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## CHALLENGES IN REGISTERING UNCONVENTIONAL MARKS UNDER THE TRADE MARKS ACT, 1999

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### ABSTRACT

The Trade Marks Act, 1999 marked a significant legislative departure from its predecessor by expressly recognising the registration of shape of goods, packaging, and combination of colours as trademarks. Yet, despite over two decades of operation under this statute, the registration of unconventional marks including colour marks, sound marks, shape marks, smell marks, taste marks, motion marks, hologram marks, and position marks continues to encounter formidable legal and practical obstacles in India. The present research paper undertakes a systematic examination of the structural challenges that applicants face when seeking to register such marks under the Act. Proceeding from the definitional parameters in Sections 2(1)(m) and 2(1)(zb) to the procedural requirements under the Trade Marks Rules, 2017, and the Manual of Trade Marks Practice and Procedure, 2015, the paper analyses the twin pillars of graphical representability and distinctiveness as recurring barriers. Drawing upon a comparative analysis with international jurisprudence and an in-depth study of eight Indian court decisions rendered between 2015 and 2025, the paper identifies specific doctrinal deficiencies in the Indian regime including the absence of explicit statutory recognition for sound, scent, and taste marks, the lack of a coherent secondary meaning doctrine, and the underutilisation of non-visual means of representation. The paper concludes with targeted suggestions for legislative reform, administrative reform, and judicial recalibration to bring India's unconventional mark regime into alignment with contemporary global standards.

**Keywords:** Unconventional marks, non-traditional trademarks, graphical representation, acquired distinctiveness, Trade Marks Act 1999.

## **I. INTRODUCTION**

The idea of a trademark has been traditionally limited to visible, word-based, or device-based marks. The Trade Marks Act, 1999 (the Act) is an Indian statutory effort to broaden this conception in adhering to a broad, inclusive definition of 'trade mark' by Section 2(1)(zb) and 'mark' under Section 2(1)(m). Under these provisions, a mark incorporates the pattern of objects, wrappings and union of colours thus all by implication the entry door leading to unorthodox trademark protection. The Trade Marks Rules, 2017 and the Draft Manual of Trade Marks Practice and Procedure, 2015 also tried to formalise the registration process of marks like sound marks, where MP3 files and musical notation have to be submitted.

Although these progressive measures have been put in place, unconventional marks of a very wide group such as the sound marks, colour marks, shape marks, olfactory marks, taste marks, texture marks, hologram marks, motion marks, and position marks remain disproportionately rejected, abandoned or held in definite pendency at the Trade Marks Registry. The underlying reasons include diverse ones: the statutory text still has a requirement of graphical representability, which is fundamentally ill-structured to consider non-visual marks; the secondary meaning or an acquired distinctiveness is not worked out by legislation, but evolved ad hoc by case law; and the Registry does not carry with it the infrastructure of administration and training of examiners that would be necessary to test consistently the use of non-conventional

The Indian commitments and contract of Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) force the policy that the meaning of a mark must be the most liberal in order to meet any sign that can identify the products or services. However, the domestic apparatus still favors the visual marks and considers non-visual marks to be exceptional and has to be supported with extraordinary evidence. This is not a simple academics tension that merely impacts upon brand owners in music, consumer goods, pharmaceuticals, and technology, who depend upon auditory, olfactory, or tactile features as the key brand signifier.

## **II. RESEARCH PROBLEM**

The main issue considered in this paper is that the Indian trademark registration system is structurally not suited to unconventional marks. Although the Trade Marks Act, 1999 broadened the definition of mark to include non-traditional marks such as word and device

marks, it did not outline the registration avenues, the evidential facts and examination guidelines applicable to the non-traditional category of marks. This is because the graphical representation requirement is based on the statutory language of the Act and serves as a de facto barricade to registration of sound marks, smell marks, taste marks, and texture marks, which cannot be suitably represented in two-dimensional visual form.

The absolute conditions of refusal in the context of Section 9 and relative conditions of refusal in the context of Section 11 of the Act developed in the context of conventional marks, are applied mechanistically to unconventional marks without special accommodation, which results in the lack of even-handed treatment at the Registry. Section 9(3) also limits registration of shape marks which are caused by the nature of the goods, which are essential to achieve a technical outcome or which add value to goods constraints that import European doctrinal principles, without (By way of procedural protective measures) parallel protection of applicants.

### **III. RESEARCH OBJECTIVES**

The following research objectives guided the present paper:

- To analyse the definitional and legislative framework in the Trade Marks Act, 1999 and the Trade Marks Rules, 2017 as they are used in relation to unconventional marks.
- To determine and evaluate the particular legal obstacles such as graphical representation conditions, individuality guidelines and pure conditions of rejection which hinder registration of unusual marks in India.
- In order to evaluate Indian judicial decisions of unconventional marks, an analysis of the interpretation and application of the statutory framework by the courts should be carried out.

### **IV RESEARCH QUESTIONS**

The following research questions are aiming to be answered in the paper:

- Whether does the Trade Marks Act, 1999 sufficiently cater to unconventional marks in its scope of definition, and, if so, in what ways are there gaps?

- What has been the impact of the demand of graphical representation as an obstacle to registering non-visual non-conventional graphical marking in India?
- What is the standard of distinctiveness under which Indian courts are treated of unconventional marks, and whether that is appropriate and proportional?
- How can the international jurisprudence and foreign legal models provide lessons to the reform of the unconventional mark regime of India?

(v) What specific legal reforms statutory, administrative, or judicial would most effectively address the identified challenges?

## **V. RESEARCH HYPOTHESES**

Although formally considering the unconventional marks (shape, packaging, colour combinations, etc.), the Trade Marks Act, 1999, keeps the structural obstacles, especially the presence of the graphical representation requirement and the lack of explicit requirements regarding the sound, smell, taste, and texture marks, which, in turn, exclude the range of unconventional marks, which are not to be registered. Indian courts and the Trade Marks Registry use the standard of distinctiveness in a disproportionately strict and inconsistent fashion to unconventional marks, leading to unfair refusals and a chilling effect on unconventional mark registration.

## **VI. RESEARCH METHODOLOGY**

This article adopts a doctrinal, comparative and empirical approach. The doctrinal method is used in the form of a textual and teleological interpretation of statutory provisions in the Trade Marks Act, 1999, the Trade Marks Rules, 2017, and the Draft Manual of Trade Marks Practice and Procedure, 2015, as well as primary judicial sources, such as the decisions taken by the Supreme Court of India and the High Courts of Delhi, Bombay and Madras. The comparative method is used to assess the approach taken to unconventional marks in various foreign jurisdictions such as in the European Union (EU Trade Mark Regulation 2017/1001), the United Kingdom (Trade Marks Act 1994) and the United States (Lanham Act) in order to gain insight about legislative and court standards that could be replicated in India.

## VII. LITERATURE REVIEW

Literary material about the topic of unconventional marks in India is also not very developed but expanding. The systemic explanation of the problems of definition and registration peculiar to non-conventional trademarks in India started with Dev Gangjee seminal essay, which examined the incongruity between the formal and practical scope of the Act. An authoritative textbook on intellectual property law, by the writer P. Narayanan, covers the registration of different types of marks; however, it dates before a number of judicial developments, especially those that were critical during 2018-2025.

Law of Intellectual Property Rights by VK. Ahuja discusses the interaction between the define clause provisions of the Act and the doctrine of distinctiveness and secondary meaning, ultimately finding that the judicialized system of developing laws in lieu of the specification granted by the legislature to the Indian regime introduces uncertainty. In more recent times, a comparative study of sound marks and scent marks in different jurisdictions by Vatsala Sahay found that the Indian insistence on the graphical representation as a precondition to registrability was increasingly being out of line with international practice where non-visual representations, including spectrograms, chemical formulae and digital samples, were being accepted.

In her article on the protection of non-conventional trademarks in India, Tanisha Ranjan notes that over recent years, Indian courts have been more ready to use the passing off and infringement actions to protect non-conventional marks, but that this judicial creativity cannot replace a sound statutory framework. In the article by Mugdha Palsule and Nikita Lakhani (CNLU, 2025), on the conventionalisation of non-conventional trademarks in India, it is found out that Trade Marks Registry uses the acquired distinctiveness doctrine selectively and inconsistently to apply to colour and shape marks.

The available literature, although useful, is largely outdated or does not fully cover the group of judicial decisions since 2018 that have advanced the law concerning shape marks, colour marks, and pattern marks in all aspects and complicate it in several ways. This gap is aimed to be bridged in the present paper as the aim is to incorporate these recent decisions into an analytical framework.

## VIII. STATUTORY FRAMEWORK: AN OVERVIEW

### A. Definition of 'Mark' and 'Trade Mark' under the Act

In section 2(1)(m) of the Trade Marks Act, 1999, the definitions of the mark are in an inclusive manner such that it would cover a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packing or even any combination of colours or combination of all colours is also covered. Section 2(1) (zb) gives a meaning of a trade mark that it is a mark which can be shown in a graphical form and also a mark that can differentiate between the goods or services of one individual and other individuals and can even take the form of a shape of goods, its packaging, as well as a combination of colours. The importance of these provisions is what is included and what is not included as well.

The fact that shape, packaging and combination of colour are expressly listed on top of the Trade and Merchandise Marks Act, 1958 is a very enhanced one when compared to the previous Trade and Merchandise Marks Act, 1958 that limited the definition of mark to the usual device, brand, heading, label, ticket, name, signature, word, letter, and numeral. But the 1999 Act does not specifically refer to the sound marks, smell or taste marks, texture, hologram or motion marks. It seems that the intention of the legislation was to have an open-ended definition that can fit new types of marks as time goes on, without the express reference has led to an interpretative doubt, and also forced both the Registry and courts to draw inferences out of thin air by reference to the general definition.

### B. The Graphical Representation Requirement

The statutory exclusion in regard to registering non-visual unconventional trademarks, as being one capable of being represented graphically, has become the single most important obstacle to the registration of non-visual trademarks. In the case *Raf Sieckmann v Deutsches Patent und Markenamt*,<sup>1</sup> the European Court of Justice expressed the Sieckmann criteria, saying that a graphical representation should be clear, precise, self-contained, easily accessible, intuitive, durable and objective. Although this judgment was made under the EU trademark law, its principles have been applied in Indian courts and the Registry.

In 2017 the EU, noting that the representation standard of the graphical representation had

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<sup>1</sup> Case C-273/00, European Court of Justice (2002) ECR I-11737.

become inadequate, substituted it by the requirement that the mark be represented in the register in a way that will allow the competent authorities and the public to identify the clear and precise subject-matter of the protection afforded by the mark to its proprietor. This standard, of clear and precise representation, includes audio files (digital) and video files as well as the three-dimensional one. India has not yet taken a similar amendment which places the graphical representation standard as a technical barrier. A pragmatic workaround was made by the Trade Marks Rules, 2017, Rule 26(5) to permit sound marks to be filed as MP3 files, with graphical notation attached. But there is no similar equivalent of smell, taste and texture marks.

### **C. Shape Marks: Section 9(3) and Its Implications**

In section 9(3) of the Act, there are statements to the effect that, a mark shall not be registered as a trade mark when it is solely composed of (a) the shape of goods which is caused by the nature of the goods themselves; (b) the shape of goods which is necessary to bring about a technical result; and (c) the shape which gives substantial value to the goods. The basis of these absolute prohibitions is Article 3(1)(e) of the EU Trade Marks Directive, and a policy of protecting the domain of the populace as a whole with respect to useable and usage forms. The provision, however, does not explicitly establish the fact of the boundary between the shape that meets substantial value and the shape that through extensive usage has become trademark distinctiveness which is at the heart of most commercially significant shape mark cases. Trade Marks Rules 2017 rule 26(3) stipulates that an application of a shape mark should include a written description of the mark and a visual representation of the mark in various views. These conditions, although reasonable, will increase the expense of the shape mark application and the amount of work involved as well as offer no information as to whether a given shape satisfies the distinctiveness test or not.

### **D. Colour Marks**

Section 10 of the Act discusses the colour limitation in registration of trade marks. The Act offers registration of combination of colours as a trademark, but does not specifically offers single colour marks. The 2015 Draft Manual of Trade Marks Practice and Procedure recognises single colour marks, but puts them on a stringent condition: the applicant must establish that the colour has acquired some sort of factual distinctiveness in that particular shade, and that its protection is extremely limited to that shade exclusively.

In *Colgate Palmolive Company v Anchor Health and Beauty Care Pvt. Ltd.*<sup>2</sup>, the Delhi High Court was mindful of recognising that single colours can, in theory, be treated as trademarks, but still understood the issue of colour depletion as a valid constraint. When the court noted that one colour alone has been ruled to be a trade mark was offset by qualifying it as subject to protection that is dependent on the goods themselves and the secondary meaning.

## IX. RESEARCH AND ANALYSIS

### Colour Marks: The Challenge of Proving Acquired Distinctiveness

**Christian Louboutin SAS v Nakul Bajaj & Ors.**<sup>3</sup>, an intermediary liability and trademark infringement case was filed by the Delhi High Court, presided over by **Justice Prathiba M. Singh** on November 2, 2018 to adjudicate a trademark infringement claim against Nakul Bajaj and Darveys.com The plaintiff, Christian Louboutin SAS had registered the red sole mark in India as a word mark, a logo mark and as a single colour mark. The defendants ran the site darveys.com and were selling what the plaintiff claimed were faked goods using its-trademarks.

The case law has the court considering the red sole a colour mark which is especially informative as to the law of unconventional marks. The court confirmed that one colour could be registered as a trademark when it has gained secondary meaning and is able to identify the goods of the owner. The court did not overturn the registration of the red sole mark and understood that the Pantone red colour on the sole of a shoe might serve as a badge of origin where it had attained enough distinctiveness in the minds of consumers. It was a significant judicial approval of single colour marks in India albeit with recognition of the high evidentiary standard that applicants must overcome.

The importance of the judgment is not only limited to the facts of the case. The court implicitly confirmed the commercial significance of unusual colour marks by admitting that a registered single colour mark (like the red sole) might be the foundation to a trademark infringement lawsuit as well as an infringement lawsuit against an e-commerce intermediary. This ruling continued to be referred to in future colour mark cases.

**The Christian LoBoutin SAS v Abubaker and Ors.**<sup>4</sup> was a red sole mark case where the red

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<sup>2</sup> 108 (2003) DLT 51, High Court of Delhi (2003).

<sup>3</sup> CS(COMM) 344/2018.

<sup>4</sup> 2019 (78) PTC 262 (Del).

sole mark registration was controversially struck down by a single judge after having earlier been held invalid by the same judge due to the argument that a single colour could not be considered a mark under Section 2(1)(m) of the Act. The single judge had reasoned, on the basis of a literal interpretation of Section 2(1) m, that the sine qua non under which colour mark registration could be affected was that of combination of colours and that a single colour ipso facto did not fit within the statutory definition.

The Division Bench appealed this decision on procedural grounds, refusing to decide a substantive question of whether a single colour was registrable. The fact that, however, one judge had invalidated a registered mark of colour by simply relying on a narrowing statutory interpretation testified, however, to the frailty of single colour mark protection in India and the pressing necessity of further specifying statutory amendment. The case showed the doctrine clash between the general definition of Section 2(1)(m) of a combination of colour and the larger principle of any sign that is capable of separating goods may form a trademark.

In a decision dated August 27, 2018, the Delhi High Court in **Marico Limited v Mr. Mukesh Kumar and Ors.**<sup>5</sup>, considered the protectability of the blue-coloured bottle as a part of the trade dress and colour combination of Marico associated with the Parachute brand of coconut oil. The plaintiff wanted the defending sides not to use its blue-coloured bottle and packaging that was misleadingly similar to its own, on the grounds of infringement of trademark, passing off and infringement of copyright.

Reviewing the trade dress of the respective packaging of the parties, the court held that the elements of passing off were prima facie, both the existence of goodwill and misrepresentation and the probability that damage will occur. During its analysis, the court based its argument on the well-established fact that the blue bottle and packaging of Parachute coconut oil had turned into a source identifier to the plaintiff under consideration with approval to the Madras High Court having earlier ruled in **Annamalayar Agencies v VVS and Sons Pvt. Ltd.**<sup>6</sup> that the blue bottle was the source identifier of Parachute. This case exemplifies the readiness of the courts to safeguard colour combinations as a part of trade dress despite the lack of explicit registration of the colour combination as a trade mark, with the law of passing off as the foundation.

This presents a serious registration problem: passing off to secure trademark protection needs

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<sup>5</sup> CS (COMM) 1569/2016

<sup>6</sup> O.A. No. 645 of 2006 in C.S. No. 603 of 2006.

an established reputation case-by-case remedied in each jurisdiction and is not accompanied by the statutory rights which registration imparts. The disconnect between the protection offered by passing off and the formal protection of registration system is a weakness of the Indian unconventional marks regime.

### Shape Marks: The Heightened Distinctiveness Standard

The Delhi High Court's judgment in **Knitpro International v Examiner of Trade Marks through Registrar of Trade Marks**<sup>7</sup>, delivered by **Justice Prathiba M. Singh** on July 13, 2022, is the most significant judicial pronouncement on the registrability of shape marks in India in recent years. The appeal arose from the rejection by the Senior Examiner of Trade Marks of the appellant's application (No. 2735618) for the registration of the distinctive shape of its knitting needle in Class 26, on the grounds that the mark was devoid of distinctive character under Sections 9(1)(a) and 9(1)(b) of the Act.<sup>8</sup>

On appeal, the court declined to interfere with the Registrar's rejection on the merits. The appellant's counsel ultimately withdrew the appeal on being unable to identify distinctive features in the needle's shape. However, the court took the opportunity to lay down the legal position on shape mark registration in India comprehensively. The court held that the threshold for extending exclusive rights to the shape of a product is 'quite high' under Indian trademark law. The shape must immediately be identifiable with the source of the product without the need for any accompanying name or logo. For trade mark registration of the shape of a product, the court held, registration can only be granted if the shape 'has acquired a secondary meaning'.

The court drew upon the American standard in *Wal-Mart Stores, Inc. v Samara Brothers*, which requires that a product design must 'always' prove secondary meaning and 'could never be classified as inherently distinctive'. The court also referred to the UK Supreme Court's decision in **Société des Produits Nestlé SA v Cadbury UK Ltd. (the Kit Kat case)**<sup>9</sup> and the judgments in *Levi Strauss & Co. v Imperial Online Services Pvt. Ltd. & Ors.*<sup>10</sup> as examples of marks that had acquired the requisite secondary meaning.

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<sup>7</sup> C.A. (COMM.IPD-TM) 110/2022

<sup>8</sup> "Trends and Emerging Challenges Relating to Non-Traditional Trademarks in India" *IJRPR* Vol. 6, Issue 11 (2025), available at: <https://ijrpr.com/uploads/V6ISSUE11/IJRPR55132.pdf> (last visited on Apr. 24, 2026).

<sup>9</sup> [2013] EWCA Civ 1174.

<sup>10</sup> CS(COMM) 657/2021, 2022 SCC OnLine Del 5046, High Court of Delhi (Mar. 24, 2022).

The judgment in *Knitpro* has been criticised as 'regressive' by some commentators, on the ground that it imposes a higher test secondary meaning as a mandatory requirement than the statutory text requires. Section 9(3) of the Act bars registration only where the shape results from the nature of the goods, is necessary to obtain a technical result, or adds substantial value; it does not expressly require proof of secondary meaning for all shape marks. The court's insistence on secondary meaning for all shape marks, including potentially inherently distinctive shapes, thus goes beyond the statutory text and adds a judicially created barrier not found in the Act.<sup>11</sup>

### **Pattern and Position Marks: Emerging Recognition**

In *Levi Strauss and Co. v Imperial Online Services Pvt. Ltd. & Ors.*<sup>12</sup>, Hon'ble Delhi High Court, on March 24, 2022, delivered a landmark decision in the sphere of non-traditional trademark protection in India. The plaintiff, Levi Strauss & Co., filed a suit seeking a permanent injunction, damages, and a declaration of well-known trademark status in respect of its 'Arcuate Stitching Design', the distinctive double-arc stitching pattern applied to the back pockets of its denim jeans since 1873. The defendant, Imperial Online Services Pvt. Ltd., was found to have continued selling jeans bearing the Arcuate Stitching Design on e-commerce platforms despite having given an undertaking in February 2021 to cease doing so.

The court held that the Arcuate Stitching Design, a non-traditional pattern mark, was entitled to trademark protection under Section 2(m) of the Act. The court's reasoning turned on a key insight: since the trademark owner's stitching pattern, even in the absence of a corresponding name or logo, uniquely identified the jeans as emanating from Levi Strauss & Co., the pattern fulfilled its function as a trademark, namely source identification. The court further held that the pattern had acquired a secondary meaning through over 150 years of exclusive use globally and was entitled to be declared a 'well-known' trade mark under Section 2(1)(zg) of the Act.

This case represents a significant judicial expansion of the concept of 'pattern marks' non-traditional marks that protect the way a design or set pattern is embossed, stitched, or otherwise applied onto the surface of goods. The court's recognition of the Arcuate Stitching Design as a registered trademark was particularly important in demonstrating that pattern marks, which had

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<sup>11</sup> "Non-Traditional Trademarks in India: Legal Recognition and Evidentiary Challenges" *IJLLR* (Mar. 15, 2026), available at: <https://www.ijllr.com/post/non-traditional-trademarks-in-india-legal-recognition-and-evidentiary-challenges> (last visited on Apr. 24, 2026).

<sup>12</sup> *ibid*

hitherto received limited Registry attention, could be formally protected as marks capable of being represented graphically under Section 2(1)(m).

### **Trade Dress and Shape Trademark: The Design–Trademark Interface**

The Division Bench of the Delhi High Court in **M/S Crocs Inc. USA v M/S Bata India & Ors.**<sup>13</sup>, decided by **Justices C. Hari Shankar and Ajay Digpaul** on July 1, 2025, addressed a critical question at the intersection of trademark law and design law: can a registered design simultaneously function as a shape trademark and ground a passing off action? The case arose from suits filed by Crocs Inc. USA against several Indian footwear manufacturers including Bata India Ltd., Liberty Shoes Ltd., Relaxo Footwear Ltd., and others alleging that these manufacturers had copied the distinctive clog-shaped trade dress of Crocs' foam clogs, including the unique molded shape, ventilation holes, and strap.

A Single Judge of the Delhi High Court had dismissed the passing off suits in February 2019, holding that Crocs could not claim passing off protection for features already covered by its registered design under the Designs Act, 2000, and that allowing such a claim would constitute a 'dual monopoly'. The Division Bench reversed this decision, holding that passing off is an independent common law remedy whose availability can be curtailed only by express statutory exclusion, which neither the Trade Marks Act nor the Designs Act provides. The court further held that whether Crocs' shape had acquired distinctiveness and whether the defendants' products caused deception were questions of fact requiring evidence, not threshold questions of law.<sup>14</sup>

The Crocs judgment is significant for the law of unconventional marks for several reasons. First, it confirms that a product's shape and configuration can simultaneously be protected under design law (for a finite period) and common law (as a source-identifying trade dress), without the former displacing the latter. Second, it clarifies that the acquisition of goodwill and distinctiveness in a shape or trade dress element over time can ground a passing off action independent of design registration. Third, it reinforces the principle that even functional design elements can, over time, acquire distinctiveness as source identifiers.

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<sup>13</sup> RFA (OS) (Comm) 22/2019, 2025: DHC:5037:DB.

<sup>14</sup> "Non-Traditional Marks and Their Registration Challenges" *Mondaq* (Jul. 22, 2024), available at: <https://www.mondaq.com/india/trademark/1496118/non-traditional-marks-and-their-registration-challenges> (last visited on Apr. 24, 2026).

## Pattern Marks and Brand Identity: Protecting the Three-Stripe Mark

In **Adidas AG v Keshav H. Tulsiani & Ors.**<sup>15</sup>, decided by **Justice Sanjeev Narula** on July 19, 2024, the Delhi High Court adjudicated a trademark infringement action by Adidas AG against a Delhi-based wholesale sportswear seller who had adopted the word mark 'ADIDAS' and used the iconic three-stripe mark on textiles. The defendant's justification that he had named his enterprise out of affection for his sister (an Adi in Sindhi) was found unpersuasive. The court awarded a permanent injunction and Rs. 14.22 lakh in nominal damages and litigation costs. From the standpoint of unconventional marks, the case is relevant because the claim encompassed not merely the word mark 'ADIDAS' but also the three-stripe mark applied to textile products, representing a distinctive pattern mark that Adidas has defended in multiple jurisdictions globally. The court's recognition that the three-stripe mark had been used by Adidas since 1949 and had achieved well-known status in India even before Adidas had an official commercial presence in India illustrates how long-standing use and international reputation can establish the acquired distinctiveness of an unconventional pattern mark. The court's award of damages reinforced that the protection of unconventional marks, such as pattern marks, carries meaningful enforcement consequences.<sup>16</sup>

## Sound Marks: Administrative Progress and Persistent Uncertainty

India does not yet have a body of case law specifically adjudicating the registrability of sound marks at the level of the High Courts, reflecting the relatively small number of sound mark applications that have proceeded to contested examinations. However, the Trade Marks Registry's administrative practice in the period 2018–2024 is instructive. Notable sound mark registrations during this period include Reliance Industries Limited's MOGO Jingle (November 2018), Mastercard International Incorporated's acceptance tone (September 2019), and Netflix Inc.'s 'Ta-Dum' sound mark (application filed December 2021, accepted 2023).<sup>17</sup>

The foundational sound mark registrations in India Yahoo! Inc.'s yodel (2008) and ICICI

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<sup>15</sup> CS(COMM) 582/2018.

<sup>16</sup> "Charting the Unconventional: Recognition and Challenges of Unconventional Trademarks in the Indian Trade Mark Regime" *CSIPR NLIU L. Rev.* (Apr. 1, 2024), available at: <https://csipr.nliu.ac.in/miscellaneous/charting-the-unconventional-recognition-and-challenges-of-unconventional-trademarks-in-the-indian-trade-mark-regime/> (last visited on Apr. 24, 2026).

<sup>17</sup> "Unconventional Trademarks: The Requirement of Graphical Representation under the Trade Marks Act, 1999" *CNLU L. Rev.* (Apr. 2025), available at: <https://www.cnlu.ac.in/wp-content/uploads/2025/04/Unconventional-Trademarks-The-requirement-of-Graphical-Representation-under-the-Trade-Marks-Act-1999.pdf> (last visited on Apr. 24, 2026).

Bank's corporate jingle 'Dhin Chik Dhin Chik' (2011) established that sounds are registrable under the Act's general definition of 'mark', provided they can be graphically represented and are capable of distinguishing goods or services. The Trade Marks Rules, 2017, Rule 26(5), codified the requirement of an MP3 file (not exceeding 30 seconds) accompanied by graphical notation of musical notes.<sup>18</sup>

However, the administrative practice also reveals significant inconsistencies. Some applications have been accepted on the basis of minimal evidence of distinctiveness, while others notably Suzuki Motor Corporation's application for a 'Distinct Car Running Sound' have faced prolonged examinations and objections under Section 9(1)(b) on grounds of functionality. The absence of formal judicial guidance on the standard of distinctiveness for sound marks, and the continued absence of explicit statutory recognition of sound marks (as opposed to mere administrative recognition through Rules and the Manual), leave this category of unconventional marks in a state of dependent uncertainty.

### **Overarching Challenges in the Registration of Unconventional Marks**

Beyond the category-specific challenges analysed above, several systemic issues compound the difficulties of registering unconventional marks in India. First, the Trade Marks Registry lacks specialised examination panels for unconventional marks. Unlike the European Union Intellectual Property Office (EUIPO), which has dedicated procedures and trained examiners for non-traditional marks, the Indian Registry applies the same examination framework to all mark categories, resulting in inconsistent standards.

Second, the absence of a statutory definition or official classification of 'unconventional marks' in the Trade Marks Act means that applicants must navigate the registration process without clear statutory guidance, relying on judicial precedents, the Draft Manual (which has never been finalised), and Rule 26 of the Trade Marks Rules, 2017. Third, the strict interpretation of the graphical representation requirement even in the post-2017 Rules era continues to disadvantage applications for smell, taste, and texture marks, for which no prescribed representation format exists. Fourth, the doctrinal uncertainty as to whether a single colour can be registered as a trade mark under Section 2(1)(m) as illustrated by the contrasting single judge and Division Bench

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<sup>18</sup> Rachna R., "Non-Conventional Trademarks in India: The What, The Why and The How" *CNLU L. Rev.* (2025), available at: <https://www.cnlu.ac.in/wp-content/uploads/2025/07/Non-Conventional-Trademarks-in-India-The-What-The-Why-and-The-How-by-Rachna-R.pdf> (last visited on Apr. 24, 2026).

positions in the Louboutin cases has not been resolved by a larger bench or by statutory amendment, leaving applicants and courts without clear guidance. Fifth, the overlap between design registration under the Designs Act, 2000 and trademark protection for the shape or trade dress of a product creates strategic and legal complexity, as the Crocs litigation has amply demonstrated.<sup>19</sup>

## X. CONCLUSION

The Trade Marks Act, 1999 constitutes a significant milestone in the recognition of unconventional marks in India by formally expanding the definition of 'mark' to include the shape of goods, packaging, and combination of colours. However, a quarter century after its enactment, the Act's promise of inclusive trademark protection for non-conventional marks remains substantially unfulfilled. The graphical representation requirement continues to exclude sound, smell, taste, and texture marks from formal statutory recognition. The doctrinal standard of distinctiveness, particularly for colour and shape marks, is higher, less consistent, and less predictable than international comparators. The absence of a finalised Manual, specialised examination procedures, and a statutory classification of unconventional marks leaves applicants navigating an uncertain landscape.

The eight judicial decisions examined in this paper from the red sole colour mark litigations of 2018–2019 through the Levi Strauss pattern mark recognition of 2022, the Knitpro shape mark analysis of 2022, and the Crocs trade dress passing off ruling of 2025 collectively trace a judiciary that is more willing than the statute currently allows to protect unconventional marks, but that is constrained by the statutory framework and the absence of legislative clarity. The courts have done commendable work in developing doctrines of acquired distinctiveness, secondary meaning, and source identification for unconventional marks, but they cannot substitute for coherent statutory reform. India stands at a pivotal moment. The rapid growth of sensory branding, the increasing importance of sonic and olfactory identity in consumer goods and technology, and India's deepening integration into the global economy together create an imperative for reform. By adopting a 'clear and precise representation' standard, codifying the requirements for each category of unconventional mark, investing in specialised Registry

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<sup>19</sup> "Charting the Legal Recognition of Olfactory Marks: A Regulatory and Evidentiary Analysis" *IIM Ahmedabad Working Paper* No. 2025-08-01 (Jul. 31, 2025), available at: <https://www.iima.ac.in/hindi/sites/default/files/2025-08/WP%20No.2025-08-01.pdf> (last visited on Apr. 24, 2026).

capacity, and providing judicial clarity on the design-trademark interface, India can build an unconventional marks regime that is both commercially effective and internationally credible. The goal must be a trademark law that is as innovative as the brands it protects.

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