

LAW OF TRADE MARKS IN INDIA – WITH INTRODUCTION TO INTELLECTUAL PROPERTY. By Ashwani Kumar Bansal. CLIPTRADE (Centre for Law, Intellectual Property and Trade), Delhi, 2006. Pp. lxxix + 1306 + I-23, Rs. 1120/-.

The modern era is of high technological development, which has necessitated the establishment of huge commercial and business enterprises. Being the age of high technological advancement, to carry the competitive business, organizations requires numerous trade marks, brands, which have been made possible through innumerable trade names, inventions, and designs. Moreover, compared to the past, many industrial establishments and businesses today have gained the popularity of globalization which has been made possible because of very efficient communication systems. These days the business and commerce has become highly competitive and has crossed the political boundaries of the States. Such a scenario requires that whoever has invested his intellectual skills as an entrepreneur, his rights to run the business exclusively in his own trade names should be protected properly under the legal regime of the nation. We have witnessed in India a tremendous transformation of the industrial, commercial and business enterprises particularly after the reforms were introduced in the year 1992 in order to successfully compete in the free market economy in our globalized village. The economic development and the growth of economy, require advanced technological research and the methodology to protect the intellectual property rights. The Book under review is one of the authentic books on the subject on the law of trade marks in India. The book provides a brief discussion of the intellectual property rights in its first chapter.

The author states that intellectual property rights (IPRs) are an institution to protect the crucial part of capital including the valuation of the man-hours invested in the creation of certain types of objects which have been accepted as subject matter of intellectual property. It may be stated that intellectual property law is essentially a system to introduce order in industrial production and commercial activities by remunerating the initiator of ideas incorporated in products and assuring value to the investment made in the entities used to manufacture or

create those products. While discussing the intellectual property rights, the author has given the genesis of intellectual property rights, the subject matter of intellectual property, the nature of intellectual property rights and also the relation of intellectual property rights with human rights. The author also discusses the acquisition of intellectual property rights, their fair use and abuse and points out that intellectual property rights cannot be looked only from the point of view of acquisition and violation of intellectual property rights in which multinational companies of developed countries are interested. The author states that there is a need to appreciate the abuse of intellectual property rights together with the impact of intellectual property rights on development, growth, establishment and displacement of industries, strategies for all of the above and access to markets, without which the knowledge of intellectual property rights cannot be complete.

The present work is essentially about the law of trade marks in India. However, the same also provides a good discussion about the international relevance of trade marks with reference to the WTO-TRIPS. The author has elaborately discussed the fundamentals and legal concept of trade marks. The author provides for a clear picture about the products v. brands. The author very aptly states that what makes an enterprise succeed are not products but brands. The book also narrates different types of trade marks like trade marks simpliciter, certification marks, collective marks, textile marks and trade name or enterprise name. According to the author modern trade marks were born really in the second half of the nineteenth century, although their origin can be traced to some extent in the eighteenth century also in the cutlery trade.

Trade marks are important for enterprises and hence these are valuable intangible assets. The cost involved in having such assets are of two kinds: first, those connected with the registration and renewal of the trade marks and secondly, those involved in the advertising effect in creating and maintaining the economic value of the trade marks. The author points out that there is a difference between the economic and the legal value of a trade mark. All the registered trade marks are of the same legal value and have unlimited life as long as these are renewed but their commercial value and life expectation are widely different.

Any stock of legally equal trade marks will contain the trade marks of unequal commercial value with different economic ages and life expectations. It may be pointed out that basically trade marks are national and territorial in nature. A trade mark enjoys protection by use or registration in each of the countries of operation separately under the law of the respective countries. There is no centralized or international protection or registration available except as discussed in Chapter 32 of the book under review which is not international registration or protection or protection to well known trade marks. But it has a semblance of international protection. Trade mark(s) of foreign countries are more often referred to as FTMs as they are introduced in foreign countries or are owned by foreigners.

In Chapters Four to Thirteen of the book the author discusses in detail, the need for registration of trade marks, licenses, the authorities under the Trade Marks Act, 1999 for the purposes of registration, the grounds for registration of the trade marks, the grounds for refusal to register trade marks, about the well known trade marks, the registration procedure and prohibition under the Trade Marks Act, 1999, the vested rights and concurrent registration and procedure of rectification and removal from the register of trade marks. In Chapter Fourteen to Twenty Five of the book the author discusses in detail about assignment and transmission of trade marks, the law of licensing of trade marks, trade mark licensing strategies and restricted practices, foreign trade marks in India, protection of trade marks by registration under the law, the protection of trade marks by copyright law and infringement and passing off under the law of trade marks. The author also discusses in Chapter Twenty Five the protection of domain names. Domain name is basically an address on the internet which is the address regime of the virtual world – it lets the rest of the world know where one is located on the internet. In Chapter Twenty Six the author discusses in detail about the injunction and other remedies against infringement of trade marks under the Trade Marks Act, 1999. Chapter Twenty Seven deals with the offences and penalties for infringement of trade marks available under the Trade Marks Act, 1999. In Chapter Thirty One the author has elaborately discussed about the WTO – Trade Marks related intellectual property rights and the comparative Indian trade marks law. The author

also discusses in Chapter Thirty Two the Madrid System of registration of marks and European Community trade marks.

The author has written a comprehensive standard work on the law of the trade marks in India with important reference to the international regime under the WTO and Madrid System. The book in its appendices provides ready references of the Trade Marks Act, 1999; The Geographical Indications of Goods (Registration and Protection) Act, 1999; The Trade and Merchandise Marks Act, 1958; The Emblems and Name (Prevention of Improper Use) Act, 1950; The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; Agreement on Trade Related Intellectual Property Rights; Paris Convention for the Protection of Industrial Property; Madrid Agreement Concerning the International Registration of Marks; Trade Marks Law Treaty (1994); Nice Agreement Concerning International Classification of Goods and Services for the purposes of the Registration of Marks (1967); Trade Marks Rules, 2002; The Trade Marks Act, 1994 (U.K.) and Federal Trade Mark Act of 1946 (U.S.A.) (known as Lanham Act, 1946).

It's a voluminous work which is bound to be useful for the scholars, law students, law practitioners and industrial establishments. The reviewer has no hesitation in recommending the book to be kept in all law libraries.

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