



Singapore Treaty Accession as Trademark Reform: What India Must Change to Protect Non-conventional Trademarks

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Singapore Treaty Accession as Trademark Reform: What India Must Change to Protect Non-conventional Trademarks

ABSTRACT

The Trademarks Act acknowledges the existence of certain types of non-conventional trademarks such as sound marks, shape marks, colour combination marks and others that are not traditional marks but are capable of distinguishing goods and services in the marketplace. This recognition mirrors the evolution of today's brand world and the fact that companies must now build their brand identity through more than just words and logos, but also by using senses and experiences. Even when formally recognized, the protection of the non-conventional trademarks in India is yet limited and inconsistent. The main problem is not that they aren't legally recognized but that they are not actually registrable. Common issues faced by applicants are uncertainty over how non-traditional marks are represented, establishing the distinctiveness of a mark, assessing consumer perception, and the standards used for examination and enforcement actions. As such, the registration and protection of such marks can be dependent on "uneven" business practice by the Administration and case-by-case interpretations by the courts. In this background, the accession to the Singapore Treaty on the Law of Trademarks becomes important. The Treaty aims to modernise and harmonise trademark registration procedures, in order to make these more efficient, technology-driven and user-friendly. It does not impose any substantive requirement for recognition of specific categories of trademarks, but establishes a framework that facilitates the procedural streamlining, digitalisation and uniformity of trademark administration. Accession therefore has the potential to serve as a catalyst for structural reform in India, which may be translated as improvements in the procedures for filing, multi-class applications, recordal, correction mechanism, electronic communication and examination practice. But the difficulties of a treaty accession to address the more fundamental issues of non-conventional trademarks remains an issue. Complementary domestic measures are needed to clarify the standards for graphical and digital representations, create more precise tests for acquired distinctiveness, enhance public notice requirements, and to offer guidelines for detailed examination by trademark officials for the protection to be effective. In addition, the procedures for opposition, infringement and enforcement should be tailored to fit the nature

of non-traditional marks. The paper suggests that India does not need to accede to the Singapore Treaty as an international commitment but as a chance for a generalized reform of the trademark laws. International harmonisation and a concerted national effort are the only ways for India to have a clear and effective system of safeguarding non-conventional trademarks in the 21st century.

KEYWORDS

Non-Conventional Trademarks, Singapore Treaty, Trademark Registration, Acquired Distinctiveness, Trademark Law Reform

1. INTRODUCTION

In the current branding environment, non-conventional trademarks have emerged as a crucial aspect of branding, especially for businesses that are no longer solely defined by words or logos. These days, brand identity is frequently conveyed by sound, colours, shapes, packaging designs, motion elements, and other senses that people connect with a specific brand¹. In such saturated markets, these alternative logos are highly effective at capturing consumers' attention and creating brand recognition.²

India has taken steps towards recognising non-conventional trademarks under the Trade Marks Act, 1999 and by judicial interpretation. Law allows for the registration of signs which are capable of distinguishing a trader's goods and services from those of another trader. Yet, despite such recognition, the Indian trademark system is fundamentally geared towards word and device marks. Consequently, the process of applying for protection of soundmarks, shape marks, colour marks, and other non-traditional marks can be challenging on various fronts: representability, distinctiveness, examination standards, and evidentiary requirements.³

India joining the Singapore Treaty on the Law of Trademarks is an important opportunity in this context for reform. The Treaty's goal is to update and streamline trademark registration rules and procedures, including by introducing more flexible and technologically oriented administrative solutions. It does not impose any obligation on member states to register particular types of marks, however, it does promote the

¹ Graeme B. Dinwoodie & Mark D. Janis, *Trademark and Unfair Competition: Law and Policy* 439–44 (6th ed. 2022).

² David A. Aaker, *Building Strong Brands* 35–41 (1996).

³ Dev Gangjee, *Relocating the Law of Geographical Indications* 149–53 (2012).

creation of efficient trademark registration systems that are able to handle the changing nature of trademark identification⁴.

This accession should thus be seen as an international agreement, but one that has the potential to also spur domestic trademark reforms. The rigid representation requirements should be rethought in India and electronic representation, such as audio and multimedia, should be allowed. A clear distinction should also be established with regard to the non-conventional marks, which will be consistent within exams. In addition, there is a need for training of trademark examiners, revision of procedural rules and manuals.⁵

In the end, there is more to meaningful protection than formal recognition of non-conventional trademarks. To overcome these challenges, India needs to update its trademark system in line with contemporary branding realities by modernizing the process for trademark registration, clarifying legal requirements, and enhancing its institutional capacity. These reforms would promote innovation, provide greater legal clarity and provide proper protection to the new forms of brand identity in the digital environment.⁶

2. THE CURRENT INDIAN POSITION

2.1 Statutory Recognition of Non-Conventional Trademarks

The non-conventional trademark is extensively protected under India's trademark law. This recognition is largely based in the Trade Marks Act 1999, s. 2(1)(zb) which specifies that a trademark is a mark that is capable of being graphically represented and of distinguishing the goods or services of the person who uses it from those of other persons⁷. The scope of the words included in the definition is broad and flexible, and encompasses the words, names, signatures, letters, numbers, devices, signs, labels, combinations of colours and shapes of goods, packaging, as well as other identifying signs. The broad scope of the definition is meant to include the variety of commercial activities and new means of brand identity.⁸

⁴ Id. art. 2.

⁵ World Intellectual Property Organization, Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs on the Internet 11-14 (2001).

⁶ Jeremy Phillips & Ilanah Simon, Trademark Use 267-71 (3d ed. 2005).

⁷ The Trade Marks Act, No. 47 of 1999, § 2(1)(zb), India Code (1999).

⁸ P. Narayanan, Law of Trade Marks and Passing Off 34-36 (7th ed. 2017).

This is because the provision moves away from the concept of the trademark being just a logo or a name. In today's business world, sensory and experiential branding is becoming more and more popular as a means for creating a product or service that stands out in a crowded and competitive market. Consumers tend to have a trade mark for a given sound, colour, shape or package type for a commercial source. The principle of source identification has been recognized by the Indian law, which allows for multiple different methods of source identification, including recognising the possibility of source identification from trademarks.⁹

This recognition was further bolstered in the Trade Marks Rules, 2017, which also introduced a procedure for the registration of sound marks. Applicants can submit sound marks in MP3 format together with a graphical representation of the sound mark under Rule 26. This step was a significant leap towards updating trademark administration with technological innovations and contemporary branding strategies. It also illustrated the adaptability of the Indian Trademark regime to the new modes of commercial communication, far from just being a visual mark.

There have also been judicial decisions and administrative practice that have helped recognize the non-conventional trademarks. In India, courts grant protection to distinctive shapes, colour combinations, packaging designs and trade dress where the features have become source-identifying. The changes reflect the progressive evolution of Indian trademark law towards the modern-day challenges of the marketing and consumer behavior.¹⁰

However, effective protection is not always realized when a piece of legislation is enacted. The legal system allows for registration of some types of non-conventional marks, but in practice, there are practical difficulties with the requirements in respect of representation, distinctiveness and proof of consumer association. However, the extent of protection provided under Indian law for non-conventional trademarks remains to be a matter of interpretation and application by trademark authorities and courts.¹¹

3. WHY THE SINGAPORE TREATY MATTERS

3.1 Procedural Modernization and Non-Conventional Marks

⁹ J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 3:2 (5th ed. 2023).

¹⁰ Dev Gangjee, Relocating the Law of Geographical Indications 149–53 (2012).

¹¹ P. Narayanan, Law of Trade Marks and Passing Off 54–57 (7th ed. 2017).

The Singapore Treaty on the Law of Trademarks was introduced to modernise and harmonise the trademark registration process given the technological advances and evolving trademark owner needs¹². The Treaty has very little to do with substantive IP rights, as trademark rights are defined by substantive IP agreements, and more to do with administrative procedures, filing procedures, communication and procedural efficiency¹³. The procedural orientation is especially important in the context of non-conventional trademarks, since many of the problems which can occur with non-conventional trademarks stem not from a failure to secure legal protection, but rather from problems in the process of registering and examining non-conventional trademarks. However, in practice, various issues arise in applying for protection of non-traditional marks, including questions about how the mark is to be represented, when the application can be made, whether the mark is required to be recognised, and the administrative treatment of non-traditional marks. Therefore, the need for procedural reform is an important part of good trademark protection.¹⁴

3.2 Benefits of Accession for India

The Singapore Treaty, when used properly, can greatly benefit the registration process for non-conventional trademarks. It has played a crucial role in streamlining and simplifying filing processes. The Treaty promotes the elimination of unnecessary forms and promotes the use of electronic communication and digital filing system¹⁵. Especially for non-conventional marks and representations that are often not effectively captured on paper. Trademark officials would be allowed to be more flexible in the administrative requirements, to better accommodate the various forms in which the trademark can be presented, such as audio files, digital images, multimedia formats and others.

India, joining the Treaty, would gain various benefits. Firstly, it would show India's intent to have a modern and internationally harmonised trademark administration system. Indian trademark regime would benefit from alignment with global procedural standards for higher

¹²Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, S. Treaty Doc. No. 109-9 (2006).

¹³World Intellectual Property Organization, Singapore Treaty on the Law of Trademarks and Regulations Under the Singapore Treaty on the Law of Trademarks arts. 2, 3, 8 (2006).

¹⁴World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 24-27 (2009).

¹⁵World Intellectual Property Organization, Singapore Treaty on the Law of Trademarks and Regulations Under the Singapore Treaty on the Law of Trademarks arts. 5, 8, 9 (2006).

efficiency and credibility¹⁶. Secondly, accession would facilitate reforms in the domestic field in those parts of the procedure where they still reek of traditional notions of the nature of trademarks as purely visual marks. Modifications to administrative procedures of filing and examination would facilitate the resolution of barriers to registration for non-conventional marks. Third, treaty based procedural harmonisation would be of benefit to Indian businesses looking to get trademark protection in foreign jurisdictions with the aim of making Indian registration practices more harmonised with the international standards and expectations¹⁷.

3.3 Limitations of Treaty Accession

But adherence to accession should not be seen as a panacea for the problems of non-conventional trademarks¹⁸. The Singapore Treaty is procedural in nature and does not define what kind of marks should be protected nor what test should be applied to determine the protection of such marks. Distinctiveness, functionality, acquired secondary meaning and consumer perception are still areas of national law. It is therefore essential for India to supplement the accession to the treaty with legislative and regulatory changes to establish more clearcut guidelines for representation, examination, opposition proceedings, and enforcement.¹⁹

3.4 Accession as a Catalyst for Broader Trademark Reform

In this regard, accession should not be considered as the only path to substantive change in the law but as a crucial catalyst for reform and modernization.²⁰ Even though the Treaty may set the groundwork for a new set of procedures, real protection of non-conventional trademarks will require domestic reforms that will clarify standards, bolster administrative capacity, and provide consistent enforcement. The only way India can have a trademark system that is capable of protecting new

¹⁶World Intellectual Property Organization, Singapore Treaty on the Law of Trademarks and Regulations Under the Singapore Treaty on the Law of Trademarks pmb. (2006).

¹⁷ World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 24-30 (2009).

¹⁸ Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, S. Treaty Doc. No. 109-9 (2006).

¹⁹ World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 24-30 (2009); P. Narayanan, Law of Trade Marks and Passing Off 54-57 (7th ed. 2017).

²⁰ Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, S. Treaty Doc. No. 109-9 (2006); World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 24-27 (2009).

ways of mark ownership is if there is some international harmonisation and some domestic reform.²¹

4. REFORM GAPS IN INDIA

While non-conventional marks are recognized under the Indian trademark law, certain issues still lie in the legal and administrative framework in relation to the protection of such trademarks²². The real difficulty lies not in the fact that the trademark system is not formally applied to these non-visual products, but in the fact that the trademark system's traditional framework is still based on a vision of the trademark as a word, logo, or label. This approach works well for traditional trademarks, but is less useful for non-traditional trademarks like sounds, motion marks, trade dress, scents, textures, holograms, or sensory trademarks that are more unique because of the way consumers interact with them.²³

The difficulty of representation, which is one of the most important reform gaps, is not generally recognized by most people. The Indian trademark law still lays a stress on graphical representation as a requirement for trademark registration. This was historically very useful to ensure legal certainty, to provide public notice and to ensure accurate record keeping²⁴. But as regards non-conventional trademarks, graphical representation can be a real blocker. Some types of marks would be better suited to digital or multimedia than static visual representations. The communicativeness of sound marks is best captured in recordings; for motion marks, some moving visual representation is needed to communicate their unique characteristics well; and for holograms, a moving visual representation is also needed. This is why clarity, accessibility and precision of representation should take priority above the formal requirements in a modern trademark regime.²⁵

The second is an examination procedure for trademark applications. At present, applications based on non-conventional marks are not examined in detail and uniformly, and thus, the examination of such applications rarely applies the same examination standards. Examiners are very

²¹ World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 28–30 (2009); Graeme B. Dinwoodie & Mark D. Janis, Trademark and Unfair Competition: Law and Policy 439–44 (6th ed. 2022).

²² The Trade Marks Act, No. 47 of 1999, §§ 2(1)(zb), 9, India Code (1999).

²³ Graeme B. Dinwoodie & Mark D. Janis, Trademark and Unfair Competition: Law and Policy 439–44 (6th ed. 2022).

²⁴ Ralf Sieckmann v. Deutsches Patent- und Markenamt, Case C-273/00, 2002 E.C.R. I-11737.

²⁵ Id.

experienced but the lack of detailed guidelines can cause differences in interpretation of distinctiveness, functionality, and registrability. As a result, the applicant could be subjected to different outcomes when facing a similar situation, which can cause confusion during the registration process. The uncertainty only adds to the expense of securing trademark protection and can deter companies from pursuing innovative brands. A more formal and clear examination process would be beneficial in terms of consistency and it would boost confidence in the trademark system.

Many of the non-conventional marks that are registered do not have inherent meaning and need to gain source-identifying qualities through their extensive use in the marketplace. The acquired distinctiveness or secondary meaning, by which applicants are often required to establish, is therefore often evidenced by advertising spending, sales, market surveys, consumer recognition studies, and through the length of commercial use²⁶. Indian trademark law, however, does not offer much clarity on the amount and quality of evidence required to meet the requirement. The lack of clarity, either for applicants or examiners, hinders the identification of genuine distinctive marks from marks which have only unusual or decorative features.²⁷

The trademark register itself is a problem not only for the record of proprietary rights, but also as a means of public notice, which alerts the competition and consumer to the extent to which the specific trademark owner has a legal right. With non-conventional trademarks, the public's perception of the trademark may not be readily discerned from the "standard visual entry," which complicates effective public notice. Third parties may not fully understand the exact extent of protection sought if the representation of the sound, motion or other unconventional mark is ambiguous. This uncertainty raise the risk of conflict, and create the potential for unpredictable trademark enforcement.²⁸

Lastly, there is a huge enforcement gap in relation to non-conventional trademarks in India. Such marks may be successfully registered, but there is no law of protection for such marks in the form of litigation. Judicial rulings have been extensive with respect to 'traditional' word marks, logos, but comparatively few with respect to scope and enforcement of sound marks, trade dress, colour marks or other more unusual marks. Infringement in these instances frequently involves a

²⁶ J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §§ 15:1-15:30 (5th ed. 2023).

²⁷ J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 15:5 (5th ed. 2023)

²⁸ Ralf Sieckmann v. Deutsches Patent- und Markenamt, Case C-273/00, 2002 E.C.R. I-11737.

complex evaluation of consumer perception, likelihood of confusion, market context and commercial association. With an absence of a principle-based framework to guide these questions, there is not one consistent enforcement approach. The lack of clarity undermines the utility of registration while dissuading businesses from seeking protection for innovative aspects of branding.²⁹

India's problems do not lie with the recognition of non-conventional trademarks in itself on the basis of the law. Overall, it is essential to build up a consistent and predictable legal and administrative structure for representing, examining, registering, opposing, and enforcing such marks. If India is to have a trademark regime that fits the needs of 21st century commerce and contemporary use of trademarks, it must fill these gaps in reform.³⁰

5. WHAT INDIA MUST CHANGE

There are several interrelated areas where India should make a significant change to the trademark law and practice for non-conventional marks to be meaningfully protected first is modernization of the representation requirement by accepting digital representation and technologically suitable representation of the mark, especially in cases where it can better communicate the mark than a traditional representation³¹. The second one should be the provision of comprehensive examination guidelines for sound marks, colour marks, shape marks and other new types of marks, in order to ensure that the evaluation of distinctiveness and functionality is based on principled and uniform standards that are not based on case-by-case discretion. The third should be a explicit set of rules for the proof of use and acquired distinctiveness, such as the use of market surveys, advertising material, sales records, and consumer recognition evidence.³²

The fourth reform is to be on the accessibility and intelligibility of the trademark register, so that competitors and the public will be able to know the precise scope of protection claimed in respect of a non-conventional mark³³. The fifth should mean more adjudicatory

²⁹ J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §§ 23:1-23:38 (5th ed. 2023).

³⁰ Graeme B. Dinwoodie & Mark D. Janis, Trademark and Unfair Competition: Law and Policy 439-44 (6th ed. 2022).

³¹ World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 18-25 (2009); The Trade Marks Rules, 2017, r. 26.

³² J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §§ 15:1-15:30 (5th ed. 2023).

³³ Graeme B. Dinwoodie & Mark D. Janis, Trademark and Unfair Competition: Law and Policy 450-52 (6th ed. 2022).

awareness, meaning more training for examiners, trademark attorneys and judges and bring about the use of a more uniform and conceptually coherent approach to non-traditional marks. Without a shared language and consistent method of evaluation, a legal category cannot be developed.

In addition to these particular changes, India needs to think about re-evaluating the need for graphical representation as the common criterion for trademark validity. A more practical standard, based on clarity, precision, usability and permanence, would better fit the requirements of sound marks, motion marks, holograms and other marks which are becoming a more important part of commerce and society in digital form. Meanwhile, the law should clearly retain the restrictions that may be justified by functional and aesthetic considerations, such as those concerning shape and colour marks. The goal is not to give the monopoly of using features reasonably necessary to competition, but solely those features that can be shown to be used as indicators of source.³⁴

6. NON-CONVENTIONAL MARKS

The non-conventional marks are not a single category of doctrine, but a variety of marks, none of which are classical, in the classical sense of word-and-device trademark protection. It encompasses smell marks, colour marks, shape marks, motion marks, holograms, texture marks, and trade dress³⁵. Aside from these, Indian law has made a significant first step by acknowledging some of these forms, particularly the use of sound marks, colour combinations and shape marks³⁶. Formal recognition is not enough to remove the doctrinal uncertainties associated with each of these categories.

The potential and the difficulty of protection of non-conventional sign is shown by sound marks. Perhaps they are quite unusual and readily identified with a specific commercial source but, for the representation to be effective, they must somehow reflect the sound rather than just its abstract description. The concern with colour marks is that they can lead to overbroad monopolisation, especially when the colour claimed is functional or is commonly used in the trade. Shape claims are the traditional balancing act of source identification and product function, and trade dress claims may include packaging, appearance, arrangement

³⁴ *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995); *Koninklijke Philips Elecs. NV v. Remington Consumer Prods. Ltd.*, Case C-299/99, 2002 E.C.R. I-5475; J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 7:63 (5th ed. 2023).

³⁵ Graeme B. Dinwoodie & Mark D. Janis, *Trademark and Unfair Competition: Law and Policy* 439-44 (6th ed. 2022).

³⁶ The Trade Marks Act, No. 47 of 1999, §§ 2(1)(zb), 9, India Code (1999); The Trade Marks Rules, 2017, r. 26.

and commercial impression, and intersect trademark law and principles of unfair competition³⁷.

There is a need to give protection to those signs that truly serve as a source identifier and can be depicted clearly enough to inform the public and competing traders and not every non-conventional sign. In this context, procedural modernization, as required by a treaty, can also have a substantive element of fairness, that is, to enhance filing practices and to impose more robust requirements of representation and effective notification of the public. The transparent layout and uniformity of the examination process will facilitate the court and trademark examiners to determine if the trademarked sign is to be protected or left in the public domain³⁸.

7. COMPARATIVE SIGNIFICANCE

Comparative law bolsters the case for reform, revealing that it is feasible to modernize trademark systems without sacrificing legal certainty. International trademark administration has become more harmonized, efficient and adapted to the newer communication technologies as is demonstrated by the Singapore Treaty itself. It is not about a redefinition of the scope of protection of such a trademark, it is not about new categories of trademarks, it is about creating an administrative framework that will be able to adapt to new methods of trademark applications, registration and brand communication. It's particularly important in this age of digital, sensory and cross-platform branding, when commercial identity is often marketed with more than a word mark or logo. Accession would also be symbolic and strategic for India. It would imply trademarks are not just a set of legally defined classifications, but rather tools in the living innovation economy. This is because a lot of businesses use non-conventional marks that they use to associate with the customer, the atmosphere and the experience they provide rather than relying on one verbal or graphic mark. In some of the most competitive business environments such as entertainment, hospitality, tech, consumer goods, and luxury, these marks can truly be a game-changer.

Similarly, India must not impose the tenets of treaties in a cut and paste

³⁷Koninklijke Philips Elecs. NV v. Remington Consumer Prods. Ltd., Case C-299/99, 2002 E.C.R. I-5475; Colgate Palmolive Co. v. Anchor Health & Beauty Care Pvt. Ltd., 2003 (27) PTC 478 (Del.); J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §§ 8:1-8:10 (5th ed. 2023).

³⁸World Intellectual Property Organization, Guide to the Singapore Treaty on the Law of Trademarks 24-30 (2009); P. Narayanan, Law of Trade Marks and Passing Off 54-57 (7th ed. 2017).

fashion. The burdens of proof and the ways of examining, the styles of litigation and the market structures vary from one jurisdiction to the next and the law that may be good in one jurisdiction may be bad in another. To this end, a calibrated approach is required in India, such as the modern administrative spirit found in the Singapore Treaty and to translate it into the Indian statutory language and examination practice and enforcement procedure in tune with the Indian context.

8. PROPOSED REFORM MODEL

There exists a model of practical reforms to implement in India that can be carried out in four linked stages. First, entry into the Singapore Treaty would put Indian trademark administration in a more contemporary and uniform structure. Second, Indian legislation/clarification changes were likely required, particularly in terms of representation, filing and treatment of non-conventional marks. Third, the trademark office would have to develop comprehensive administrative regulations, examination manuals, filing directions for each type of non-traditional trademark³⁹. Fourth, doctrinal principles for distinguishing between non-conventional marks and conventional marks as well as between products and services in cases involving non-conventional marks would need to be clarified.

This tiered system would permit reform without the turmoil of an overhaul of trademark law. It would uphold the fundamental ideas of distinctiveness, consumer association and fair competition, and it would render the system more practical for contemporary branding. It would also minimize unnecessary litigation since the applicant would know the requirements at the time of filing itself. This certainty is particularly useful for researchers and practitioners because it reduces transaction costs and increases overall compliance, with its standards being more predictable.⁴⁰

A helpful example is the processing of sound marks. In principle they are recognized in India, but a reform model would render that recognition real. Applicants would be familiar with the required file format, musical notation, description, and evidence of use/acquired distinctiveness. Examiners would use an even standard instead of a variable standard. Opponents still would be given a fair chance to challenge the registration, and courts would have the benefit of having a more firm and complete administrative record to determine a dispute⁴¹. It also applies to claims of

³⁹ Office of the Controller General of Patents, Designs and Trade Marks, Trade Marks Manual of Practice and Procedure 2015; Dev Gangjee, Relocating the Law of Geographical Indications 149–53 (2012).

⁴⁰ P. Narayanan, Law of Trade Marks and Passing Off 54–57 (7th ed. 2017).

⁴¹ World Intellectual Property Organization, Guide to the Singapore Treaty on the Law

shape marks, colour marks and trade dress. Commercial interest is a key factor in these categories, and they are also susceptible to confusion, functionality objections, and overly broad claims. If the sign is to serve as a source identifier the protection should be assured with a clear reform structure. Thus, India can reform the trademark regime without compromising competition and maintain the public domain.⁴²

9. CONCLUSION

It is no longer possible for India to view non-conventional marks as "exceptional" or "marginal" issues in trademark law. Today, the concept of branding is not limited to names, logos or labels, but also includes sounds, shapes, colours, packaging, etc., which enable consumers to identify the commercial origin. In an increasingly competitive marketplace and with increasingly savvy consumers, these are actually taking on real commercial and legal meaning. The law should, therefore, adapt to this change and not remain based on the assumptions of earlier days of trademark practice.

The Singapore Treaty is an excellent opportunity for India to modernize the trademark registration process architecture. What it means isn't just in terms of administrative efficiency, but also the way it reflects the direction in which trademark reform is going. Registration through accession with a focus on the modern methods of communication and harmonised procedures may be able to alleviate some of the bumps in the road relating to the filing and processing of non-conventional marks. It might make the system more approachable, more understandable, more adaptable to the current branding world.

Concurrently, such an accession would not suffice. But the most profound issues with non-conventional marks in India are not just those of procedure, they are also those of definition and enforcement of representation, distinctiveness and enforcement. A mark could be formally allowed but then at the examination stage could be subject to doubt due to lack of adequate clarity and consistency in determining whether it actually serves as a source identifier. Likewise, even if a mark is registered, it may be challenging to litigate the scope of protection and likelihood of confusion without solid guidance from courts and enforcement authorities. This implies that procedural reform has to go hand in hand with substantive and institutional reform.

of Trademarks 24–30 (2009).

⁴² J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 7:63 (5th ed. 2023); Graeme B. Dinwoodie & Mark D. Janis, Trademark and Unfair Competition: Law and Policy 450–52 (6th ed. 2022).

India then needs to step towards a more advanced and integrated trademark system to truly serve the goal of protection of non-conventional marks. Such would call for flexibility in representation, guidance of the public in examination guidelines, higher standards of evidence, clearer public notice, and increased unfamiliarity of the examiner or judge with alternative representations of brand. It would also involve rethinking assumptions about the form of a trademark that is necessary to be legally recognized. The protection of innovation and fair competition cannot be the sole preserve of conventional marks and the need for non-conventional marks to be practically registrable, commercially meaningful and enforceable must not be overlooked.

So, in this context, the goal of accession to the Singapore Treaty can be interpreted as a reform opportunity, not a reform end point. It can be a framework for modernization, but the essential change will have to be within the country, through legal and institutional reform. It is only by aligning with international trends and proceeding with internal reforms that India can develop a trademark regime that is fit for the digital age and provides effective protection for non-conventional trademarks.

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