



Trade Marks

Trade mark laws are governed by the Trade Marks Act, 1999 and the Trade Marks Rules, 2002. The object of this Act is to confer protection to the user of trade mark on his goods and to prescribe conditions for acquisition of trade mark. It also regulates the mode of transferring the right to use the trade mark. Trade mark means a registered trade mark or a mark used to identify the origin and manufacturer of the goods. The trade mark includes the use of the design, brand, heading, label, ticket, name, signature, word, letter or numeral separately or in any combination thereof.

Procedure

The trade mark Act provides for registration of trade mark with the Registrar of Trade Marks. For purposes of the registration of trade mark, India has been divided into four zones. The Trade Mark offices are located in Mumbai, Delhi, Calcutta and Chennai. After the application is processed and examined by the Trade Mark Authority, it is advertised in the Trade Mark Journal issued by the Trade Mark Registry at Mumbai for inviting objections. If no objections are filed within a period of three months from the date of advertisement, the Registrar of Trade Marks may register the trade mark. Section 18 of the Act provides for procedure for filing an application for registration of trade mark. This section states that an application shall not be made in respect of goods comprised in more than one prescribed class of goods.

Information required to file the Trade Mark Application

In order to file a trade mark application in Form TM-1 and the Additional Representation, the following information is required:

1. The name, address and country of incorporation/nationality of the applicant;
2. Class and description of the goods. The Indian classification of goods in the Fourth Schedule corresponds to International Classification; and
3. If the trade mark has been used in India, the date of its usage in India.

Period of Registration

Registration of a trade mark is initially for a period of ten years subject to renewal for a further period of ten years.

Relief against Infringements

When the registered trade mark is used by a person who is not so entitled, it constitutes infringement. The relief, which the Court may grant, includes injunction and other

damages or an account of profit together with or without an order for delivery of the infringed labels and marks for destruction or erasure. The general principle is that no man is entitled to represent his goods as being the goods of another man. It is an actionable wrong for any person to pass off his goods as and for the goods of another person.