



A CRITICAL ANALYSIS ON DECEPTIVE SIMILARITIES OF TRADEMARKS IN INDIA

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ABSTRACT

The main reason intellectual property rights (IPR) are granted to creators of intellectual property is to safeguard their ownership rights. In contrast to other intellectual property, the primary goal of giving a certain organization a monopoly over a brand name or symbol is to benefit the public at large. Any word, phrase, symbol, or design that distinguishes a company from its rivals in a marketplace can be used as a trademark. Thus, the main reason for granting trademarks is to make it easier for customers and keep them from becoming confused by the large number of competitors in a market. This makes it even more crucial to safeguard customers from being duped by similar-sounding or similar-looking identifiers. Therefore, the trademark law benefits greatly from the 25 notion of "Deceptive Similarity." Understanding the idea of deceptive similarities is the aim of the study.to research the elements that influence misleading similarity.to understand the origin of the misleading resemblance. This study is based on an empirical framework and includes a survey, content, analysis, and qualitative data. The results were coded for analysis. Simple random sampling was used in this study, and there were 200 samples in all. The survey can be conducted anywhere in Chennai, however for this study, a sample of participants was chosen from 12 online platforms. Despite the fact that misleading similarity is a crucial topic in trademarks, the poll reveals that the majority of respondents are not very familiar with the idea. This prevents the party from registering a trademark if it has any similarities with other marks. The Indian trademark act prevents such act and punishes such persons for copying the mark of other trademarks.

Keywords: Trademark, Infringement, Deception, Intellectual properties, Marks, Similarity.

INTRODUCTION

The evolution of deceptive similarities of trademarks in India has witnessed a dynamic trajectory over the years. Beginning with rudimentary legal provisions, India's approach to trademark infringement based on deceptive similarities has progressively evolved to align with international standards. The Trade Marks of

1999, which established a more thorough framework for trademark protection, and later changes to fortify enforcement mechanisms are important turning points. Landmark court decisions have further clarified the criteria for determining deceptive similarities, emphasising the need to protect consumers from confusion while safeguarding the rights of trademark owners.

Furthermore, India's approach to trademark protection has been significantly shaped by its ratification of international agreements such as the TRIPS Agreement, which has promoted an atmosphere that encourages innovation and fair competition in the global economy. The Indian government has undertaken various initiatives to address deceptive similarities of trademarks in the country. These efforts include streamlining trademark registration processes through digitalization and automation, reducing the backlog of pending trademark applications, and enhancing the efficiency of the trademark office. Additionally, awareness campaigns and educational programs have been initiated to educate businesses and the public about trademark rights and deceptive practices. The government has also increased penalties and enforcement measures to deter trademark infringement and deceptive similarity cases, thereby promoting a more robust and protective environment for trademark owners and consumers alike. These initiatives collectively aim to strengthen intellectual property protection, foster innovation, and maintain fair competition in India's rapidly growing market.

The following elements need to be taken into account while assessing misleading similarity: Similarities in the type and function of the products sold by competitor vendors, The type of marks—words, invented words, names that are descriptive or not, geographical, etc. the kinds of products for which they are already trademarked or are anticipated to be trademarked. the extent to which the markings and the key characteristics are similar in terms of phonetics, appearance, and notion. their degree of education and intelligence, the kinds of customers who are most likely to buy products bearing the marks, and the degree of caution they are likely to exercise when making their purchase. The method by which the goods are purchased or ordered. Current trends in deceptive similarities of trademarks in India show a growing focus on e-commerce and online brand protection due to the rapid digitalization of commerce. This includes an increase in cases related to deceptive similarities in domain names, online marketplaces, and social media platforms. Additionally, there's a continued emphasis on protecting well-known trademarks against dilution and infringement. The judiciary has been actively involved in shaping trademark law, issuing decisions that clarify the criteria for deceptive similarity. Moreover, increased cross-border trade and international business operations have led to a rise in cases involving foreign trademarks, necessitating stronger mechanisms for international cooperation. Overall, the evolving landscape of trademarks in India is marked by a dynamic interplay of legal, technological, and global factors. It's challenging to definitively state which country gives more importance to deceptive similarities of trademarks compared to India, as this can vary depending on legal systems, cultural norms, and the level of trademark-related activity. Nonetheless, nations with strong and well-established trademark protection systems, such as the United States and several European countries, have strict laws against misleading similarities. These jurisdictions have a strong focus on safeguarding consumer interests and maintaining the integrity of trademarks.

Furthermore, 16 international treaties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), have forced nations all over the world to give trademark protection top priority, albeit with varying degrees of enforcement and strategies. It's essential to consider each country's specific legal and cultural context when assessing the importance placed on deceptive similarities of trademarks.

OBJECTIVES

1. To study about the concept of Deceptive similarities.
2. To examine the elements that contribute to false resemblance.
3. To understand the origin of the misleading resemblance.
4. To find the government measures related to deceptive similarity.

REVIEW OF LITERATURE

(Thakur, Rustam Singh 2011), It will be against a court's legal authorities to go beyond the precise wording of the regulations to express fairness after reading this article. Due to a lack of physical guidance, the court was having difficulty deciding an instance based on misrepresentation. The advice has now been expanded to the turn. There are numerous common issues that need to be resolved right now.

(Jain, Sankalp 2020) security for logos are ideologically justified by the attempt to allay customers' concerns, which may have the unintended consequence of confusing both parties by attaching a logo to the goods that are delivered and received rather than being purposefully done so. This could result in a decrease in sales and confused customers. This term is intended to denote an idea that is somewhat elusive and is used to evaluate a market logo that is misrepresented.

(Laskar, Manzoor 2013), The concepts of passing off and infringement action under the trademarks Act of 1999 are covered in this article. It outlines what behaviors qualify as passing off and trademark infringement, the various remedies, who can file a lawsuit and who can be sued, and the defenses that may be used in the event of a trademark infringement. The considerations to be taken into account in passing off and infringement cases are also included in the paper, along with other court rulings from Indian courts.

(Pandey, Kritarth 2014), The prerequisite is that the provided sign must be able to differentiate the products or services of one business from those of other businesses. This is due to the fact that a trademark's main purpose is to set one company's goods or services apart from those of other companies; it makes no difference if a mark is aesthetically pleasing or not.

(Gangjee, Dev S 2008), A puzzle opens this article. With the Trade Mark Act of 1999, which went into force in 2003, statutory provisions pertaining to trademark dilution were first incorporated into Indian law. However, these provisions have been on the shelf for the past six months, almost unaltered, since they were first introduced. According to this article, precedents for dilution under passing off are inappropriate for the statutory provisions since the latter need a more precisely defined injury to be caused and differ significantly from the former.

(Goyal, Narendra and Singh, Mukesh Kumar 2011), The concept of the theory of dilution is first illustrated in the paper before moving on to discuss its history and development in the modern era. The study

explains the progressive development of unique laws in nations such as India, the United Kingdom, and the United States of America. The conclusion is ultimately reached as a result of the recommendations to change the recent laws.

(Sharma, Apoorva 2011), In the first section of the article, I would explain what comparative advertising is, why, according to Professor Ralph's thesis, the rule of trademark protection should only be applied to areas that would confuse customers, and why expanding it would be against the general welfare. In the second section, I will describe how case law has influenced Indian trademark protection legislation and how they are safeguarded in other nations.

(Mishra, Neha 2008), Using significant cases and rules from their respective laws, the article investigates the issue of registrability of several non-traditional trademark forms in various jurisdictions, such as the US and the EU. The study also analyzes the reasons why non-traditional trademarks may not be sufficiently accepted as registered trademarks with the Indian Trademarks Registry Office, particularly when they involve unusual sound, taste, or odor marks.

(Francis, Geejo 2011), In addition to names, numbers, logos, coined terms, colors, or combinations of these, trademarks may also refer to the texture or shape of the product. Trademarks distinguish the product's origin and set it apart from inferior imitations. In India Trademarks are protected by The Trademarks Act, 1999 which came into force repealing the Trademarks and Merchandise Act, 1958 to meet the WTO and TRIPS requirements.

(Yu, Peter K 2017), The intellectual property standards that the RCEP aims to establish are the main subject of this article's analysis. The article then addresses whether or not there will be an intellectual property chapter in the RCEP Agreement, and if so, whether or not it will resemble the TPP Agreement's intellectual property chapter. In the article's conclusion, the considerably more difficult topic of whether the RCEP intellectual property chapter should and will have high or low protection and enforcement criteria is raised.

(Gupta, Aditya 2009), The enforcement of intellectual property rights at the borders has been a major concern in recent years due to the acknowledgment of the need to strengthen intellectual property protection, particularly with regard to counterfeit trademarks and pirated copyrighted items. They therefore offer a great deal of room for misuse, and their application has a mixed track record.

(Mahendiran, Shreekanth and Chatterjee 2022), This study investigates how trademark litigation can shield a company from future trademark infringement in markets with lax government enforcement. Using a stylized theoretical model, we empirically investigate this concept in relation to pharmaceutical trademarks in India. We compile a database of trademarks and look into lawsuits filed by certain trademark owners.

(Benny, Vipin 2020), This study looks at how the Indian economy is affected by three IPR indicators: patents, trademarks, and industrial design. This essay shows how industrial design, patents, and trademarks are important factors that influence economic progress.

(Ragavan, Srividhya 2019), By analyzing the function of use in relation to well-known markers, this research demonstrates how concentrating on usage can produce inconsistent outcomes. The harmonized trade regime's recommendations, particularly those pertaining to trademark law, are implicated in this article. This paper's overall thesis is that, depending on the market, a logical approach will inevitably require some degree of flexibility in defining what renown means for a foreign trademark in each country.

(Pandey, Abhishek 2020), The purpose of this research article is to examine trademark genericing. This article gives a quick overview of trademark genericing and the associated problems. A number of research issues have been addressed in detail, including what constitutes a trademark, how genericide happens, how to keep a trademark from becoming generic, and how genericide affects trademarks.

(Sharma, Deepshikha 2013), India is a signatory to the Madrid Protocol: India joins the global trademark registration system six years after ratifying the Madrid Protocol. For both India and the other 89 signatory nations, the Madrid Protocol mechanism is an affordable means of gaining protection. The system, which was first put into place in 1891 with the Madrid Agreement and expanded to include the Madrid Protocol in 1989, offers an alternative to a collection of national applications, each with its own registration requirements and associated costs.

(ISKCON vs. ISKCON Apparel Pvt. Ltd. & Anr. 2020), In addition to explaining the goal of the lawsuit that protected the Plaintiff's rights, the paper examines four key provisions of the Indian Trademark Law that served as the foundation for the Hon'ble High Court's ruling. These include national applications with all of their unique registration requirements and fees.

(Islam, Mohammad Towhidul and Bhuiyan 2022), In order to determine how the IP-related dispute resolution mechanism has been successful in upholding a peaceful international order, this chapter will provide insight into its methodical growth. It will go into detail about how the current dispute resolution system resolves disputes and works to establish global peace and security. It will go over the TRIPS Council's function, the WTO dispute resolution process, and how this program promotes world peace.

(Siems, Mathias 2000), The rights of database and semiconductor topography makers are discussed in this research in relation to this topic. Laws pertaining to information technology frequently need to be updated. This relates, among other things, to intellectual property law, when specific new items have been granted new intellectual property rights. However, the idea that these rights are inherent (also known as "sui generis rights") is debatable.

(Umahi, Okechukwu Timothy 2012), The Nigerian Patent Office, Nigerian Copyright Commission, and other government organizations that oversee different kinds of 20 intellectual property rights that impact them are examined in this article along with the administration of intellectual property in Nigeria. Therefore, in order for the system to benefit from the synergy, the article promotes de-bureaucratizing Nigerian intellectual property by harmonizing the rights under the 20 proposed Nigerian Intellectual Property Commission (NIPCOM).

METHODOLOGY

This study is based on an empirical framework and includes a survey, content, analysis, and qualitative data. The findings were coded for analysis. Simple random sampling was used in this study, and there were 200 samples in all. The survey can be conducted anywhere in Chennai, but for this study, a sample of participants was chosen from 23 online platforms.

Gender, age, education, occupation, and marital status are independent variables. Deceptive similarity means are dependent variables. Deceptive similarity is widely acknowledged as one of the grounds for 293 trademark infringement. Deception may occur in relation to: The doctrine of deceptive similarity is primarily used in the judicial courts as matters of trademark infringement; Do Indian trademark laws effectively reduce deceptive similarities of trademarks?

HYPOTHESIS

NULL HYPOTHESIS:

The respondents' opinions on deceptive resemblance, which is widely acknowledged as one of the grounds for trademark infringement, do not significantly correlate with their educational backgrounds.

ALTERNATIVE HYPOTHESIS:

The respondents' opinions regarding deceptive resemblance, which is widely acknowledged as one of the grounds for trademark infringement, are significantly correlated with their educational backgrounds.

ANALYSIS OF DATA:

CHI SQUARE:

Case Processing Summary

	Valid		Cases Missing		Total	
	N	Percent	N	Percent	N	Percent
Educational qualification of the respondents * Deceptive similarity has broadly recognised as one of the grounds for infringement of trademark.	227	98.7%	3	1.3%	230	100.0%

Educational qualification of the respondents * Deceptive similarity has broadly recognised as one of the grounds for infringement of trademark. Crosstabulation

Count

		Deceptive similarity has broadly recognised as one of the grounds for infringement of trademark.					Total
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree	
Educational qualification of the respondents	School level	0	0	5	3	0	8
	Undergraduate	22	22	14	3	0	61
	Postgraduate	0	36	3	36	22	97
	Others	11	0	36	14	0	61
Total		33	58	58	56	22	227

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	156.717 ^a	12	.000
Likelihood Ratio	197.940	12	.000
Linear-by-Linear Association	9.982	1	.002
N of Valid Cases	227		

a. 5 cells (25.0%) have expected count less than 5. The minimum expected count is .78.

INFERENCE:

Since the null hypothesis regarding the educational background and their viewpoint on deceptive similarity—which is widely acknowledged as one of the grounds for trademark infringement—is rejected, the alternative hypothesis—which has an expected p value of less than .005—is put forth.

RESULT:

With a few exceptions, Figure 1 demonstrates that most respondents are aware of what deceptive similarity signifies. The majority of the 19 respondents, as seen in Figure 2, are aware of what deceptive similarity is. The respondents overwhelmingly concur that deceptive likeness is widely accepted as a basis for trademark infringement, as seen in Figure 3. The respondents overwhelmingly concur that deceptive likeness is widely accepted as a basis for trademark infringement, as seen in Figure 4.

1024 The majority of respondents said that deceit can occur when it comes to commodities, as seen in Figure 5. According to respondents, there may be deceit about commodities and trade connections, as seen in Figure 6. According to Figure 7, the respondents are largely ignorant of the fact that the law of misleading similarity is primarily applied in court cases involving trademark infringement. Figure 8 demonstrates that the respondents are largely ignorant of the fact that the law of misleading likeness is primarily applied in court cases involving trademark infringement, and some have expressed their neutrality toward the claim. The respondents gave the statement ratings ranging from 4-5, as seen in Figure 9. The majority of respondents gave the statement a rating of 4, as seen in Figure 10.

Conclusion: The p-value is smaller than .005. The null hypothesis is disproved here.

DISCUSSION:

It is seen in Figure 1 that most of the respondents are between the age group of 21-30 and have stated that deceptive similarity means dissimilarities between the trademark and deceptive literally means appearance of anything similar to another. It is seen in Figure 2 that PG students have responded more compared to other respondents and have stated that deceptive similarity means dissimilarity between the trademark as the name itself clearly states the deceptive which means to have something similar to other things like symbols and logo's. Figure 3 shows that respondents under the age of 20 strongly agreed that

deceptive similarity is a recognized basis for trademark infringement, while respondents in the 21–30 age group agreed with the 13th that deceptive similarity violates a trademark's exclusive rights without the owner's or any licensees' consent.

The majority of respondents indicated that they agreed that deceptive similarity is a recognized basis for trademark infringement, as shown in Figure 4-21. However, some respondents indicated that they had no opinion on the matter. Figure 5 shows that a greater proportion of respondents have According to 103, deception occurs when it comes to goods since it is almost identical to another mark and is hence more likely to mislead or confuse people. It is seen in Figure 6 that the respondents are mostly working in a public sector and have stated that deception can arise out of deception as of goods as it deceives the public people and respondents who are self-employed have stated that the deception can arise regarding the deception as of trade connections. Figure 7 shows that most respondents are largely ignorant of the notion that the theory of deceptive similarity is mostly applied in court cases involving trademark infringement because deception is a significant basis for trademark infringement. Figure 8 demonstrates that respondents have expressed ignorance, indicating that the doctrine of deceptive similarity is primarily applied in judicial courts as trademark infringement cases. Some respondents have also expressed neutrality toward the statement, expressing uncertainty that the doctrine of deceptive similarity is primarily applied in judicial courts as trademark. It is seen in Figure 9 that most of the respondents are residing at urban area and semi-urban area and have rated 4 to the statement that Whether the Trademark laws of India are effective in reducing deceptive similarities of trademarks which The fact that the trademark rules prohibit deceptive resemblance and have a maximum penalty of six months, three years, and a fine of up to two lakhs demonstrates their dissatisfaction. It is seen in Figure 10 that majority of the respondents have completed PG and have rated just four to the statement that Whether the Trademark laws of India are effective in reducing deceptive similarities of trademarks as the punishment and remedy available int enough for the offender and the aggrieved party. Conclusion: The p-value is smaller than.005. The null hypothesis is disproved here. Therefore, it is an alternative hypothesis that the dependent and independent variables have a significant relationship.

LIMITATION

The major limitation of my research was the area in which we took the survey, since we took our survey in the ESI HOSPITAL WEST KK NAGAR and it was difficult to collect proper data as the people were in hurry to do their work and most of the people to whom I collected the data was from mostly semi-urban area.

SUGGESTION

To address the issue of deceptive similarities of trademarks in India, several measures can be considered. First, increased awareness campaigns and education initiatives for businesses and consumers can help prevent unintentional trademark infringements. Second, the Indian government should continue modernizing trademark registration processes, investing in technology and reducing the backlog of pending

applications to expedite the examination of trademarks. Third, the legal system should strive for consistency in interpreting deceptive similarity, possibly through specialized trademark courts or tribunals. Fourth, collaboration with international bodies and foreign counterparts can enhance cross-border enforcement, especially in the age of e-commerce. Lastly, stricter penalties for trademark violations can act as a deterrent. By combining these approaches, India can create a more robust and effective system for tackling deceptive similarities of trademarks.

CONCLUSION:

Under many trademark regimes, the idea of deceptive likeness is commonly acknowledged as one of the grounds for trademark infringement. The Registrar of Trademarks may refuse to give an application trademark registration under the Indian legal system if there is a misleading likeness. Never the less, the Trademark Act does not include any specific standards that can determine the range and extent of the term "deceptive similarity." A judicial position on the cases pertaining to the situation at hand must be noted in order to close the gap. The Indian Judicial Courts have addressed issue in a number of cases, offering significant rulings and recommendations in cases involving misleading similarity.

The study's goal is (1) to learn more about the idea of deceptive similarity. (2) To research the elements that influence deceptive similarity. (3) To understand the origin of the misleading resemblance. The empirical form is the foundation of this study. Simple random sampling was used in this study, and there were 200 samples in all. The survey can be taken anywhere in Chennai, however for this study, a sample of persons who are well-known were surveyed online. The survey shows that most of the respondents are not much aware of the concept of deceptive similarity even though this is an important topic in trademarks. This prevents the party from registering a trademark if it has any similarities with other marks. The Indian trademark act prevents such act and punishes such persons for copying the mark of other trademarks.

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