a brand through a color trademark. The luxury markets are so brand conscious and often visually dependent, color can be a very strong identifier.

High brand loyalty and low price elasticity is due to strong consumer attachment to a color, which results in considerable market power. This psychological factor points to the need to examine what is the consumer behaviour in the analysis of color trademarks and its impact in the competition.

4.8 Scarcity and Competitive Constraints

Color trademarks are unlike other trademarks in that they do not offer any color. In contrast to the varied array of words and figures that can be formed, the common colors are rather limited. Therefore, granting certain exclusive rights to colors would limit the competitors owing to the great visual difference in the arena.

Due to this absence, a competitive inhibition takes place and the new entrants can not create a differentiated branding easily without violating the trademarks. As a result, the framework highlights the importance of questioning how providing protection for trademark colors would impact access and innovation in the marketplace.

4.9 Comparative and Global Perspective

The conceptual framework also has a comparative element given that the legal standards for color trademarks and competition law differ between jurisdictions. Brands operate at a global level, and the differences in legal systems may influence their manner with regard to protecting and enforcing trademarks.

In other jurisdictions, registration of color trademarks is even harder, and it needs to be shown to have a high level of distinctiveness, and a limited range of circumstances results in a protection. Some other's lack of restrictiveness may increase the chances of anti-competitive effects taking place. Finding out the best practices and where harmonization can be achieved helps to ensure more balanced approach to regulation. [3]

4.10 Interrelationship between legal and economic principles

The economic relation of law and the realities is the prime focus of this. Although trademark law is concerned with brand protection and consumer confusion, competition law looks at the overall effect of this protection on market structures. The complete study on color trademarks is possible only if these two schools of thoughts are merged in such a way.

The economic theory refers to the demands and supply of goods. It helps to understand the market structure and how it is beneficial for one who is already in the market. It is when these considerations are taken into account that the framework is handy in ensuring that the legal analysis is rooted in reality.

4.11 Balancing Innovation and Competition

One of the most significant ideas of this conceptual framework is to seek the compromise between the innovation and competition. Trademark protection encourages business investment in branding and innovation by offering important exclusive rights. However, excessive protection harms competition and restricts consumer choice.

Color trademarks require skill and precision, as it involves striking a fine balance. Though

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[3] S. White et al., *How Trademarking Colors in the Fashion Industry and Beyond Can Lead to Market Power*, p. 8 (Liberty University Law Review, Lynchburg, 2021).
https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1307&context=lu_law_review

registering individual colors can enhance the distinctiveness of the marks, but they should not create barriers to entry or the use of essential design features for which such protection is sought.

4.12 Policy Implications and future directions

The framework emphasizes the policy implications of the protection of color trademarks. It is expected that the Tribunals and the regulators will set forth clear criteria establishing distinctiveness, functionality and the effect of competition. It involves a more indirect approach that takes into consideration industry issues and a presence of other colors.

Consequently, future measures in order include further harmonization of law and cooperation between intellectual property and competition regulators. The processes will ensure protection of color trademarks in a way that will promote novelties along with healthy competition.

4. LEGAL FRAMEWORK

The law that regulates color trademarks and their connection with market power in luxury branding is placed at the cross condition of trademark law and competition law that have unlike though occasionally overlapping goals. The trademark law aims at protecting unique marks or symbols that can identify the origin of goods or services, thus ensuring that consumers do not confuse, and the identity of the brand is not violated. Competition law, conversely, is focused on the preservation of the fair market conditions by eliminating the anti-competitive patterns like the abuse of dominance, cartelization, and the foreclosure of the market. In the case of color trademarks used as strategic instruments of luxury branding, there can be a conflict between the two types of law and a regulation of the matter must be delicate and moderate.

Most jurisdictions accept the fact that color can theoretically act as trademark, provided some stringent conditions are satisfied. The first one is that the color has to have attained distinctiveness or secondary meaning, i.e., it has to be associated by a substantial part of the relevant population with a specific source of goods or services. This is a critical need since the colors are usually regarded as not inherently distinctive, and there are only a limited number of colors, and thus, their monopolization can be an issue. To offer such distinctiveness, courts and trademark offices usually demand very large amounts of evidence, including consumer surveys, long usage and wide advertising, among others.

Besides uniqueness, the accuracy of the alleged color and the graphical depiction are essential as well. To eliminate confusion and generalisation, applicants are usually expected to define the precise shade by using internationally recognised color codes or descriptions. This guarantees that the boundaries of protection are well spelt out and do not unfairly infringe on the rights of business rivals. Moreover, the functionality doctrine is important to restrict the extent of color trademarks. A color used in a functional role like to enhance the performance of the product, to enhance the safety or to enhance cost efficiency cannot be registered as a trademark. This doctrine is crucial in avoiding the abuse of trademark law in acquisition of exclusive rights to features that are supposed to be open to all players in the market.

5. LEADING CASE LAWS

1. *Qualitex Co. v Jacobson Products Co.*[4]

The case of Qualitex Co. v. Jacobson Products Co. (1995) is a turning point in establishing color as a trademark deserving protection and extensive in the fields of market power and competition law, especially those in which the visual image is the core of brand name. The U.S Supreme Court in the case decided that any one color-Qualitex applied to dry-cleaning press pads-had the potential to serve as a trademark under the Lanham Act, as long as the color had come to have a secondary meaning and was not functional. This decision in effect destroyed the previous notion that colors as inherently restricted and aesthetic would be incapable of serving as exclusive markers of commercial origin. This recognition, however, creates a complicated conflict between competition law protection of intellectual property and maintenance of a competitive market. By providing monopoly over a color the Court enabled firms to steal a rare communicative asset, and this could give them a lot of market power, particularly in the luxury branding industry where color is closely linked with brand image and consumer perception. Color can be used as a short cut to prestige and exclusivity in luxury markets and monopolization can generate a barrier to entry such that competitors may feel compelled to not use some color palettes in the market at all. However, the Court tried to eliminate anti-competitive risks using the so-called doctrine of functionality by stating that a color could not be trademarked and it had some utilitarian or cost-related purpose. This restriction is important, and it guarantees that some important characteristics are not exclusive to any players in the market. But this is never useful in

[4] *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159 (1995).

the context of luxury branding where colors do not have functional implications but are more aesthetic and symbolic. The decision, therefore, arguably strikes a balance in favour of the brand owners allowing them to consolidate power in the market by using non-traditional marks. Another reason that the Court gave to support its stance was the importance of the perception of consumers, as the purpose of the trademark law is to prevent confusion and to support making the right purchasing decisions. However, this consumeristic argument can unintentionally justify exclusivity that goes beyond what is required to guard against confusion, and this raises competition issues. Finally, Qualitex lays the foundation of the doctrine of color trademarks, and, at the same time, reveals the possible distortion of the competitive processes by establishing the rights to such rights, especially in the vertical of expensive goods where branding and visual difference are the main determinants of value.

2. *Libertel Groep BV v. Benelux-Merkenbureau*[5]

The European court of justice in Libertel Groep BV v. The Benelux-Merkenbureau (2003) made a major contribution to the jurisprudence of color trademarks in the European Union though it consciously addressed the issue of competition law. The issue that the case dealt with was the registration of the color orange that Libertel was claiming as a telecommunication service brand. The Court confirmed that one color could actually pass as a trademark under the EU law, but it had to meet the very high standards of graphic representation and uniqueness, which is usually achieved by acquiring secondary meanings. Critically, the Court recognized the danger involved in awarding exclusive rights over colors and that the color palette that the market participants have is restricted and the monopolization over colors may excessively limit competition. This realization is an indicator of more conservative and competition-receptive jurisprudence than previous jurisprudence. The Court pointed to the societal interest in the availability of colors to all traders and thus incorporated the competition law into the trademark analysis. This choice is especially topical in the terms of luxury branding, as expensive brands usually use unique colors as the indicators of identity, tradition, and exclusivity. The law also offers such brands the opportunity to consolidate their market and create a sense of loyalty in the market through the ability to trademark colors, which may increase their market power. The necessity of obtained distinctiveness, however, serves as a

[5] *Libertel Groep BV v. Benelux-Merkenbureau*, Case C-104/01, [2003] ECR I-3793 (ECJ).

guarantee, as only those colors, which have become very much linked by a certain undertaking, get some protection. It is hard to meet this threshold and so cannot allow over broad claims that will shut down competition. Moreover, the strictness in terms of high accuracy of graphical representation guarantees the legal clarity, allowing the competitor companies to interpret the extent of protection and not to violate it. In the light of competition law, Libertel is a balancing exercise, where the economic consideration of color as a branding consideration is made but limitations are placed to ensure it does not lead to anti-competitive results. However, even in luxury markets, where branding costs are high and consumer identification is great, even the narrowly defined color trademarks may give great benefits, which may be used to strengthen leading positions. The case therefore points out to the current conflict between safeguarding brand identity and ensuring open markets, and how trademark law has to be proportionately determined so that it does not provide too much market power.

3. *Heidelberger Bauchemie GmbH Case*[6]

The Heidelberger Bauchemie GmbH (2004) ruling also narrows down the European jurisprudence in the area of color trademarks, especially in relation to color combinations, and also emphasizes the need of precision to avoid anti-competitive outcomes. In this, the European Court of Justice dealt with the question of whether a blue and yellow combination, which was not described in a certain space, can be registered as a trademark. The Court found that such a mark did not qualify as required in clear, precise, and objective in the graphical representation.

The ruling by the Heidelberger Bauchemie GmbH, 2004, also illustrates the tightening of the law of the European territory against the use of color trademarks especially when it comes to combination of color, and it explains that it is vital to be specific because otherwise the process will have anti-competitive impacts. The European court of justice has in this case taken into consideration the possibility of wanting to have blue and yellow combination as a trademark despite having no clear spatial organization. The Court also believed that such a mark was not in compliance with one of the criteria of the graphical representation which is that it must be clear, precise and objective as required in the old

[6] *Heidelberger Bauchemie GmbH*, Case C-49/02, [2004] ECR I-6129 (ECJ). *Heidelberger Bauchemie GmbH v. Deutsches Patent- und Markenamt*, Case C-49/02, [2004] ECR I-6129 (ECJ).

jurisprudence. The court ruling has serious implications on competition law since a company can no longer can make a claim that is too broad and therefore can be applied very broadly and thereby inhibit freedom of competition. The Court further restricts itself to some, familiar applications of colors, by ascertaining very stringent and systematic organization of color, in order to protect the registration of trademarks on abstract ideas. This choice puts a significant limitation on the area of protection in the context of luxury branding where combinations of colors would also be included in a visual brand. Although it is possible to still adopt unique combinations as a brand, one should do it in a way that the full spectrum of the rights is evident. This aids in producing legal certainty, and decrease the occurrence of chilling effects on competition whereby the companies will not use particular colors in fear of infringement. The ruling also indicates a bigger issue of whether the total effect of the exclusive right to colors and combinations should be considered. Monopoly may also be curtailed to a small number of options so that a few companies are permitted to be monopolies in various colors or patterns, which means that there is a lack of innovation and dynamism in the market. Meanwhile, the ruling does not cancel the existence of color trademarks as a form of such an exercise but just that such rights must be reasonable and need not go further than protecting actual brand identifiers. This is a fine thread in the luxury markets where visual distinction is such a significant value and distinguishing factor. It is upon this that the Heidelberger decision is likely to alter the use of color trademarks to a more subtle and competition-friendly practice and should be narrowed down to ensure it does not take on anti-competitive overreaching.

4. *Christian Louboutin v. Yves Saint Laurent*[7]

Christian Louboutin v. Yves Saint Laurent (2012) is a sunny example of the use of trademarks in the luxury fashion world and how the courts are trying to balance between the protection of trademarks and the postulates of the competition law. In the case, Louboutin claimed that it had a right to the red lacquered sole on its high-heeled shoes under its exclusive rights since it was already a branding in its own right and its position. To this retort, Yves Saint Laurent created shoes in red-only, with red soles, on the concept that it would be a ridiculous limitation to creative freedom and competition to give a person a monopoly in a color in fashions. The case was upheld in the U.S. Court of

[7] *Christian Louboutin S.A. v. Yves Saint Laurent America, Inc.*, 696 F.3d 206 (2d Cir. 2012).

Appeals, Second Circuit which granted the trademark that was registered by Louboutin but restricted the use to the trademarks where the red sole was in contrast with the rest of the shoe. This subtle result is a pointer of a calculated attempt to strike a balance between the objectives of brand defense and market competition. In the area of competition law, the case refers to the dangers of granting wide color monopolies in the field of aesthetics and innovation. Fashion is concerned with the utilisation of colors and designs and by patenting one particular color; competition to develop and sell the products would be very limited. Meanwhile, the court also accepted that the red sole of Louboutin had gained a second meaning and that it was a strong indicator of a origin, which should have at least partially been safeguarded. In limiting the trademark to contrasting use, the court did not intend to limit in so many aspects freedom of competition by allowing the use of color red in a different manner. The luxury branding experience demonstrates that the visual aspects contribute significantly to power creation and sustenance in the market. The red sole is another mark of superior quality and exclusivity, it is used to indicate exclusivity and status as well, and it has solidified the brand of Louboutin in the luxury market. It is also implied in the case that this type of power is not absolute and can only be closely specified to prevent the effects of anti-competitiveness. The decision, therefore, provides an example of practical solution to color trademarks and awareness of the importance thereof but restricts the scope of protection to ensure that competition and innovations are not hampered.

5. *Cadbury UK Ltd V. Nestle SA*[8]

The case in Cadbury UK Ltd v. Nestle SA (2013) points out the scope to which protection of color trademarks may be extended and the precision and exactness needed to ensure that the implications of anti-competition are not experienced especially in the market of consumer goods. Cadbury wanted to patent the unique purple color (Pantone 2685C) to be applied on chocolate products indicating that they have gained much attention among consumers over the years. Nestle appealed the registration arguing that the description of the color was too generic and could not be considered descriptive enough to qualify as a trademark. The UK courts ruled in favour of Nestle on the basis that the Cadburys application was not clear and specific as it was not specific enough on the scope of the

[8] *Société des Produits Nestlé SA v. Cadbury UK Ltd*, [2013] EWCA Civ 1174 (Court of Appeal).

alleged monopoly. This case is important in regards to competition law, as it may prevent unreasonable appropriation of a popular color in a very competitive environment. Chocolate can usually be packed in the color of the chocolate and monopoly of a certain color may greatly restrict the ability of other competitors to sell their products effectively. The implication is a bit different in case of luxury branding but is still applicable. Cadbury does not work in a luxury market, albeit high end as presented in the case, but color can be used as an effective branding tool, which can increase strength in the market. The tight definition that the court required will however guarantee that these powers are not given too much wigle thus creating a competition balance. Another broad concept that the decision reflects is that trademark laws must not pose unnecessary obstacles to the entry or complication as far as the accessibility of the necessary marketing equipment is concerned. The court did not refuse the claim made by Cadbury, and competition policy does not contradict with the purposes of the trademark law; the range of colors can be offered to all players of the market. Simultaneously, the case in question illustrates that even a well-recognized brand has no chances of registering non-traditional marks to the latter, as long as they do not fit the strict legal criteria. It is a reminder in such a luxurious market like the role of branding is most significant and that color trademarks are not handed out, but should be worked out in detail. Overall, Cadbury v. Due to the necessity to have an intermediate between the two extremes of monopolizing the competitive process and the necessity to take into consideration the role of color in branding, Nestle condones the necessity to have an intermediate course.

6. CONCLUSIONS AND SUGGESTIONS

The color trademarks and market power topic in the luxury branding analysis suggests that, the line to protect intellectual property rights versus the competitive markets is very thin. Color trademarks, among the most efficient tools of brand recognition and consumer awareness, can be utilized in acquiring the invaluable competitive edge on the market, in particular, in the field where aesthetics and symbolism are to take centre stage among consumers. The actual market power can be enhanced through the strategic utilization of color in the luxury market that has close links between branding and exclusiveness and brand perception in the marketplace, and the dominance can be reinforced.

However, the law must ensure that these benefits do not end up being an unwarranted ban of the competition. The trademark law, as to its variations of distinctiveness, non-functionality and precise representation, provide a great protection against the overreaction of the vice of the color trademarks. At the same time, competition law offers a necessary solution to a situation of anti-competitive effect of the exercise of trademark rights, such as the market foreclosure or the dominant position abuse.

These two legal disciplines do not necessarily clash with each other but they complement each other. The intellectual property rights result in innovation, investment and brand differentiation that consequently results into dynamic and competitive markets. These rights are competition law-protected concepts that were not exploited at the expense of consumer welfare or competition process. The balance is particularly applicable when it comes to the trademarks of color since there are only a finite amount of colors available and the applicability of such colors in product design and marketing is limited too.

The limit of this equilibrium will be strained later as the methods of branding will become more advanced and markets will be globalized. Consideration of the economic impact of protection of trademarks on the color aspect should be taken very seriously by the courts and regulatory bodies in particular in areas where brand concentration and consumer loyalty is high. There will also be need to have a flexible and context sensitive approach, an approach that would accommodate the legal principles in addition to the realities on the market.

In conclusion, it is possible to justify the trend towards the popularisation of colour marks in luxury branding by the fact that the character of intellectual property in the current markets where image and perception of the consumer are at least priceless. Luxury brands are now relying heavily on color, which has surpassed aesthetic value to become a key source marker. They use colors to make their brands easily distinguishable in a highly competitive and perception-conscious market. The frequency and use of some colors and their location makes them specific and creates a high level of recognition with specific brands. Thus, these colors contribute significantly to brand equity and customer loyalty. However, it also introduces important issues of competition law with the increasing reliance on color trademarks. Monopoly on certain colors, especially in industries where there is considerable visual differentiation can lead to concentration of market power in particular to the other market players.

In such cases, the intersection between competition law, and trademark law becomes somewhat significant. Use of trademarks must be safeguarded from misleading and destroying the goodwill of the brands but it must not stretch to a wrongful monopoly over scarce visual resources. Because of the limited nature of colors being restricted, there is another risk of overreach since the ability to be able to manipulate colors which would be appealing and/or useful for the most will restrict rival organisations being in a position to successfully develop and promote their products. This applies especially to the luxury markets where the main elements of consumerism are beauty, appearance and symbolism. Consumer loyalty for a specific color may affect market success of the existing brand range which may deter the new entrant into the market and reduce market dynamism.[9]

We ought to adopt a medium-level and sophisticated color trademark management route, in light of these issues. One of the suggestions being put forward is the creation of a new set of criteria for developing distinctiveness and secondary meaning. Candidates must be asked to present evidence and strong proof of how the color has become a special attribute with their brand in the minds of their customers as colors are not a specialty in their own right. This would ensure that trademarks are not protected in areas where this is not otherwise justified and would not therefore create excessive color monopolies.

Restricting the area of protection granted to color trademarks is another issue to consider. Law must create distinctive character in color protection and it must be limited to specific goods, services or situation in which the color has gained distinctiveness and not general and vague proclamations by the legal authorities. It would allow the contenders to use the same color or minor modifications of the color in other locations without infringing the trademark right.

The functionality doctrine will be enforced more vigorously to prevent the misuse of trademark law to gain a commercial advantage over competitors. A color that is found to be of use or ornamental use in an industry cannot be trademarked. It could have been that the judicial guidance and use of this doctrine could have been done in a more reasonable and consistent manner to try and strike a balance between the intellectual property and competition law rights.

When pursuing registration of a trademark, or when enforcing it, competition law should be

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[9] A. Brown & R. Kumar, *Aesthetic Meets Antitrust: Luxury Brands and Fast Fashion in the Global Market*, p. 27 (Indian Journal of Law & Liberal Arts, New Delhi, 2026). https://www.ijllr.com/post/aesthetic-meets-antitrust-luxury-brands-and-fast-fashion-in-the-global-market-through-the-lens-of-c P. Singh et al., *Competition Law in Attempt to Understand (Luxury) Trademarks*, p. 14 (Concurrences, Brussels, 2021).

taken into account. Governments must contemplate a color's uniqueness and the likely market effects it will have - not only the probable colors the product will happen to be like. This refers to the analysis of the possible impact of the issue of issuance of exclusive rights in the development of barriers to entry, restricting innovation, or distortion of the market. The tightening collaboration between intellectual property offices and competition regulatory bodies can significantly contribute to the realization of this goal.

In addition, periodic review mechanism should be present whereby validity of color trademark is reviewed. Due to changing markets and consumer perceptions, a color that was once unique may lose its uniqueness or turn utilitarian. By looking at trademark law regularly, you will make sure that it remains relevant and adequate.

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