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**THE BENEFITS AND RISKS OF TRADEMARK REGISTRATION:
EXPLORING THE PROS AND CONS OF PROTECTING BRAND**

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ABSTRACT

Registering a trademark is a crucial legal process that grants businesses exclusive rights to use their brand and prevents unauthorised usage for consumers against the illegal use or adoption of another party's well-known trademark with the intent to mislead the general public to obtain unproductive benefits in the market². A brand is an identifier, such as a word, symbol, or phrase, that distinguishes a company's products and services from other offerings in the marketplace³. While registering a trademark offers many advantages to brands, it also presents potential risks and pitfalls to consider. In the 21st century, in which the world wide web plays a significant role in everyday life, an extension of one's business to a web presence is natural. Since the pandemic, business owners have opted to operate their businesses virtually; thus, it is just as essential to guard a brand online as offline. Although the specifics of the law are different, constant vigilance remains necessary.

Benefits of Trademark Registration

1. **Establishing Brand Identity and Preventing Consumer Confusion** -One of the significant advantages of trademark registration is that it serves to solidify a company's brand identity and protect it from consumer confusion. Registration of a trademark provides the exclusive right for a company to use the associated mark for their goods or services; this protection prevents unauthorised parties from taking advantage of similar effects that may lead to consumer misunderstanding and negatively affect the brand's reputation and sales. Chapter III of the Trademarks Act,1999, describes the registration procedure for and duration. Establishing a unique brand identity and distinguishing company products or services from competitors is crucial to successful business operations. Trademarks provide businesses with a

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² Cadbury India Ltd. & Ors v. Neeraj Food Products, SCC 841 (2007).

³ Trade marks act § 2 (1) (i) (vii) (zb) (1999)

valuable tool to achieve these outcomes by helping them to create a recognisable, distinct identity in the marketplace. Through trademark registration, customers can accurately recognise, identify, and distinguish the products or services provided by one company from those offered by others. A trademark can help protect businesses from competitors by making it easier for customers to recognise and identify the source of a particular product or service. This is particularly necessary for industries with many similar products or services, which can lead to consumer confusion. By helping to distinguish each business and its products or services, trademarks allow customers to quickly find the items they are looking for while providing companies with an essential measure of protection from competition. The effect of Registration is given in Chapter IV of the Act. Trademarks can provide crucial legal protection for businesses against other companies attempting to use similar names, logos, or designs. Trademark law allows companies to act against other entities infringing on their trademark rights. This helps to protect a company's unique image and name from being used in ways that could confuse consumers or create unfair competition. Sometimes, a court may even order a defendant to pay damages for any losses from trademark infringement. A trademark can also ensure businesses have exclusive rights to use logos and branding in their geographic market. A strong trademark can give a business a competitive advantage by providing a unique symbol or design to identify the company's products or services. The trademark becomes an invaluable asset for the industry, enabling customers to immediately recognise the source of the goods and services, thus enhancing their perceived value of them in their minds. By establishing exclusive ownership of its trademark, a business can gain a certain level of market protection from any competitors who might attempt to copy its symbol or design and, therefore, unfairly capitalise on its brand recognition. Similarly, domain names are critical to the success of online businesses. Domain names are integral to a company's brand and are required for any serious online presence. To qualify as a trademark or service mark, a domain name must be novel and distinguishable from other goods and services. It can be a trusted online identification of goods or services. Domain names are protected at the national and international levels by the relevant provisions of federal Trademark Law and a variety of International Trademark Treaties, as well as at the global level by ICANN [Internet Corporation for Assigned Names and Numbers]. Any existing national or international trademark law body does not adequately protect domain names. To achieve this crucial goal, the Internet

Corporation for Assigned Names and Numbers (ICANN) and the World Intellectual Property Organization (WIPO) enacted the Uniform Domain Name Dispute Resolution Policy (UDNDR Policy), an efficient and effective dispute resolution policy. Domain names are recognised as intellectual property, such as trademarks; the Indian courts have ruled that a domain name's original purpose was to provide computer internet addresses. However, the Internet has become a business platform. Domain names have become business identifiers as online commerce grows. Thus, the domain name identifies the website and distinguishes distinct businesses and services. Therefore, a domain name as an address must be unique, and if used for a business, it must be exclusive. As more enterprises trade or promote online, domain names have become valuable and dispute prone⁴.

- 2. Increased Value of a Brand-**Trademark registration can offer various valuable benefits for businesses. Not only can it protect a brand from infringement, but it can also increase the value of that exact brand. Registered trademarks are considered valuable assets and can be leveraged in numerous ways, including licensing, selling, and acting as collateral for loans. Furthermore, having a registered trademark can make it easier for a business to expand into new markets and attract investors who may be wary of investing in an unregistered brand. Upon Registration, the distinctiveness and validity of the mark are presumed⁵. It is a legal asset which can be licensed to make money, For Example, Collaborative agreements between various clothing brands — Nike Jerseys in partnership with Manchester United (and all other logos that are contained on such jerseys)
- 3. Legal Protection Against Infringers-**Another benefit of trademark registration is the legal protection it provides against infringers. Registered trademarks are protected by law, and owners can take legal action against anyone who uses their trademark without permission⁶. This protection can be crucial in preventing others from using a brand's reputation and goodwill for their benefit. There cannot be an infringement if a mark is not registered⁷. A trademark registration only if it is not dishonest or fraudulent acts as prima facie proof of validity in a court of law; however, after a careful examination of sections 27, 28, and 34 of the Act, the Indian courts have noted that the rights of a registered proprietor are not absolute or indefeasible. The Act

⁴Satyam Infoway Ltd v. Siffynet Solutions (P) Ltd, 6 SCC 145 (2004).

⁵Trade marks act § 31 (1999)

⁶Trade marks act § 29 (1999)

⁷Trade marks act § 27 (1999)

creates a presumption that a mark is valid, which can be overcome by evidence of past use⁸.

- 4. Enhanced Marketing and Advertising Efforts-** Trademark registration can strengthen a brand's marketing and advertising initiatives. Registered trademarks provide a unique identity that can be utilised in branding campaigns, including logos, slogans, and product packaging. This can help differentiate a brand from its rivals, thus driving additional customers. One uses a Trademark, brand name, logos, or tagline in their adverts or marketing campaigns. Selling the products on a large scale would be easier if they were not associated with a business. It also identifies the goods or services sold or offered by a company, For example, Apple MacBook, Apple iPhone, Apple EarPods, etc. — when we hear the word apple — we associate the product with the digital goods company based in California, USA.

Risks of Trademark Registration

- 1. Cost and Time Involved-** Obtaining a trademark registration can be an expensive and lengthy undertaking. In addition to the application cost, legal fees, and other associated costs, businesses with limited financial resources may find the process of trademark registration to be a heavy burden. Moreover, the entire procedure can take several months to complete, which may prevent the launch of new products or services.
- 2. Potential for Rejection or Opposition-** **There is also a risk that competitors may reject or oppose a trademark application.** The trademark office may only accept a trademark application if it is unique to an existing trademark or if it is distinctive enough. Additionally, competitors may oppose a trademark application if they believe it infringes on their rights. Trademarks have the additional drawback of providing only minimal legal protection. Trademarks ensure that consumers recognise and associate your brand with quality goods and services. This means that trademarks cannot safeguard the quality of products or services themselves but rather simply the advertising for them. While it is essential to protect advertising, competitors will likely look elsewhere for intellectual property protection.

⁸Shamrock Geoscience Ltd & Anr v. KabaInfratech Private Limited and another, MANU 3814 (Del 2022).

3. **Need for Ongoing Monitoring and Enforcement**-Trademark registration also requires ongoing monitoring and enforcement efforts. Registered trademarks must be monitored to ensure no one else uses them without permission. Infringers must be identified and stopped; legal action may be taken to protect a trademark owner's rights. Even though it usually only happens in rare instances, famous trademarks can be genericised. Brand recognition is buyers' mental link between a product and its name brand. 'Sharpie', for example, is generally used to refer to any marker, while 'Google' is now commonly used to refer to any search engine. This is a positive indicator of a product's success when it has a significant market share. However, doing so jeopardises the trademark's legal protection. Instead of waiting for generalisation, trademark holders should take preventative efforts, including educating customers on the correct use of their brand. Indian courts have ruled that generic terms like "Chyawanprash" cannot be protected by trademark law. However, whether or not the Party should lose its monopoly on "Chyawanprash" is a question of law that should be decided case by case⁹. The courts have also said that giving one proprietor exclusive rights to a generic term would violate the principles of natural justice and be unfair to the other proprietors in the trade. The Court did recognise, however, that composite generic trademarks (marks that combine a generic term with other terms) can be used and registered¹⁰.
4. **Renewal**-Another drawback of trademarks is renewals. Trademark renewals are more frequent than other IP protections. Brands must be renewed every ten years, with fees for each class. For companies with extensive trademark portfolios, ten years might be pricey. Brands that are not renewed on time will be removed from the registry. Maintaining trademark renewals is essential. The limitation period for filing a renewal is one year from the expiration date. Failing to do this is revocation of all legal remedies¹¹. In *D. Baskaran v. Deputy Registrar of Trade*, the petitioner argued that the registrar should not have refused to renew his license because he had submitted his renewal application after the deadline. High Court ruled that the Deputy Registrar's refusal to register the trademark was unlawful, and it ordered a further evaluation of the application in light of the relevant law. This ruling reversed the earlier rejection and opened the door for reconsidering D. Baskaran's trademark registration.

⁹*Dabur India Limited v. Emami Limited*, MANU 2112 (2019).

¹⁰*Mr A. D. Padmasingh Isaac and M/s Aachi Masala Foods (P) Ltd v. Aachi Cargo Channels Private Limited*, 2 AIR (2014).

¹¹Trade marks act § 25 (1999)

Conclusion

In conclusion, registering a trademark can benefit organisations considerably, but some hazards and concerns must be considered. Gaining legal protection against infringement and establishing a distinct brand identity for consumers and competitors are just two benefits of registering a trademark. Trademarks are helpful because they allow businesses to stand out, develop their unique identity, and defend their good name and reputation. Moreover, trademark registrations can be lucrative for licensing, selling, and luring investors. Marketers and advertisers benefit from trademarks because they provide products with a different identity that customers can relate to.

Although trademark registration has many benefits, it also carries some dangers. The process can be time-consuming and expensive, which could be a problem for small enterprises. The requirement for constant monitoring and enforcement of trademark rights is another risk, as is the prospect of rejection or disagreement from competitors. In addition, trademarks provide little legal protection and cannot ensure the quality of goods or services. Another danger is generalisation, which occurs when a brand is used so frequently that it becomes synonymous with an unrelated term. In addition, brands often have stringent renewal requirements, and failure to do so on time can result in losing trademark protection.

Last, we should weigh the possible expenses, time commitments, and ongoing duties connected with trademark registration against the benefits of brand protection and improved value. Trademark registration is grave; firms should get legal counsel and perform extensive study before making decisions.