

# Trademark Protection- A Conceptual Analysis

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## ABSTRACT

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is derived from the term "industrial property" which includes trademarks, designs, service marks, inventions, commercial names and designations and protection against unfair competition. The Paris Convention defined the term "INTELLECTUAL PROPERTY" for the first time. The Paris Convention provides for protection of industrial property like patents, trademarks, service marks, industrial designs, and the repression of unfair competition.

Intellectual property rights refer to the general term for the assignment of property rights through patents, copyrights and trademarks. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period.

By restricting imitation and duplication, monopoly power is conferred, but the social costs of monopoly power may be offset by the social benefits of higher levels of creative activity encouraged by the monopoly earnings. Intellectual property rights are intangible in nature, different from the objects they are embodied in. Intellectual property right is a means of just enrichment of the owner.

This study specifically talks about trademark as intellectual property right and explain the concept of trademark in detail.

## 1. Introduction

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation.<sup>1</sup>The intellectual property system helps strike a balance between the interests of innovators and the public, providing an environment in which creativity and invention can flourish, for the benefit of all.

The main aim of intellectual property is predominantly recognized in the commercial world to protect the interest of mercantile community, create monopolies and vest the same with the inventors. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

*"Intellectual property shall include rights relating to:*

- 1) *literary, artistic and scientific works;*
- 2) *performances of performing artists, phonograms and broadcasts;*
- 3) *inventions in all fields of human behaviour;*
- 4) *scientific discoveries;*
- 5) *industrial designs;*
- 6) *trademarks, service marks, and commercial names and designations;*

*7) protection against unfair competition and all other rights resulting from intellectual activity in industrial scientific, literary or artistic fields".<sup>2</sup>*

## 2. Classification of intellectual property

### PATENTS

A patent is a property right which is granted to an invention, allowing the patent holder to exclude others from making, selling, or using the invention.

A patent is a title which provides its owner the right to prevent others from exploiting or misusing his invention. It does not allow by itself making or selling an invention but it rather gives the right to exclude others from making, using, selling or importing the patented invention. It does not allow by itself making or selling an invention but it rather gives the right to exclude others from making, using, selling or importing the patented invention.

Patents can further be classified into:

1. Utility
2. Design
3. Plant

With patent protection, the patent holder can take legal action against anyone who copies the patented invention, design, or discovery. Without this legal protection, anyone can use similar designs, products, and processes without risk.

Essential requirements for a patent application are:

1. The invention must be a patentable matter.
2. The invention must be novel.
3. The invention must include an inventive step.

<sup>1</sup>[http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo\\_pub\\_450.pdf](http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf).

<sup>2</sup> Article 2(viii), WIPO

4. The invention must be susceptible of industrial application.

category of applicant as small entity in addition to natural person and other than small entity.

#### TRADEMARKS

Trademark is a mark which is capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks allow manufacturers to market their products in a unique way so that the consumers can clearly identify the organization that produces them. Trademarks indicate some kind of trade connection between the goods and services and the trademark owner. A trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, logos, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings. Trademarks are protected for specific classes of products and services for periods of 10 years, renewable indefinitely.

Some companies spend millions nurturing their corporate identities. As an illustration the President of Coca-Cola stated that even if the corporation's buildings – machinery – equipment - vehicles and physical property are destroyed, the company can get back on its feet provided the trademarks survive.<sup>3</sup>

#### 3. Definition of trademark

Trademark is a mark which is capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks allow manufacturers to market their products in a unique way so that the consumers can clearly identify the organization that produces them. Trademarks indicate some kind of trade connection between the goods and services and the trademark owner. Traditionally, the term trademark includes any word, name, symbol or device, or any combination thereof. However, trademarks have now evolved beyond this purview to include shapes, packaging, color combinations, sound, smell, holograms and even motion marks. A trademark clearly distinguishes a product or service of a company from that of other companies in the market.

The North American Free Trade Agreement (NAFTA) gives definition of the term trademark under Article 1708 as, “a trademark consists of any sign or any combination of signs capable of distinguishing the goods and services of one person from those of another including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging.”

#### COPYRIGHTS

Copyrights protect original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software. With copyright protection, the holder has the exclusive rights to modify, distribute, perform, create, display, and copy the work.<sup>4</sup>

In Japan, trademarks were defined as “symbols placed on goods which directly or conceptually express the origin of the goods”. This definition was first amended to include service marks and was later amended to include trade dress and three-dimensional objects.

The US Code defines ‘trademark’ as, “any word, name, symbol, or device, or any combination thereof, which serves to identify and distinguish the owner’s goods from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown”.

The creators of such works automatically acquire rights at the date of the creation of the work, which mean that they can control their further use. The only absolute requirement is that the work is original, i.e. not copied from somewhere else and has required original intellectual effort by the author.

In the US, shapes of goods can be protected under section 43(a) of the Lanham Act. Section 43(a) protects both registered and unregistered trade marks.

#### DESIGN

The industrial design recognizes the creation new and original features of new shape, configuration, surface pattern, ornamentations and composition of lines or colours applied to articles which in the finished state appeal to and are judged solely by the eye.

The Indian Trade Marks Act, 1999 defines trademark as, “trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours and;

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or

<sup>3</sup><http://www.innovaccess.eu/types-of-ip>.

<sup>4</sup><https://www.upcounsel.com/intellectual-property-protection>.

without any indication of the identity of that person, and includes a certification trade mark or collective mark."<sup>5</sup>

A trademark can be a word mark, service mark or logo mark. An example has been given below for the company Apple Inc., well known for their electronic goods.

Following images represents word mark and logo mark of Apple.



Apple Word Mark



Apple Logo Mark

#### 4. Historical Background Of Trademark System

Most accounts of the history of trademarks tend to focus on two intertwined themes. One is a history of the social practices and understandings attached to the activity of applying marks to goods; the other is a positivist history of trademarks law. These two histories are often conflated in a way that suggests that the law inevitably evolves with, or ought to reflect the changes in, the nature and functions of marks.<sup>6</sup>

The origin of trademarks can be traced back as far as the beginning of the circulation of goods. The history of marks is nearly as old as the histories of mankind.

In the earliest times traders applied marks to their good to indicate ownership. These are called proprietary or possessory marks. Most of the earliest known trade marks on goods are associated with makers' or owners' identities. For example, merchants marked their goods before shipment so that in the event of a shipwreck, any surviving merchandise could be identified and retrieved. From medieval times marks were used for a slightly different purpose within guild structures. In order to be able to identify the source of unsatisfactory goods, the guilds required their members to apply identifying marks or signs to the goods. Gradually as Industrial Revolution sparked, guild system disintegrated into free business and thus establishing civil protection against those who replicated the mark of another.

Prior to enactment of any statutory laws relating to trademarks, these marks prevailed as common law marks. The dictum 'nobody has any right to represent his goods as the goods of somebody else' and 'nobody has the right to pass off his goods as the goods of somebody else' was established in the case, *Southern v How, 1617*, where a clothier who had gained great reputation by putting his marks on clothes made

<sup>5</sup>Trademarks Act, 1999, Section 2(zb).

<sup>6</sup> F. Schechter, *The Historical Foundations of Law Relating to Trade Marks* (1925).

by him was used by another to deceive and make profits. The Courts thereafter followed these principles as the law. They recognized such disputes and gave remedies as 'passing off'.<sup>7</sup>

The British Trademark act of 1875 was the first statute for protection and registration of trademarks. The Trade and Merchandise Marks Act, 1940 was the first Indian legislation which dealt with trademarks. Later it was replaced by the Trade Marks Act, 1958, which was replaced by the Trademarks Act, 1999. The Trademarks Act, 1999 came into effect on September 15, 2003.

#### 5. Types Of Trademarks

Many business owners try to choose names or marks that clearly spell out the product or services that are being offered. However, these are the weakest types of marks. Generally, the strength of a mark is improved if the mark has less connection to a characteristic of the products or services it identifies.

##### Generic marks

*Generic trademarks are common terms used to name products or services, for example, a brand of shoes called "shoes." These marks don't qualify for protection.* Generic trademarks describe a product, so no one can register them as trademarks. These marks don't qualify for any protection because anyone has the right to use generic words to describe the products they are selling. To qualify a generic mark for a trademark, it needs to describe qualities, characteristics, or ingredients of the good your business sells. However, it's possible to combine a generic mark with other words to have a trademark approved.<sup>8</sup> A trademark is more or less strong depending on how unique it is.

##### Descriptive marks

Again, descriptive marks cannot be registered as trademarks unless these have a secondary meaning. The marks which describe the product or the ingredients or nature of a product are known as descriptive marks. Generally, such type of marks are protected or given registration as these marks can not be monopolized. An example of a merely descriptive mark would be COLD AND CREAMY for ice cream. Such a mark is unlikely to be granted registration, as the phrase merely describes an attribute of the product. Words that merely describe an attribute, feature, end result or use of the product, or the persons employed in its production, generally are not granted trademark protection.<sup>9</sup>

##### Fanciful or Coined marks

Fanciful trademarks are inherently distinctive. Fanciful marks involve terms that are invented solely to function as a trademark or service mark, or that have completely fallen out of common usage.

A fanciful mark does not have meaning other than with reference to particular products or services. For example, Exxon® is used solely to refer to a brand of motor fuel and

<sup>7</sup> <https://www.bananaip.com/ip-news-center/history-and-evolution-of-trademark/>.

<sup>8</sup> <https://www.upcounsel.com/generic-trademark>.

<sup>9</sup> <http://www.inta.org/TrademarkBasics/FactSheets/Pages/TrademarkStrengthFactSheet.aspx>.

products related to the motor fuel. Similarly, Kodak® (now "Eastman Kodak") was used as a mark for a company that produced imaging innovations. Other fanciful marks are those like Clorox® and Polaroid®.<sup>10</sup> Fanciful or coined marks are the strongest type of trademarks.

### Suggestive marks

Suggestive trademarks are those that 'suggest' rather than 'describe' qualities of the underlying goods or services. A suggestive mark hints at or suggests the nature of a product or service or one of its attributes without actually describing the product or service. Examples of suggestive marks would be AIRBUS for airplanes, HABITAT for home furnishings.

Suggestiveness and descriptiveness are not mutually exclusive. Courts have clarified this fine distinction by stating that a mark is suggestive if it requires imagination, thought and perception to determine the nature of goods or services in question. For instance, it takes an imaginative leap to realize that greyhounds are sleek and fast, and that these traits are connoted in the use of GREYHOUND for a bus line. By contrast, no imaginative leap is required to figure out that QUICK STOP for a convenience store is meant to connote speedy service, and that such a mark would be classified as descriptive rather than suggestive.<sup>11</sup>

### Arbitrary marks

Before filing an application for registration of trademark, it is important to assess the mark and to determine what category is most appropriate to the mark. It is important to understand the difference between each type of trademark. If the mark is too generic, it might be difficult to be qualified for registration. Understanding all the different types of marks helps the proprietor/user to know whether he needs to make changes to the mark before applying for registration. It is best to completely understand each type of trademark. The categories of trademarks designate how unique the mark is and how much protection it offers in legal situations.

## 6. Functions of trademark

The main function of the trademark is to create a separate identity of the product. It creates an impression on the minds of the consumers and distinguishes the products of a particular entity from those of others. It gives an indication of trade source or manufacturer. It tells the person who is about to buy that what is presented to him is either what he has known before under the similar name as coming from a source with which he is acquainted, or that it is what he has heard of before as coming from that similar source.<sup>12</sup> The trademark represents the product and advertises it, as well as it guarantees the quality of the product.

<sup>10</sup><https://www.justia.com/intellectual-property/trademarks/strength-of-marks/fanciful-marks/>.  
<sup>11</sup><http://marklaw.com/index.php/trademark-terms-s/304-suggestive-trademarks>.

<sup>12</sup> Sumat Prasad v. Sheojahan Prasad AIR 1972 SC 2488 at 2490.

Under modern business conditions a trade mark performs three functions<sup>13</sup> :

1. It identifies the product and its origin.
2. It guarantees its unchanged quality.
3. It advertises the product.

As understood from the Trademarks Act, 1999 the trademarks have the following functions:

1. It identifies goods/or services and its origin: The mark should be capable of distinguishing one product from another. The mark should be such, so as to identify the origin of the goods or services to help the public trace the product to its source. This creates a better impression of the goods/services and helps in eliminating confusion.
2. It guarantees unchanged quality: The mark is an assurance of the quality of the product. With a particular mark, a certain amount of goodwill is attached, which helps in triggering the sale of the same. The public associates the product with the mark and is hence assured of the quality. The mark, over the time affirms quality and attracts a segment of public, which is convinced of the excellence and standard of the product. Therefore mark can be said to be an indicative of the quality of a product.
3. It advertises the goods/services: The new Act has encouraged the traders and service providers to develop their trading. The mark is beneficial in increasing globalization as well as increasing the trans-border repute of the product. As a result of advertising, the mark becomes popular as well as known to different sections of the public, across the globe. The mark caters to the development of the product as well as helping in business to grow. With increased advertisement, the mark begins to be popular.
4. It creates an image for the goods/services. The marks, which have acquired distinctiveness as well as popularity among the public due to, prolonged use help in creating an impression of the product. An image is created of the mark and hence the product is associated with the mark.

## 7. Qualities of a good trademark

Any trademark should be easy to remember whether it is a word, or any other feature like colour combination, labels, etc. It should not be too lengthy and complicated to be forgotten easily. It can only be suggestive of the quality of the products, but not descriptive; as it is against the law to include words like pure, excellent, best, perfect, etc. It must not be barred under the Trade Marks Act under the Prohibited classes of trademarks.

Recently there was an escalation in the trademark war over the colour Purple 2685C between Cadbury and Nestle. When Cadbury had applied for trademark in the colour in 2004, it was published in the Trade Marks Journal of UK in 2008- which was opposed by Nestle. Since then, there have been a number of appeals and hearings which resulted in the rejection

<sup>13</sup> Industrial Property (WIPO) 1978, p.219

of Cadbury's appeal in registering the hue of purple as a trademark.<sup>14</sup>

A good trademark should possess the following qualities:

- Should be easy to spell, pronounce and remember
- Should be distinctive
- Should not be descriptive

## 8. Economic importance of trademarks

Trademarks play an important role in commercialization and economic growth. Trademarks and related intellectual property encourage vibrant competition for the benefit of consumers, workers, brand owners and society at large.

World Trademark Review recently spoke to Rosa Wilkinson, director of innovation at the UK IPO, who stated: "It may seem hard to evidence but it is a simple story. Until you have a brand in which an investor - whether a bank or private investor - can believe, how can you expand? A trademark can be a great way of communicating who you are and what you stand for. It can say to potential investors that you are a business they should be involved with. It can help a business build corporate identity potential partners want to put their trust in".<sup>15</sup>

Every day billions of people are engaging with brands and trademarks. Trademarks play a very important role in protecting consumers and in promoting global economic growth. The consumer/customer may not even know who the manufacturer of the product is but it is the brand (mark) which creates an ever lasting impact upon the minds of the public and weights the decision of the general public whether to buy or not to buy a particularly branded product. Trademarks establish goodwill between the source of a product or service and the public. A well-chosen and well-publicized trademark often has value far beyond the physical assets of a company. Trademarks promote freedom of choice and enable the consumers to make confident and self purchasing decisions. Thus, trademarks help in building businesses. The good will built up by a manufacturer in respect of his good is an invaluable asset over which every manufacturer has ownership. The good will is manifested in the trade mark of the manufacturer. The trade mark forms the link between the goods and the manufacturer using which the manufacturer of particular goods may be identified.<sup>16</sup>

Trademarks are one of the most valuable intangible assets a company owns. However, due to lack of knowledge between the correlation of brands and trademarks, these marks are often misunderstood by the public at large. A recent Gallup poll reported that "consumers will give more money to the businesses they feel emotionally connected to".<sup>17</sup>

Trademarks help businesses build and retain demand for their products and services while enabling consumers to

<sup>14</sup><https://legaldesk.com/trademark-in-india-introduction>.

<sup>15</sup><http://www.worldtrademarkreview.com/Blog/detail.aspx?g=4dbdf74b-869c-4c3c-a853-e71df19a0c15>.

<sup>16</sup><http://www.domaindisputesindia.com/>.

<sup>17</sup><https://www.raconteur.net/business/understanding-true-economic-value-of-trademarks>.

quickly identify and make a purchase decision based upon a recognized trademark. Because of their value, it is vital for every company—be it a multinational conglomerate or a one-product startup business—to make every effort to protect its trademarks. Trademarks protect consumers, provide endless opportunities to promote and encourage innovation and ideas, increase jobs and fuel global economic growth.

Trademarks also provide the legal framework for a strong brand. So, Trademarks and intellectual property play a vital role in developing brands, promoting competition, driving economic growth and protecting consumers.

## 9. Basic principles of trademark law

The following are the fundamental principles of the trade mark law as embodied in the preamble and the various provisions on the Trade Mark Act, 1999-

1. Since registration confers on the proprietor a kind of monopoly right over the use of the mark, which may consist of a word or symbol legitimately required by other traders for bona fide trading or business purposes, certain restrictions are necessary on the class of words or symbols over which such monopoly right may be granted<sup>18</sup>. This principle is laid down in Section 9- Absolute grounds for refusal of registration.
2. Registration of a trade mark should not interfere with the bona fide use by other persons of names or words in ordinary usage. This principle is embodied in Section 13 and Section 35.
3. Property rights in a trade mark acquired by use are superior to similar rights obtained by registration under the Act. This is clear from the preamble which refers to 'better protection of trade marks' thereby necessarily implying the existence and availability of some protection under the common law. It, therefore, follows that prior users of trade mark should be protected against monopoly rights granted under the Statute. This principle is enacted in Section 34.
4. There are two main interests to be protected in a trade mark. The first the interest of the public. A trade mark ought not to be registered if its use will be apt to mislead the public as to the origin of the goods they are purchasing. There is also the interest of the other traders who are entitled to object if the use of the trade mark proposed for registration will be calculated to enable the applicant's goods to be passed off on the public as such other traders' goods. These interests are protected by Section 9 and Section 11<sup>19</sup>.
5. Granting the benefits of registration under the Statute is not only a matter of interest to the applicant seeking registration, but it is a matter in which the public is also interested. It is, therefore, necessary that any member who wants to object to the registration should be permitted to do so. The Act accordingly provides for advertisement of the application and opposition thereto by any interested party.<sup>20</sup>

<sup>18</sup> Perfection case, (1909) 26 RPC at 860, 861.

<sup>19</sup> Bass v. Nicholson (1932)49 RPC 88.

<sup>20</sup> Lord Atkin in Shredded Wheat (1940)57 RPC 137 at 149.

## 10. Trademark Classification In India

There are 1-45 classes in the nice classification out of which, classes from 1-34 categorize Goods and classes 35 – 45 classify services.

Each class specifies a broad heading called 'Class Header' which gives a clear idea as to the type of goods/services which fall under them and the detailed list of names of goods/services. The Classification also gives an 'explanatory note' which very clearly elucidates about the type of goods/services which would fall under the particular class.<sup>21</sup>

### Classification of goods and services – Name of the classes<sup>22</sup>

**Class 1.** Chemical used in industry, science, photography, agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesive used in industry

**Class 2.** Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordents; raw natural resins; metals in foil and powder form for painters; decorators; printers and artists

**Class 3.** Bleaching preparations and other substances for laundry use; cleaning; polishing; scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions, dentifrices

**Class 4.** Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels(including motor spirit) and illuminants; candles, wicks

**Class 5.** Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides

**Class 6.** Common metals and their alloys; metal building materials;

transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores

**Class 7.** Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs

**Class 8.** Hand tools and implements (hand-operated); cutlery; side arms; razors

**Class 9.** Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or

images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus

**Class 10.** Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopaedic articles; suture materials

**Class 11.** Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying ventilating, water supply and sanitary purposes

**Class 12.** Vehicles; apparatus for locomotion by land, air or water

**Class 13.** Firearms; ammunition and projectiles; explosives; fire works

**Class 14.** Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and other chronometric instruments

**Class 15.** Musical instruments

**Class 16.** Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks

**Class 17.** Rubber, gutta percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal

**Class 18.** Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery

**Class 19.** Building materials, (non-metallic), non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

**Class 20.** Furniture, mirrors, picture frames; goods(not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother- of-pearl, meerschaum and substitutes for all these materials, or of plastics

**Class 21.** Household or kitchen utensils and containers(not of precious metal or coated therewith); combs and sponges; brushes(except paints brushes); brush making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes

**Class 22.** Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes) padding and stuffing materials(except of rubber or plastics); raw fibrous textile materials

**Class 23.** Yarns and threads, for textile use

**Class 24.** Textiles and textile goods, not included in other classes; bed and table covers.

**Class 25.** Clothing, footwear, headgear

<sup>21</sup> <https://selvams.com/kb/in/trademarks/trademark-classification-in-india/>.

<sup>22</sup> [https://ipindiaonline.gov.in/tmrpublicsearch/classfication\\_goods\\_service.htm](https://ipindiaonline.gov.in/tmrpublicsearch/classfication_goods_service.htm).

**Class 26** . Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers

**Class 27** . Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings(non-textile)

**Class 28** . Games and playthings, gymnastic and sporting articles not included in other classes; decorations for Christmas trees

**Class 29** . Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats

**Class 30** . Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces, (condiments); spices; ice

**Class 31**. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt

**Class 32** . Beers, mineral and aerated waters, and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages

**Class 33** .Alcoholic beverages(except beers)

**Class 34** . Tobacco, smokers' articles, matches

#### SERVICES

**Class 35** .Advertising, business management, business administration, office functions.

**Class 36** .Insurance, financial affairs; monetary affairs; real estate affairs.

**Class 37** . Building construction; repair; installation services.

**Class 38** . Telecommunications.

**Class 39** .Transport; packaging and storage of goods; travel arrangement.

**Class 40** . Treatment of materials.

**Class 41** .Education; providing of training; entertainment; sporting and cultural activities.

**Class 42** .Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

**Class 43** .Services for providing food and drink; temporary accommodation.

**Class 44** .Medical services, veterinary services, hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

**Class 45** .Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

#### 11. Conclusion

Intellectual Property Rights (IPR) are considered to be the backbone of any economy and their creation and protection is essential for sustained growth of a nation. The intellectual property rights are now not only being used as a tool to protect the creativity and generate revenue but also to build strategic alliances for the socio-economic and technological growth. The researcher has given a comprehensive account on the trademark laws in India. The law of trademarks has undergone colossal change in the past seven decades with the enactment of Trademarks 1940 and Trade and merchandise marks act 1958 and Trademarks act 1999.

In India, the principles involving damages in trademark infringement are still evolving and the Indian courts are continuously adapting and developing newer interpretations. The focus on awarding damages has intensified due to increase in piracy and need for deterrence, importance of compensating plaintiffs in an environment where the cost of litigation is increasing and the need to relieve pressure on the country's criminal justice system by fashioning more civil remedies.

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