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**NON-TRADITIONAL TRADEMARKS: A COMPARATIVE
ANALYSIS OF THE INDIAN, US, AND EUROPEAN LEGAL
FRAMEWORKS**

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1. Abstract

This article provides a comprehensive study on non-traditional trademarks, a dynamic field in the Intellectual Property (“IP”) law landscape that goes beyond the typical word and logo marks to encompass sensory and three-dimensional indications like sound, color, shape, scent, and motion. The article analyzes in depth the legislative laws, judicial precedents, and administrative policies of non-conventional marks in countries like India, the United States of America, and the European Union. Comparative analysis undertaken in the paper will discuss the obstacles presented to the applicants and trademark offices to register and enforce rights in these categories of marks, together with landmark cases that have influenced the jurisprudence in both jurisdictions. The comparison shows that, although more or less reluctantly, the traditions of the US and EU have gradually accepted unconventional designs, thanks to laws more adaptable to economic demands, rather than the Indian framework, which remains more conservative and rigid. The paper concludes by proposing recommendations for reform in India, aimed at harmonizing its trademark regime with international best practices, thereby fostering innovation and brand differentiation in the global marketplace.

Key words: Non-Traditional Trademarks, Distinctiveness, Intellectual Property, Non Conventional Marks, Sound, Graphical Representation, Recognition

2. Introduction

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A trade-mark has become a very important feature of the business world in as much that it is capable of uniquely distinguishing the wares or services produced by one entrepreneur from those belonging to other entrepreneurs. However, up until this point, trademarks have been limited to words and logos (combined as logos) that can be seen and represented on paper. However, the ways companies now sell products and changes in technology have created new types of trademarks including non-traditional marks that appeal to different senses other than sight. For example: sounds, scents, tastes, and motion, and even holograms.

Non-traditional trademarks in most cases show obstacles in legal systems worldwide in terms of recognition and protection. These problems stem from the complexity of identifying and representing such signs, examining their distinctiveness, and preventing monopolization of functional product features. In addition, legal standards differ markedly between jurisdictions and the global protection of these marks is problematically complex.

The focus of this paper would be on the exploration of non-traditional trademarks as permitted in India, US and EU which are considered important centers consistent with global intellectual property laws forums. By examining statutory provisions, administrative guidelines, and landmark judicial decisions, the study aims to elucidate the current state of the law, identify gaps and inconsistencies, and propose pathways for reform. The findings of this research have practical significance, as they can inform businesses seeking to protect innovative brand elements, guide policymakers in shaping more responsive trademark regimes, and aids consumers to better understand the evolving landscape of brand identification and protection.²

3. Hypothesis

The Indian legal framework for non-traditional trademarks is less adaptive than those of the US and EU, resulting in limited protection and reduced opportunities for Indian businesses to innovate in brand identity.

4. Scope of Research

This research shall delve into what the Statutory laws, Trademark office practices and the Judicial experiences have been with respect to non-traditional marks both in India, US and

²Kurup, R. R. & Nimita Aksa Pradeep. (2020). Non-Conventional Trademarks In India: The What, The Why And The How. E- Journal of Academic Innovation and Research in Intellectual Property.

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Europe. It revolves around five core areas of non-traditional marks namely, sound, color, shape, scent and motion marks. This paper covers the issues over definitions, graphical or other representation of the marks, distinctiveness, functionality and enforcements. It excludes recognition of taste marks as tastemarks have limited Corporation and practical challenges in enforcement across the studied jurisdictions.

5. Research Questions

1. How does India, the United States, and the European Union define and classify non-traditional trademarks within their legal frameworks?
2. What are the procedural and substantive requirements for registering non-traditional trademarks in these jurisdictions?
3. What does it mean, in terms of business and consumer perception, to extend trademark protection to nontraditional trademarks?

6. The Concept and Classification of Non-Traditional Trademarks

Non-traditional trademarks are marks that do not conform to the conventional scope of words, logos, or combinations thereof. Instead, they encompass sensory and three-dimensional elements that serve to uniquely identify the source of goods or services.

6.1. Types of Non-Traditional Trademarks

- i. **Sound Marks:** Sounds that are distinctive and associated with a brand, such as jingles or unique audio signals. E.g.: The Nokia tune is registered as a sound mark in several jurisdictions.³
- ii. **Color Marks:** Single colors or combinations of colors used in a distinctive manner to identify goods or services. E.g.: The colour purple for Cadbury chocolates has been recognized in the UK, subject to proof of acquired distinctiveness.
- iii. **Shape Marks:** The three-dimensional shape of a product or it's packaging that is distinctive. The distinctive contour shape of the Coca-Cola bottle is a well-known example of a shape mark.⁴

³Assets (E-JAIRIPA), 1–01, 131–148. <https://cnlu.ac.in/storage/2022/08/9-Rachna-R-Kurup-and-Nimita-Aksa-Pradeep.pdf>

⁴David Pressmen, Patent it Yourself (13th edition, Nolo,2008) pg. 18

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- iv. **Scent Marks:** Fragrances or odors that uniquely identify a product. E.g.: The scent of fresh cut grass for tennis balls was registered as a mark in the EU, but such registrations remain rare due to representation challenges.⁵
- v. **Motion Marks:** Moving images or sequences used as trademarks, often in digital or advertising contexts. E.g.: The animated sequence of the Windows logo appearing on startup is a registered motion mark.

Each type poses unique challenges in terms of representation, distinctiveness, and functionality.

7. LEGAL FRAMEWORKS:

7.1. International agreements:

i. The TRIPS Agreement

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a major international treaty that sets minimum standards for the protection of intellectual property, including trademarks. Article 15 of TRIPS defines a trademark as any sign, or combination of signs, capable of distinguishing the goods or services of one business from those of others. This broad definition allows for the inclusion of non-traditional marks, such as colors, shapes, and sounds, as long as they can be represented and are distinctive. However, TRIPS does not require that all types of non-traditional marks must be accepted; it leaves the details to each country's laws.⁶

ii. The Madrid System

The Madrid Agreement and the Madrid Protocol provide a mechanism for the international registration of trademarks. Although the treaties do not explain the kinds of trademarks one can register, the point is that those marks that are registerable at the applicant's foreign domicile can be registered. This also means if a country accepts non-traditional trademarks (like sound or color marks), these can be internationally registered under the Madrid

⁵Reetika, Dr. (2018). Issues and challenges relating to non-conventional trademarks. In C.R. Institute of Law, International Journal of Enhanced Research in Management & Computer Applications (Vol. 7, Issue 2, p. 301). https://www.erpublications.com/uploaded_files/download/dr-reetika_JINaB.pdf

⁶Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 33 I.L.M. 1197 (1994), art. 15.

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System. This system allows the brand owners with just a single application to protect their marks in multiple countries worldwide.⁷

iii. The Paris Convention

The Paris Convention for the Protection of Industrial Property is one of the earliest treaties related to intellectual property. It obligates the member countries to provide national treatment for trademark protection; however, it does not specifically deal with non-traditional marks. Yet, its general policies favor safeguarding any sign that may function as a trademark, so long as national legislation permits, including non-traditional marks.⁸

iv. The Singapore Treaty on the Law of Trademarks

The adoption of the Singapore Treaty in 2006 marked an important milestone towards aligning trademark laws around the globe. Its provisions include the grant of trademark rights to virtual marks such as holograms, motion marks, color marks, and position marks. The treaty encourages states to develop clear criteria for representing and describing these marks in trademark applications. Although it does not obligate states to grant all the non-traditional marks, it does try to set some ground for their acknowledgment and safeguard.⁹

7.2. The Indian Legal Framework

i. Statutory Provisions

India is primarily governed by the Trade Marks Act, 1999, which describes a trademark as any mark that may be represented graphically and may serve the purpose of distinguishing a good or service. Section 2(1)(m)¹⁰ includes devices, brands, headings, labels, tickets, names, signatures, words, letters, numerals, shapes of goods, packaging, and combinations of colors as potential trademarks.

⁷Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, Dec. 27, 1989, 28 U.S.T. 764.

⁸Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583

⁹Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, S. Treaty Doc. No. 110-2 (2007).

¹⁰Trade Marks Act, 1999, § 2(1)(m), No. 47, Acts of Parliament, 1999 (India).

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However, the need for graphical representation still presents as an obstacle for non-visual marks such as sound and scent. The Indian Trade Marks Rules, 2017¹¹, provide some procedural guidance but are silent on the issue of registration of non-traditional marks.

ii. Registration Requirements and Challenges

The Indian trademark office requires that a mark be capable of graphical representation and possess distinctiveness. This graphical representation requirement disproportionately affects the registration of these marks that cannot be adequately depicted in a two-dimensional form, such as scents and tastes.

Distinctiveness is a critical threshold. Marks that are inherently distinctive or have acquired distinctiveness through use may be registered. This is extremely difficult for non-traditional marks, since the novelty factor and lack of established consumer recognition make proving gained distinctiveness a challenge.

Functionality serves as another barrier to registration. Features that serve to be functional to the use or to the purpose of a given product are unable to be registered as trademarks. This principle prevents monopolization of technical aspects better protected by patents.

iii. Judicial Approach and Case Law

Indian courts have shown a gradual acceptance towards the recognition of non-traditional trademarks, especially in the context of shape and sound marks.

In **Lilly ICOS LLC and Anr. v. Maiden Pharmaceuticals Ltd.**¹², the Delhi High Court upheld the almond shape of a pharmaceutical product as a valid trademark, recognizing its distinctiveness and the likelihood of confusion caused by similar shapes.

In **GorbatschowWodka KG v. John Distilleries Ltd. (2017)**¹³, the Bombay High Court protected the distinctive bottle shape of a vodka brand, underscoring the importance of non-traditional marks in brand identity.

The Delhi High Court in **MRF Ltd. v. Metro Tyres Ltd. (2015)**¹⁴ recognized the tread pattern on tires as a valid mark, highlighting that such patterns can serve as source identifiers.

¹¹Trade Marks Rules, 2017 (India)

¹²Lilly ICOS LLC and Anr. v. Maiden Pharmaceuticals Ltd., 2009 (39) PTC 666(Del)

¹³GorbatschowWodka KG v. John Distilleries Ltd., 2011 (4) BomCR 1

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Sound marks have also gained recognition. For instance, **Yahoo Inc.** and **ICICI Bank** successfully registered their distinctive sound marks, marking a significant development in Indian trademark jurisprudence.¹⁵

Color marks have encountered mixed outcomes. In **Colgate Palmolive Co. v. Anchor Health and Beauty Care Pvt. Ltd. (2011)**¹⁶, the Delhi High Court protected a red and white color combination for toothpaste packaging. However, subsequent cases have revealed inconsistencies, with some color marks being refused registration due to lack of distinctiveness or functionality.

Regardless of these developments, the Indian trademark office is still overly conservative and frequently rejects non-traditional trademark applications due to the rigid graphical representation requirement and high distinctiveness threshold.

7.3. The US Legal Framework

i. Statutory Provisions

The Lanham Act, codified in Title 15 of the United States Code¹⁷, governs trademarks in the US. Unlike India, the Lanham Act does not explicitly require graphical representation of marks, allowing applicants to submit alternative forms of representation such as sound recordings or written descriptions.

ii. Registration Requirements and Challenges

Tracking applications for a trademark with the sound mark is tricky, as the US Patent and Trademark Office (USPTO) has put requirements concerning the trademark. The trademark has to have a distinct non-functional mark. The USPTO has developed specific guidelines for non-traditional marks, including sound and color marks.¹⁸

¹⁴MRF Ltd. v. Metro Tyres Ltd., AIR ONLINE 2019 DEL 972

¹⁵Yahoo Inc.'s "Yahoo yodel" was the first sound mark registered in India in 2008, recognized under the Trade Marks Act, 1999 and Trade Marks Rules, 2017; ICICI Bank was the first Indian entity to register a sound mark for its corporate jingle "Dhin Chik Dhin Chik" in 2011. The Trademark Registry of India granted registration by registering the musical notes that form this jingle as a trademark, making it a non-conventional sound mark

¹⁶Colgate Palmolive Co. v. Anchor Health and Beauty Care Pvt. Ltd., 108(2003) DLT51

¹⁷Lanham Act, 15 U.S.C. §§ 1051 et seq. (2024).

¹⁸How to claim acquired distinctiveness under Section 2(f). (2022, April 23). USPTO.

<https://www.uspto.gov/trademarks/laws/how-claim-acquired-distinctiveness-under-section-2f-0>

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For sound marks, applicants must provide a clear audio file and a detailed description. For color marks, evidence of acquired distinctiveness is typically required unless the mark is inherently distinctive.

The functionality doctrine prevents registration of features essential to the product's functionality as well as its cost or quality. This doctrine ensures that trademark law does not encroach upon patent law.

iii. Judicial Approach and Case Law

US courts have been at the forefront of recognizing non-traditional trademarks.

In **Qualitex Co. v. Jacobson Products Co. (1995)**¹⁹, the US Supreme Court held that a single color can function as a trademark if it has acquired distinctiveness and is not functional. This landmark decision opened the door for color mark registrations.

In **In re Clarke (1998)**²⁰, the USPTO allowed the registration of a scent mark for sewing thread, recognizing the possibility of scent as a trademark, provided it is distinctive and non-functional.

The Supreme Court in **Two Pesos, Inc. v. Taco Cabana, Inc. (1992)**²¹ recognized trade dress, including shape and color combinations, as protectable trademarks, emphasizing the importance of distinctiveness.

The court in **Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc. (2012)**²², clarified that protection of color marks could cover single colors that were applied to goods (shoes) so long as it was both distinctive and non-functional – a single red sole on a shoe could be protected as source indication by virtue of intrinsic nature – because consumers bought into this feature not strictly out of necessity but also largely out of association with an originating good.

The USPTO also issues detailed guidelines for non-traditional marks via the Trademark Manual of Examining Procedure (TMEP).

7.4. The European Union Legal Framework

¹⁹Qualitex Co. v. Jacobson Products Co., 514 U.S. 159 (1995)

²⁰In re Clarke, 17 U.S.P.Q.2d 1238 (T.T.A.B. 1990)

²¹Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763 (1992)

²²Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc., 696 F.3d 206 (2d Cir. 2012)

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i. Statutory Provisions

The EU Trade Mark Regulation (EUTMR)²³ and the Trade Mark Directive²⁴ provide the legal basis for trademarks in the EU. The 2017 reforms notably removed the requirement for graphical representation, allowing marks to be represented in any suitable form that is clear, precise, self-contained, easily accessible, intelligible, durable, and objective.

ii. Registration Requirements and Challenges

Sound, color, shape, motion and hologram marks are among the extensive list of non-traditional marks accepted by the European Union Intellectual Property Office (EUIPO). Yet, the call for one-time visibility continues to churn along. In essence, the CJEU has confirmed that only trade marks which depart from industry standards to a great extent can be considered inherently distinctive. Marks that are functional or required for technical results cannot be contentious.

iii. Judicial Approach and Case Law

In **Shield Mark BV v. Kist (2003)**²⁵, the Court of Justice of the European Union (CJEU) held that sound marks could be registered if they are capable of graphical representation, typically through musical notation or other clear depictions.

In **Dyson Ltd v. Registrar of Trade Marks (2007)**²⁶, the CJEU denied registration for a vacuum cleaner shape, emphasizing that the shape was dictated by technical function and thus not registrable.

The **Louis Vuitton Malletier v. OHIM (2010)**²⁷ case addressed the registrability of two-dimensional patterns, requiring evidence of acquired distinctiveness.

More recently, in **Christian Dior Couture (2021)**²⁸, the EUIPO and the Board of Appeal reiterated that three-dimensional marks must significantly diverge from industry norms to function as trademarks.

²³ Regulation (EU) 2017/1001

²⁴ Directive (EU) 2015/2436

²⁵ Shield Mark BV v. Kist, Case C-283/01, CJEU, 2003

²⁶ Dyson Ltd v. Registrar of Trade Marks, Case C-321/03, CJEU, 2007

²⁷ Louis Vuitton Malletier v. OHIM, Case T-508/07, General Court, 2010

²⁸ MelaineD. (2023, December 20). Standing out from the crowd: EUIPO rules that the shape of Dior's Saddle bag lacks distinctiveness. Osborne Clarke. <https://www.osborneclarke.com/insights/standing-out-crowd-euipo-rules-shape-diors-saddle-bag-lacks-distinctiveness>

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The EU model is based on a limited harmonization throughout the member states while allowing for further flexibility due to technological development, balanced by strict adherence in relation to distinctiveness and non-functionality.

8. Impact of Extending Trademark Protection to Nontraditional Trademarks:

8.1. Impact on Businesses

i. Strengthening Brand Identity and Differentiation

Permitting nontraditional marks to be registered as trademarks allows businesses to create an identity that transcends logotypes and names. By safeguarding distinct assets like jingles, packaging shapes, or signature colors, companies can distinguish their products more effectively in competitive markets. Businesses can enable better differentiation of their products in the marketplace. Such distinctiveness not only minimizes consumer confusion but also reduces competitive imitation, thus strengthening the brand's market presence.²⁹

ii. Broadening Legal Protection and Competitive Advantage

The acknowledgement of nontraditional trademarks enables businesses to have exclusive rights over features of the brand. This added shield serves as an encouragement to restrict wrongful use or imitation of the creative brand, protecting the company's resources spent on marketing. This also minimizes chances of counterfeiting and brand dilution, thus ensuring safer conditions for brand development and expansion.

iii. Enabling Innovative Marketing Strategies

Because businesses own the rights to protect marks of nontraditional nature, they can advertise through other channels like sight, sound, smell and touch. These practices can boost consumer engagement and pave the way for more robust brand development as well as licensing. For example, some branding elements like sound or brand color easily get licenced which further help the brands to earn a few thousand dollars.³⁰

8.2. Influence on Consumer Perception

²⁹Pandit, R. (2025, April 23). Non-Traditional Trademarks & Brand Security. De Penning and De Penning. <https://depenning.com/blog/breaking-the-mold-the-impact-of-non-traditional-trademarks-on-brand-security/#:~:text=Non%2Dtraditional%20trademarks%20make%20it,more%20memorable%2C%20reinforcing%20brand%20identity>

³⁰Ibid

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i. Enhancing Brand Recognition and Recall

Non-traditional trade marks are often perceived by the senses and can therefore make a brand more present in the memory of consumers. A brand signature tune, a specific scent associated to the product, or the distinctive shape of packaging are some examples that how cues work in branding. By engaging more senses, this sensory memory will then lead to a faster access point for recall and therefore also create stronger associations with the brand, particularly in competitive retail.

ii. Fostering Emotional Connections and Loyalty

The use of nontraditional marks plays to the heart of the matter; emotion drives choice, and appeal to personality fuels brand loyalty. Associating sensory experiences, like the sound of a catchy jingle or recognizing a unique scent, can create positive associations and deepen emotional bonds with the brand. Such emotional connections increase customer retention and make them more supportive in the long run.³¹

iii. Enhancing the Consumer Experience

- iv. With the legal backing of nontraditional marks, brands can ensure multi-sensory engagement. Such engagement makes brand interaction more enjoyable. The enhancement of experience not only helps distinguish the brand but also increases consumer satisfaction, impacting brand loyalty and purchase behavior.³²

9. Comparative Analysis:

The comparative analysis reveals distinct approaches to non-traditional trademarks across India, the US, and the EU.

The United States practices flexibility, which is helpful in dealing with the lack of a graphical representation need and comprehensive administrative instructions. The USPTO and courts have cumulatively broadened the scope of protectable marks, which, in turn, has advanced innovation in branding.

The European Union balances flexibility with other rigid requirements like distinctiveness and non-functionality of a mark. Even though the removal of the graphical representation

³¹Tran, B. (2025, June 18). How Non-Traditional trademarks influence consumer perception. PatentPC. <https://patentpc.com/blog/how-non-traditional-trademarks-influence-consumer-perception>

³²Ibid

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requirement and acceptance of different forms of representation is a step forward, the CJEU maintains strict scrutiny to prevent overbroad monopolies.³³

While recognizing the importance of non-traditional marks, India is still hampered by statutory demands like the graphical representation and overly strict distinctiveness requirements. Non-traditional marks are gaining judicial acceptance, but this progress is lagging in comparison to the US and EU. These variations affect the capacity of brand owners to obtain and enforce rights over non-traditional marks, which puts India at a potential competitive disadvantage in the global market.³⁴

10. Challenges and Policy Considerations:

The protection of non-traditional trademarks raises several challenges:

- i. **Graphical Representation:** The traditional graphical representation requirement makes it impossible to register marks such as scent and sound. More recent forms, such as audio or digital representation, are yet to be formally acknowledged.³⁵
- ii. **Distinctiveness:** Non-traditional marks often lack inherent distinctiveness and require evidence of acquired distinctiveness, which can be difficult and costly to prove.
- iii. **Functionality:** Distinguishing between functional features and distinctive marks is complex, especially for shape and color marks.
- iv. **Consumer Perception:** Assessing whether consumers perceive a non-traditional mark as a source identifier is challenging due to the subjective nature of sensory perceptions.
- v. **International Harmonization:** Divergent standards across jurisdictions complicate global brand protection strategies.

³³João Pereira Cabral. (2020, November 19). The elimination of the “graphical representation” requirement and its effect on non-traditional EU trademarks. *Inventa*. <https://inventa.com/ip-news-insights/opinion/elimination-graphical-representation-requirement-and-its-effect-non>

³⁴Gowda, N. (2023, April 15). Non-Conventional Trademarks- analysis of the Indian structure. *Rostrum Legal*. <https://www.rostrumlegal.com/non-conventional-trademarks-analysis-of-the-indian-structure/>

³⁵Balaji, G. (2025b, July 9). Securing Non-Traditional Trademarks in India: Challenges, Milestones, and Future Prospects - Depenning&De Penning and De Penning. <https://depenning.com/blog/securing-non-traditional-trademarks-in-india-challenges-milestones-and-future-prospects/#:~:text=Procedural%20Hurdles%20and%20Evidentiary%20Requirements,acceptance%20and%20high%20refusal%20rates>.

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Despite the advantages, extending protection to nontraditional trademarks presents certain challenges. Proving the distinctiveness and non-functionality of such marks can be complex, and the criteria for registration may vary significantly across jurisdictions. Additionally, some nontraditional marks, such as scents or motions, are difficult to represent visually, complicating the application process. Marks in the non-traditional range, which include scents or motions, are not easy to visually represent. This further complicates the application. For businesses, marks need to align with the targeted audience to ensure the mark resonates, requiring deep market research and cultural appraisal.³⁶

11. Recommendations for India:

To align with international best practices and foster innovation, India should consider the following reforms:

- i. **Relax Graphical Representation Requirements:** Amend the Trademarks Act and Rules to allow for alternative forms of representation, such as audio files for sound marks and digital descriptions for motion marks.
- ii. **Develop Detailed Guidelines:** The Indian Trademark Office should come up with detailed examination guidelines for non-traditional marks to attain consistency and certainty.
- iii. **Clarify Distinctiveness Standards:** Provide clearer criteria for inherent and acquired distinctiveness in non-traditional marks, with the backing of empirical consumer perception studies.
- iv. **Enhance Judicial Training:** Sensitize the judiciary to the nuances of non-traditional trademarks through specialized training and expert inputs.
- v. **Promote Awareness:** Conduct outreach programs for businesses and legal practitioners to encourage the use and protection of non-traditional marks.

12. Societal Implications and Critical Perspectives:

- i. **Risks of Overreach and Encroachment on the Public Domain**

³⁶Mishra, M. (2019, April 23). Non-Conventional trademark. *Trademark - Worldwide*.
<https://www.mondaq.com/india/trademark/801030/non-conventional-trademark>

Despite these benefits, critics warn that expanding trademark protection to encompass non-traditional marks risks overreaching into elements that should remain freely available. When it comes to colors, sounds, and scents, granting a monopoly over basic colors, familiar scents, and common sounds, could potentially restrict competition unfairly and reduce the ability of other to make full use of the elements in the public domain for product design or marketing.³⁷ Policymakers must carefully balance the need to incentivize brand innovation with the imperative to preserve open access to generic or functional elements.

ii. Administrative Complexity and Resource Burden

The registration and enforcement of non-traditional trademarks present substantial administrative challenges for trademark offices. Unlike traditional marks, non-conventional signs often require specialized methods of representation, such as audio files for sound marks or chemical formulas for scent marks. This further creates complexity on the examiner tasked with applying new technical standards to assess functionality, distinctiveness, and the adequacy of representation. The consequences could be increases in costs, longer durations for an examination, and inconsistent decision-making with the risk of depriving users of the trademark system of the procedural fairness and predictability.³⁸

iii. Balancing Innovation with Fair Competition

It raises the policy question of how brands innovation can be encouraged without undermining competition and consumer choice. It is not necessarily objectionable to accord their ability to serve as symbols of a company's investment in creating branded elements by conferring non-traditional marks, but the more stringent legal standards that are in place must be heightened, as a result (distinctiveness and non-functionality).³⁹ Clear standards would also limit protection to truly unique and nonessential elements of distinctiveness, thus avoiding using trademark to monopolize functional or generic elements of products.

13. Conclusion

³⁷Dinwoodie, G.B., "The Rational Limits of Trademark Law," in *Trademark Law and Theory: A Handbook of Contemporary Research* (Edward Elgar, 2008), pp. 3-28.

³⁸*Ibid.*

³⁹*Ibid.*

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Non-traditional trademarks represent a crucial and evolving aspect of intellectual property law, reflecting the increasing complexity of modern branding and consumer engagement. While jurisdictions like the United States and the European Union have developed progressive and flexible legal frameworks that effectively accommodate a wide range of non-traditional marks, India's current trademark regime remains comparatively conservative and procedural in nature. This restrictiveness, particularly the stringent requirement for graphical representation and high thresholds for distinctiveness, limits the scope of protection available to Indian businesses.⁴⁰

For India to stand in line with the best practices being followed globally and to support newer and innovative branding strategies, a suitable relaxation and streamlining with respect to the graphical representation requirement, distinctiveness requirement, and administrative procedures may be considered.⁴¹ Such changes would not only harmonize India's trademark laws with global standards but also empower Indian enterprises to protect their unique brand elements more effectively, fostering competitiveness in the international marketplace.

Indeed, a more flexible, modern and inclusive trademark system would better serve the purposes of promoting brand differentiation, facilitating consumer recognition and driving economic development through fostering creativity and investment in unique brand identities. Non-traditional trademarks will only reach their full potential in the field of commerce today in a dynamic commercial environment through continued coordination in the international sphere as well as further development of domestic law.⁴²

⁴⁰Balaji, G. (2025, July 9). *Securing Non-Traditional Trademarks in India: challenges, milestones, and future prospects*. Lexology. <https://www.lexology.com/library/detail.aspx?g=aa00de6d-6399-4425-99dc-ab93fa806e20>

⁴¹Suneet, &Suneet. (2024, October 10). Unconventional trademarks in India: need for progress? Patent, Trademark & Design Registration Service in India | Brainiac IP - Provisional Patent Filing, Trademark Registration, Patent Application. <https://brainiac.co.in/unconventional-trademarks-in-india/#the-need-for-reforms>

⁴²WIPO, Non-Traditional Trademarks: Overview and Policy Considerations, Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, World Intellectual Property Organization.

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