

FLUID TRADEMARKS IN DIGITAL ECONOMY: A CRITICAL ANALYSIS OF TRADEMARK PROTECTION IN INDIA

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ABSTRACT:

Fast-paced developments in digital communications, globalization and consumer-oriented brand management have changed the nature of trademarks and turned them from merely source identifiers into effective means of engaging brands. These fast-paced developments include fluid trademarks that help organizations temporarily change the form of their trademarks without losing their fundamental nature. Although fluid trademarks increase consumer engagement and market relevance, they undermine the established legal tenets of trademark law which hinge upon consistency, distinctiveness and legal certainty. The present paper attempts to examine the concept and development of fluid trademarks and analyze their compatibility with the Trademarks Act, 1999. Using the doctrinal approach, the research seeks to find out whether fluid trademarks can fit the Indian trademark system and whether any legal issues like distinctiveness, consumer confusion and trademark dilution. An analysis of the legal status of fluid trademarks in the US, UK, China, and Russia reveals that despite the growing acceptance of fluid trademarks in business, they are still being protected in most countries in accordance with the traditional principles of trademark law, which are not statutory provisions. In addition, the paper examines key judicial pronouncements in cases involving deceptive similarity, trade dress, domain names, well-known trademarks, and digital trademark infringement to determine how the principles of trademark law are applied to fluid trademarks. A substantial deficiency in the Indian legal system with regard to fluid trademarks is noted. It is concluded that the application of the traditional principles of trademark law in dealing with fluid trademarks is inadequate. Legal recognition of fluid trademarks and reform is suggested as necessary to achieve an appropriate balance.

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Keywords:

Fluid Trademarks, Trademark Law, Trade Marks Act, 1999, Dynamic Branding, Distinctiveness, Consumer Confusion, Trademark Dilution, Comparative Trademark Law, Digital Economy, Legal Reforms.

INTRODUCTION:

The modern business environment, including commercials, finds trademarks important in the differentiation of goods and services and the perception of consumers. Historically, trademarks have been used as a stable sign of origin, which makes consumers distinguish and identify competing products in the market. A trademark must be distinctive, a graphical representation is possible, and the use must be consistent under the Trade Marks Act, 1999. But since the world has become globalized due to the rapid advancement in technology, consumer tastes and preferences have changed. Due to this there is a major change in the nature and role of trademarks.

A fluid trademark is said to be a trademark that is subjected to deliberate and temporary changes in its outlook (e.g. a change in design, colour, structure or presentation) whilst preserving its central identity and recognisability. However, unlike traditional trademarks, which are static and consistent, fluid trademarks are dynamic, and as such they are created to respond to various situations, events, or consumer expectations without the loss of their core source-identifying purpose.

The emergence of digital media, advertisement approaches and stiff competition in the market have forced companies to abandon the traditional branding approaches. In the modern dynamic and fast-paced world, consumers are getting more and more drawn to innovative, interactive and social relevant brands. The notion of fluid trademarks is an indication of the wider change of the branding philosophy that used to be the identification of goods and services but has now been transformed to a form of engagement with the consumer. Fluid trademarks are indicative of the transition to dynamic and participatory branding when trademarks cease to be passive symbols and begin to be active instruments of communication. They enable the brands to react to real-time events, match the trends in society, and even encourage the campaigns of public awareness.

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Nevertheless, this development also poses serious questions of law since the current trademark systems are mostly created to safeguard stable and fixed marks. The increasing popularity of fluid trademarks undermines the conventionally held beliefs about uniqueness, stability, and consumer recognition and thereby prompting a re-examination of the legal principles that regulate the protection of trademarks.

Although fluid trademarks have become increasingly common in global branding practices, Indian legal scholarship has primarily focused on their commercial and marketing significance. Limited attention has been devoted to examining whether the existing framework under the Trade Marks Act, 1999 adequately accommodates intentionally variable trademarks without undermining the fundamental principles of distinctiveness, consumer recognition, and source identification. This paper seeks to address that gap by critically analysing the adequacy of the existing legal framework and exploring the need for doctrinal and regulatory reforms.

Objectives:

The following objectives are pursued in the present research:

- To examine the idea and development of fluid trademarks in the modern branding environment.
- To analyse the compatibility of fluid trademarks with the principles embodied in the Trade Marks Act, 1999.
- To examine the judicial approaches to the development of trademark concepts with the help of the case laws.
- To derive solutions through comparative approaches to fluid trademarks in different jurisdictions.
- To evaluate the need for legislative or regulatory reforms to effectively protect fluid trademarks while maintaining consumer protection and legal certainty.

RESEARCH METHODOLOGY:

This paper is a doctrinal research based on statutes, case laws, research papers, and legal articles. It examines the Trade Marks Act, 1999, and cases of judicial rulings to explore the legal issues surrounding fluid trademarks.

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The study is analytical and descriptive in nature and addresses the changing concept of fluid trademarks and their limitation under the current legal frameworks.

REVIEW OF LITERATURE:

Jerre B. Swann (2014), "Fluid Trademarks and Dynamic Brand Identities" (The Trademark Reporter, Vol. 104)³ examines fluid trademarks as an emerging branding strategy and discusses the legal challenges associated with their protection, including dilution, abandonment, consumer recognition, and enforcement. The study highlights the need for careful brand management to preserve the distinctiveness of fluid trademarks while leveraging their marketing potential. However, it primarily adopts a practical perspective and does not critically analyse the adequacy of the Indian trademark regime or the need for legal reforms in the digital economy.

R. Karthikeyan (2018), "Trademark in the Digital Era: Issues in Protection of Fluid Marks – An Analysis"⁴ (International Journal of Law Management & Humanities), examines the emergence of fluid trademarks and the inadequacy of existing international and Indian trademark laws in protecting them. The study analyses the TRIPS Agreement, the Trade Marks Act, 1999, and comparative jurisdictions, advocating legal reforms for the recognition of fluid trademarks. However, it does not address recent developments in AI-driven branding, digital commerce, or the adequacy of the Indian legal framework in the evolving digital economy, which are examined in the present study.

Yusuf Gunawan (2026), in Non-Traditional Trademarks in the Digital Economy⁵ (International Journal of Social Science and Human Research), examines the expansion of trademark protection to non-traditional marks such as sound, colour, motion, shape, and scent in the digital economy. Through a comparative analysis of the United States, the European Union, and Indonesia, the study highlights the challenges relating to distinctiveness, non-functionality, representability, and enforcement, while proposing a structured reform model for emerging jurisdictions. However, the study focuses broadly on non-traditional trademarks and does not specifically examine the legal challenges

³https://cdn2.hubspot.net/hubfs/454850/1._John_Welch_Images/vol104_no1_a1.pdf

⁴<https://ijlmh.com/wp-content/uploads/2019/03/Trademark-in-Digital-Era-Issues-in-Protection-of-Fluid-Marks-Analysis.pdf>

⁵<https://www.ijsshr.in/v9i3/Doc/80.pdf>

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surrounding fluid trademarks or the adequacy of the Indian trademark framework, which form the focus of the present study.

Aditi Patil(2026)in *Trademark Protection in the Digital Age (SSRN)*⁶ examines the evolving challenges of trademark protection arising from digital technologies, including AI-generated content, NFTs, the metaverse, social media, cybersquatting, and cross-border enforcement. The study analyses the Indian legal framework alongside international practices and recommends legislative and technological reforms to strengthen trademark protection in the digital economy. However, the study broadly addresses digital trademark issues and does not specifically examine the legal status and protection of fluid trademarks under the Indian trademark regime, which is the focus of the present study.

FLUID TRADEMARKS EVOLUTION:

The history of fluid trademarks can be interpreted as the adaptation to the new and dynamic market environment and consumer behaviour. Historically, trademarks had to be consistent because it was necessary to guarantee that the origin of goods and services is clearly identified to avoid confusion in the market. Nevertheless, in the era of globalization, online communication, and extreme rivalry in the market, these traditional ideas have been changed drastically.

One of the most significant contributing reasons to this development is the emergence of online platforms and social media, where visual material has taken a leading role in capturing and maintaining consumer interest. With an environment like this, the use of static trademarks can be considered monotonous, but fluid trademarks offer newness and interaction. They enable brands to communicate with their audience in real time, so that the brand seems to be more relatable and responsive.

Fluid trademarks act as marketing instruments because they help the brands make their identity more personalized based on the particular events, festivals, or social movements. This flexibility makes consumers more engaged and enables emotional bonds between the brand and consumers. It is also an evidence of a change in the branding ideology - no longer to name the origin of goods, but rather to express values, feelings, and messages. This is a major improvement in the marketing practice as well as the changing concept of trademarks in the legal context.

⁶https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6914078

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POSITIONS IN DIFFERENT REGIONS:

Fluid marks align with the millennial preference for personal connection, individuality, and uniqueness, challenging the traditional trademark principle that brand strength depends on consistent use. As their commercial use is relatively new, their legal protection remains uncertain. Key concerns include whether inconsistent use weakens trademark rights and brand integrity, confuses consumers, dilutes distinctiveness, leads to abandonment of the core mark, or encourages unauthorized variations by third parties.

i) US:

Since there is no clear mechanism for providing protection for fluid mark in all its possible forms. Unregistered trademark is explained under section 43(a) of the Lanham act and fluid trademark can get the protection under the same provision.

ii) UK:

Under UK trademark laws, there is an option for the application for filing of the fluid mark in the form of "series of marks"⁷. Here, the term series refers to a group of marks which are similar in terms of material elements and differences lie only in the non-distinctive aspect which doesn't affect the trademark identity. The applicant can apply for maximum six marks in the category of "series of marks". However, the above-stated alternative would not be possible when there is considerable difference between fluid marks and parent trademark.

There is another method through which fluid trademark can be registered in the UK and that is through copyright law. Copyright, Designs and Patents Act 1988 provides the copyright protection for all those works wherein copyright exists in the UK. Even though the requirement of distinction under trademark laws and originality under copyright laws is different, still the provision of artistic work would help in protecting the fluid trademark. Fluid trademark like logo, pattern or devices can also be protected through UK registered designs.

iii) CHINA:

As in case of any other jurisdiction, there is no recognition of legal validity of fluid trademarks by Chinese trademark laws. By the way, it should be mentioned that according to

⁷<https://aminiconant.com/trademark-enforcement-strategies-for-robust-brand-protection/>

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the Chinese trademark law, the trademark owner has a right to use variants of the same mark. According to Chinese trademark law, the variants of the registered trademark are protected on condition that they are related to the registered mark but not changing the distinctive features of the latter.

iv)RUSSIA:

According to Russia Civil Code, the trademark means either word, or graphic, or three dimensional designation or combination of all these. However, it should be noted that the concept of 'fluid trademark' is not considered or defined in the above-mentioned code. But it is worth mentioning that the current Rules of trademark prosecution have introduced the new concept - 'illuminated' and 'dynamic' designation.

In this case, the trademark application together with the variant of the designation under consideration is accompanied by a video file.

V)India:

The doctrine of fluid trademarks has not been addressed in any Intellectual Property Laws. However, both The Trademarks Act, 1999, and the Copyright Act, 1957 have inadvertently covered this aspect, until it is covered under an individual Intellectual Property law.

Fluid marks may be registered as a 'series of marks' under section 15 of the Trademark Act, only if the variations made could make ornamental differences to the basic concept itself.

In the case of Proctor & Gamble v. Joy Creators, the Delhi High Court said, "it would be sufficient for the plaintiff to prove that the mark used by the defendant resembles the trademark in a substantial degree due to the extensive usage of the main features in the trademark." This means that the fluid trademark, although not registered, would still be eligible for protection under common law if there was substantial similarity.

CHALLENGES WITH TRADITIONAL TRADEMARK LAW:

The use of fluid trademarks causes a problem in the context of traditional trademark laws. Fluid trademarks do not align with the provisions of Trademarks Act 1999, as the trademark law is formulated on the basis of fixed, consistent, and identifiable marks. Fluid trademarks encourage innovation and flexibility but create problems in terms of trademark protection in India. They are an alteration of a basic mark, which has some distinctive features and is

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combined with new designs. It poses a challenge as far as principles of distinctiveness, perception of consumers, and enforceability are concerned.

i) Distinctiveness versus Variability:

It is necessary that a mark should be distinctive and should have the capability to distinguish the products of one trader from another trader. Fluid trademarks cause problems in terms of constant variability. Though the distinctive features are same, it can be problematic for it to qualify as a distinctive mark due to too much variability.

ii) Possibility of Consumer Confusion:

Trademark laws aim to avoid consumer confusion. The frequent use of modifications in the trademark may cause confusion regarding the source of the product or service. The constant changes may result in the consumer being unable to tell whether the modification is of the same brand or an imitation, thus leading to the failure of the trademark to function as a source identifier.

iii) Trademark Dilution and Identity Issues:

The use of fluid trademarks causes the trademark to be diluted as the variations used may be too distant from the original trademark. The modifications made frequently to the trademark may reduce its originality, distinctiveness, value, and reputation.

iv) Registration and Legal Protection Issues:

The registration of trademarks in India requires that the trademark should be specific and should be graphically represented. India's laws do not recognize fluid trademarks.

Despite the provisions of Section 15 of the Trade Marks Act, 1999, which allows for the registration of series trademarks with slight variations, there remains an issue with the fluidity of trademarks.

v) Enforcement and Legal Uncertainty:

It becomes difficult to enforce the right to the fluid trademark as most variants of the same are unregistered. This poses difficulties in enforcing the rights to the trademark in case of infringement. In passing off and other common law remedies may be available when

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goodwill and substantial similarities can be proved. As the Indian courts have not yet passed decisions on fluid trademarks, there is legal uncertainty.

JUDICIAL APPROACH:

In the case of **Parle Products Pvt. Ltd. v. J.P. & Co., Mysore (1972)**⁸, the Supreme Court of India was faced with the issue of deceptive similarity in the context of packaging and trade dress. The Court held that the trademark must not be compared in meticulous detail or in the manner of comparing the sides of two coins. Instead, the focus must be on the overall impact created in the minds of the consumers. The Court further emphasized the point that if the essential features of the trademark are copied, then even if minor differences exist, infringement would not be ruled out.

Yahoo! Inc. v. Akash Arora (1999)⁹ was a landmark decision of the Delhi High Court relating to the protection of trademarks in the cyber world. The Court held that domain names were akin to trademarks because they were used to identify the goods and services provided by the trademark owner. The Court further observed that the use of deceptively similar domain names would cause confusion and would be in the nature of passing off.

In **Tata Sons Ltd. v. Manu Kosuri (2001)**¹⁰, the Court was faced with the issue of the misuse of the famous trademark “TATA” in the context of domain names. The Court held that the unauthorized use of the famous trademark “TATA” in the cyber world would amount to passing off and infringement.

In the case of **Daimler Benz Aktiengesellschaft v. Hybo Hindustan (2003)**¹¹, the Delhi High Court was faced with the issue of unauthorized use of the mark “Benz” in relation to different goods. The Court held that well-known trademarks require a higher degree of protection, including in different classes of goods. It was emphasized that such unauthorized use can weaken the reputation of the mark. The case established the doctrine of dilution in Indian law.

In the case of **ITC Limited v. Philip Morris Products SA (2010)**¹², the Court was faced with the issue of deceptive similarity in the context of trade dress. The Court held that even

⁸AIR 1972 SUPREME COURT 1359

⁹78(1999)DLT285

¹⁰2001 PTC 432 (Del)

¹¹ AIR 1994 Delhi 239 and 1994 PTC 287

¹²2010 (42) PTC 572 (Del.)

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where the brand names differ, similarities in packaging, color scheme, and overall appearance can lead to confusion between the two marks. The case emphasized the importance of protecting trade dress in Indian law.

In the case of **Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd. (2017)**¹³, the Supreme Court was faced with the issue of trans-border reputation. The Court held that reputation is not enough; goodwill in the mark in India is required. The Court emphasized the importance of the principle of territoriality in determining the scope of trademark protection.

In the case of **Christian Louboutin SAS v. Nakul Bajaj**¹⁴, the Delhi High Court was faced with the issue of the liability of e-commerce platforms in cases of infringement. The Court held that platforms cannot claim immunity if they have taken an active part in the sale or promotion of the infringing goods. The case extended the scope of trademark infringement to cover online platforms.

RECOMMENDATIONS AND LEGAL REFORMS:

Considering the challenges posed by fluid trademarks and the importance of trademarks in the post-pandemic digital economy, the following suggestions aim to bridge the gap between evolving trademark practices and existing trademark law.

i) The Legal Recognition of Fluid Trademarks as Trademarks:

One of the basic requirements would be the legal recognition of fluid trademarks. The existing law places significant emphasis on consistency in the trademark. However, the changing practice of trademark has proven the contrary. Moreover, the existing trademark law grants protection to the trademark on the basis of the overall impression and the essential features of the trademark. The decision in the case of *Parle Products Pvt. Ltd. v. J.P. & Co., Mysore* supports the above contention. Therefore, the legal recognition of fluid trademarks must be on the basis of the preservation of the essential identity.

ii) The Development of Flexible Trademark Registration:

The existing system of trademark registration, which requires the registration of the trademark in the form of a graphical representation, cannot be considered adequate in the

¹³(2018) 2 SCC 1

¹⁴ AIR ONLINE 2018 DEL 1962

case of fluid trademarks. Although the existing law provides for the registration of series marks, the same would not be sufficient. One such solution would be the recognition of the dynamic trademark and the registration of the family of the trademark under the umbrella of the fluid trademark. Moreover, the registration of the flexible trademark would be more appropriate in the present scenario.

iii) The Strengthening of Consumer Protection Standards:

The dynamic nature of fluid trademarks has created concerns over how consumers will perceive such trademarks. Too many variations can create difficulties for consumers to identify products and services. To this end, regulatory guidelines need to be followed to ensure fluid trademarks do not exceed the limit to remain easily recognizable. Defining the limit to make variations will create a balance between creativity and consumer protection.

iv) Protection Against Trademark Dilution:

Fluid trademarks need to be strictly controlled to prevent dilution, especially for renowned trademarks. Dynamic variations can easily dilute the trademark's identity. A controlled approach is needed to ensure fluid trademarks do not alter the essential identity of products and services. This is particularly relevant for trademarks with high recognition.

v) Adapting Trademark Law to the Digital Economy:

The post-pandemic world has created an increased need for digital platforms, thereby making fluid trademarks more relevant. The dynamic nature of fluid trademarks has created an essential need for trademark branding. The post-pandemic world has created an increased need for digital branding.

The judicial system has recognized this through the *Yahoo! Inc. v. Akash Arora* case, which recognized the extension of trademark law to the digital world. The need for stricter regulations is now required to address fluid trademarks in the digital world.

vi) Clarifying Territorial and Transborder Protection:

Fluid trademarks, with their global presence, need to be protected within the framework of territoriality. A better framework is needed to assess the degree of protection based on local recognition and goodwill, as well as the practicality of visibility of brands in bordering countries in today's digital world.

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vii) Balancing Innovation with Legal Certainty:

It is important to note that, in the end, the regulation of fluid trademarks will be about finding a balance between innovation and the objectives of trademark law. Although innovation is to be encouraged, it should not be done to the detriment of the objectives of trademark law. A balanced approach to the regulation of fluid trademarks, which is capable of coping with the dynamic nature of branding and consumer protection, will be critical to ensure that trademark law remains relevant to a changing commercial world.

CONCLUSION:

This study has explored the concept of fluid trademarks as an emerging trend in modern branding. It establishes that trademarks are no longer confined to their traditional role as static symbols of origin but have evolved into dynamic tools of communication that enhance consumer engagement and reflect changing market trends. The rise of fluid trademarks has been closely associated with globalization, digitalization, and the increasing demand for adaptive branding strategies.

The study further highlights the inherent conflict between the innovative nature of fluid trademarks and the rigid framework of the Trade Marks Act, 1999. Fundamental principles of trademark law, including distinctiveness, consistency, and consumer protection, are challenged by the evolving nature of fluid trademarks. Issues relating to consumer confusion, trademark dilution, registration difficulties, and enforcement challenges demonstrate the limitations of the existing legal framework in addressing this emerging form of branding.

An analysis of judicial precedents shows that, although courts have recognised concepts such as trade dress protection, deceptive similarity, and digital trademark infringement, there is still no direct legal recognition of fluid trademarks within the Indian trademark regime.

Based on the findings of this study, there is an urgent need for legal and regulatory reforms to accommodate the dynamic nature of fluid trademarks. Such reforms should include recognition of flexible trademark structures, the development of suitable registration mechanisms, the formulation of guidelines to prevent consumer confusion and trademark dilution, and the adaptation of trademark laws to the realities of digital commerce. These measures would help achieve a balance between innovation and legal certainty in trademark protection.

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In conclusion, fluid trademarks represent the convergence of creativity, technology, and modern branding practices. Developing an appropriate legal framework for their protection will safeguard the interests of trademark owners and consumers while ensuring that trademark law remains relevant and effective in an evolving commercial environment.

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