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FROM PHYSICAL MARKETS TO NATIONAL PLATFORMS: REASSESSING HONEST CONCURRENT USE UNDER SECTION 12 OF THE TRADEMARKS ACT

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Abstract

This article critically examines the doctrine of honest concurrent use under Section 12 of the Trade Mark Act, 1999, in the context of India's developing digital marketplace. The doctrine was introduced to recognise circumstances in which similar trademarks, adopted honestly and used concurrently, can exist together to avoid consumer confusion. Historically, the judicial application of the doctrine has been influenced by honesty of adoption and the nature of the marketplace. These legal standards were developed during the geographically segmented, brick-and-mortar commerce.

The rapid emergence of the digital economy, e-commerce platforms, online marketplaces, and search engines has brought fundamental changes in consumers' encounters with trademarks. The rationale that was used to guide Section 12 is based on the assumption that traditional businesses operated in different regional places with limited consumer interaction, is now being challenged. This article argues that although the doctrine of honest concurrent use continues to be relevant, there is a need to reinterpret the application to overcome the challenges posed by increased digitalisation.

By analysing the structural framework of Section 12 with the help of court rulings and contemporary developments, the paper evaluates the adequacy of the existing legal framework of the concurrent use doctrine to address modern problems. The article concludes by stressing the continuous purpose of the doctrine but presenting a more contextual

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application to preserve the balance between trademark protection and consumer interests in an increasingly digitalised space.

I. Introduction

Honest Concurrent Use (HCU) doctrine has been defined in Section 12 of the Trademarks Act of 1999. It allows one or more proprietors to register identical or similar trademarks in an honest and concurrent manner. The provision provides for a peaceful coexistence of two similar trademarks on the premise of innocent, geographically isolated adoption.

With the onset of the internet revolution, the nature of marketplaces, especially e-commerce, has transformed significantly. The fundamental assumption used to evaluate the honesty of adoption is being blurred by the increasing penetration of the internet in the form of e-commerce, online advertisements, and search engines. Resultantly, the trademarks that once co-existed in separate regions peacefully are now just a search away. Thus, the question raised is whether the present doctrine that was shaped under the Brick-and-Mortar marketplace can still be applied in a borderless architecture of marketplaces.

Although the rationale underlying Section 12 remains sound, the article critically reexamines its contemporary utility with the changing dynamics of trademark coexistence. As regional boundaries are becoming less significant in online commerce, new challenges have emerged for HCU. Thus, the question that stands before Indian courts is not of the similar marks co-existing, but whether the factors that formed the basis of HCU are still appropriate in a borderless digital marketplace.

With the help of new judicial interventions, including *KEI Industries Ltd v. Raman Kwatra (2022)* and *Sumit Vijay v. Major League Baseball (2026)*, this paper studies how the digitalised economy has complicated the traditional basis of the doctrine. Lastly, it argues the importance of adjusting, and not revamping the entire purpose and application of Section 12 by putting less reliance on geography, more attention to notice, platform-enabled expansion, and concrete efforts to avoid customer confusion.

II. The Doctrine of Honest Concurrent Use: Origin, Purpose and Judicial Evolution

The fundamental rule of trademark ownership is that the first party to use a designation as a trademark acquires intellectual property rights in that designation, despite the registration. But there is a recognised exception to this general principle, where two or more similar trademarks can co-exist in certain circumstances. This is called the "Doctrine of Honest Concurrent Use" (HCU).

The doctrine of HCU owes its origin to the nineteenth-century English common law as an equitable response to the rigid enforcement of proprietary exclusivity. It received statutory recognition under Section 21 of the Trademark Act,1905, which was later elaborated in the landmark case of *Pirie's Application* (1933). It was held that the independent and honest adoption of similar trademarks could be justified as concurrent registration in appropriate circumstances. Also, to protect the commercial goodwill of a trader who had adopted a similar mark without an intention to deceive.

In India, this principle was subsequently incorporated under **Section 12 of the Trade Marks Act, 1999**. With this provision, the Registrar has the discretionary power to permit the concurrent registration of similar or identical trademarks under HCU, subject to limitations. The seminal ruling that integrated this doctrine into Indian jurisprudence was ***London Rubber Co. Ltd v. Durex Products (1963) 2 SCR 211***. In this case, the Supreme Court held that the doctrine is intended to protect consumers from deception while reconciling the competing claims of proprietors. Further, the court also observed that the discretion provided to the Registrar must be exercised by analysing the facts of each case rather than the rigid rules.

Subsequently, in ***Kores (India) Ltd. v. Khoday Eshwarsa & Son***, the Court provided the doctrine of broad equitable principle via a structured test identifying the relevant considerations in determining whether concurrent registration should be permitted. These include the honesty of adoption, the duration and extent of concurrent use, the degree of similarity between the competing marks, the nature of the goods or services, the likelihood of consumer confusion, and the surrounding circumstances of each case.

Furthermore, in ***KEI Industries Ltd. v. Raman Kwatra* (2022)**, the Delhi High Court observed that a defendant can no longer claim accidental or oblivious regional adoption when a simple internet search could have revealed a senior use. Similarly, ***Sumit Vijay v. Major League Baseball* (2026)** reflects that the judiciary is willing to evaluate trademark disputes while keeping in mind the changing realities of marketplaces, especially in the digital domain.

These developments indicate the attempts of the Indian judiciary to transform the trademark law to meet the needs of the digital era. Nonetheless, the statutory language of Section 12 lacks explicit guidance on internet platforms, digital advertising and algorithmic misuse, leaving grey areas that lead to inconsistent application. Therefore, there is still a pressing need for legislative updates and regulations that can serve as a strong legal standard in this increasingly interconnected commercial world.

III. Honest Concurrent Use within the Digital Marketplace: Reassessing Traditional Assumptions

Trademarks have been territorial in scope since their inception.

The reason behind the development of the doctrine of HCU wasn't merely because similar trademarks existed; it was developed because the courts had to recognise the marks that were independently adopted by traders operating in geographically distinct markets without mutual awareness. As early trademark law developed prior to the ubiquity of automobiles, trains, aeroplanes, and the Internet, the geographical reach of a mark's goodwill was initially quite limited. Moreover, this territorial separation often reduced the likelihood of consumer confusion and provided a basis for inferring the honesty of adoption of a similar mark. It is important to note that **the language of Section 12 nowhere prescribes 'geography' as a legal requirement;** it is the judicial application of this doctrine that the courts have frequently iterated territorial separation as persuasive evidence of honest adoption under good faith.

This judicial assumption reflected the commercial realities of that time. These were constructed for a brick-and-mortar market infrastructure. Prior to the internet revolution, businesses rarely enjoyed nationwide visibility, and consumers were mostly encountered by the geographically confined trademarks. Consequently, the co-existence of two traders under similar marks did not overlap their consumer base. Therefore, it was evidently easier for the courts to use their statutory discretion under Section 12 and follow the principle of territorial separation, simultaneously focusing on the basic features such as duration of use, honest adoption, and geographical extent of business. Hence, geography merely acted as an evidentiary circumstance that was used to infer whether the concurrent use was genuine and not confusing the consumers.

The emergence of the technological age has presented an entirely new set of challenges and has radically changed traditional assumptions. 10 As the law was created within the confines of geographical limitations, courts could not predict the creation of a cybermarket which transcended physical borders. Today, however, businesses are not inextricably linked to a geographical location because the Internet allows a business to transcend those physical boundaries.11 The Internet's pervasiveness offers a global, borderless dimension for marketing, advertising, and selling services and products, which in turn are making consumers broaden their scope to encounter trademarks and not just be limited to the locally confined markets.

In such an environment, Section 12's hardest question is no longer simply whether two traders once coexisted honestly in separate local markets. It is whether honesty should now be judged by conduct, including precautions taken to reduce confusion and harm, rather than by a thin snapshot of priority and geography alone (Anemaet, 2021).

This transformation has posed important consequences for the application and assessment of honesty under Section 12. It is now the Information Age, and the Internet has become an increasingly common information repository shared by many individuals. This instant interconnection of individuals and businesses now threatens the basis on which the concurrent use doctrine rests; i.e., ignorance of another's mark due to geographic distance and the overlap of remote territories due to the Internet. While it is true that the Trademark Act of 1999 does not impose any statutory obligation to conduct an online search before adopting a mark. But, the increasing commercial use of the Internet gives rise to the possibility that it may effectively give at least some degree of notice to any subsequent user that another person is using the text-based trademark in question. In short, it can be said that the rule of "honest adoption" cannot be detached from the realities of the electronic marketplace.

Recent cases shift attention from bare coexistence to procedural integrity. *Raman Kwatra v. KEI Industries* is presented as requiring consistency between what a party says during registration and what it later argues in infringement litigation, making honesty partly a question of litigation conduct as opposed to solely marketplace adoption (Varnekar 2025). Dr *Reddy v. Fast Cure Pharma* is described as loosening territorial constraints on cancellation and enforcement, allowing disputes to follow the site of trademark harm rather than only the office of registration. That move fits a wider judicial trend in which confusion, control, and enforcement practicality matter more than older local-market boundaries(Varnekar 2025).

Simply put, Section 12 now looks exceptional rather than a routine path to coexistence (Choudhary 2010). Courts increasingly prioritise confusion, dilution, and famous-mark protection. "Honesty" now includes procedural consistency and good-faith litigation conduct. Geography matters less once online, and nationwide markets blur local separation (Varnekar 2025; Singh 2021).

The above discussion does not make the geographical considerations totally irrelevant. Geography still has a residual role because trademark rights remain territorially granted and because markets are not fully placeless. Research on regional marks and territorial branding shows that place continues to matter for innovation, product signalling, and reducing information asymmetry, especially where origin itself conveys quality (Castaldi, 2022; Sgroi, 2022; Santeramo, 2022).

India's evolution is therefore not the abolition of HCU, but narrowing and migration from a geography-centred coexistence doctrine toward a stricter inquiry determined by well-known mark protection, digital visibility, and stronger infringement enforcement (Choudhary 2010; J2025; Chaurasiya 2022). The unresolved issue is whether Indian courts will develop a more conceptually stable, context-sensitive approach, a concern echoed by newer work on adjacent trademark doctrines that warns against subjectivity and unpredictability in evolving adjudicative frameworks (Shiralkar, 2026).

IV. Towards a Contemporary Interpretation of Section 12

The concurrent-use doctrine traditionally allowed multiple parties to do as much if they were in geographically remote areas. However, cases from the early twentieth century were decided at a time when a brick-and-mortar location was the epicentre from which goods and services were offered and sold.The Internet has made a company's physical location less relevant. For example, Google's physical location is irrelevant for consumers who want to use the company's well-known search engine. As such, it is no longer feasible to apply a rule that will not accommodate a likelihood of confusion when the parties are geographically remote.

Although the Trademarks Act, 1999, offers a legal foundation for the protection of brand identity in India. While its broad provisions have allowed for judicial creativity, it has not moved as quickly as technological development. The lack of digital-specific language and the application of geography-based modes of trademark protection persist even today. Consequently. India's online enforcement environment is fragmented, with dilution, influencer promotion, and indirect association now central problems, yet it does not show a mature, honest concurrent use doctrine designed for that setting (Chandra 2025).

Unlike some jurisdictions (e.g., *the U.S. Lanham Act or the EU Trademark Regulation*), the Indian statute is not adequately modified the enforcement rules and judicial interpretations to meet the actual challenges of digital commerce. This necessitates the need for the judicial expansion of existing principles to ensure that the statutory framework stays dynamic, forward-looking, and responsive to the unique realities of digital trademark.

A more defensible India-focused framework is a conduct-and-market-impact test. It has been discussed that support allowing coexistence where both users are legitimate, provided they take reasonable steps to reduce cross-border confusion, give notice, and use disclaimers or other technical measures before consumers are misled (Zheng, 2024). This approach fits broader digital-IP scholarship, which favors targeted mechanisms over absolute territoriality. Across online IP disputes, scholars repeatedly describe territorial rules as generating fragmented enforcement, uncertainty, forum shopping, and high compliance costs, which argues for narrower connecting factors and practical allocation rules rather than rigid geography alone (Knapp 2022; Sridhar 2024).

Conclusion

The doctrine of honest concurrent use under Section 12 of the Trademark Act 1999 has its historical origins in English Common Law and is still surviving because it represents an equitable principle rather than a rigid rule. The doctrine has always accommodated the genuine realities of commercial marketplaces and protected consumers interests. This accord was successful in the traditional commercial environment where locational separation served as persuasive evidence for honest and bona fide adoption. Although the rationale of Section 12 has not changed, it now faces major challenges in a market defined by stable local separation, because honest concurrent use was built around geographic remoteness and Bonafide adoption, while internet trade and national platforms collapse those assumptions.

Furthermore, the analysis suggests that the geography should no longer do most of the doctrinal work. E-commerce has widened the customer base and made digital platforms important actors in trademark harm, including when they actively participate in sales or fail to exercise due diligence. It is also demonstrated that Section 12 should adopt a holistic approach to include both local markets and e-commerce platforms, where the platform-era user proves honest adoption, due diligence, and limited risk of consumer confusion and market harm.

Ultimately, the wider question before Indian Trademark law is not whether honest concurrent use should be repealed, but how it should be applied. In this age of digital platforms, it is no longer where the parties are trading, but whether their activities are justifying their coexistence. Thus, the doctrine therefore appears to be recalibrated, not abolished. By making this shift, the courts can prevent this historic doctrine from becoming a loophole in the Trademark law.

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