

## TRADEMARK...

### [Part 1 of 2]

*Trademark is a unique symbol or sign which may be a label or numeral or combination of colours for identification of your goods or services*

**Trademark enables you and a third party to distinguish your products and services from those belonging to your competitor.**

Businesses are often faced with the decision of **whether they should register their trademarks or leave them unregistered**. If a protected trademark can have a positive impact on yearly sales or provide intrinsic value to a business, registration may be the best course of action.

### UNREGISTERED TRADEMARK

- ❖ An **unregistered trademark** is a trademark which is not registered under the Trade Marks Act 1999 as amended from time to time and **does not have safeguards against infringement**.
- ❖ **Unregistered trademark does not get much protection** and cannot stop any third party from using the same mark.
- ❖ An unregistered trademark is one which does not get statutory protection but possess certain common law rights.
- ❖ One of the major pitfalls of not having your trademark registered is that in the event of litigation, the ***owner will have to prove that there is goodwill and reputation attached to your unregistered trademark that is used to sell goods or offer services.***
- ❖ You will also have to show that the mark has a reputation to the extent that it signifies the distinctiveness of the trademark. In other words, you must show that the public can easily identify or connect the mark with the related goods or services.
- ❖ ***Making the decision to not register your trademark may seem like a big-save for your business, but in the long run this might not be a smart move.***
- ❖ The reason why unregistered trademarks can be costly and time consuming is because of lack of legal ownership.
- ❖ Initiating a legal action against infringement can cost you a fortune because of the lack of proof of ownership.

*If there is the possibility that your trademark could attract infringers, obtaining a registration may be a wise option over leaving it unregistered.*

*For example, imagine that there was a chikki store in a small town called “Maganlal” that made chikkis and other sweetener products. The store attracted customers from the town itself and also from tourists and others from around the state. The store never bothered to register “Maganlal”, but it operated with that name for decades.*

*Now imagine that a new store opens down the street, also calling itself “Maganlal”. Surely, the first **Maganlal** would lose customers who mistakenly assumed that the second store was the original, or related thereto. Moreover, the customers themselves would be harmed, particularly if they purchased chikkis that was inferior in quality to the goods they assumed they would get based on the original stores excellent reputation. Everyone would lose, except the new store(s), which would benefit from the goodwill created by the original.*

#### **Disclaimer:-**

The content herein is provided for understanding of Law and shall not be construed as Legal Advice or Legal

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**SIMILAR OR IDENTICAL TRADEMARK**

***What characteristics of the trademark should be considered to understand if the two marks are identical or similar? A mark identical to an already registered trademark can be registered? If yes, on what Grounds?***

*There is one Company which is using a trademark “TANISHQ” for manufacturing and sale of watches and there is another one Individual who started using name “KANISHK” for its Jewellery items. The intention of the Individual using the name “KANISHK” for its own Jewellery business is obvious since it closely resembles to the “TANISHQ”.*

*The use of the name by an Individual in a deceptively similar manner has caused irreparable loss and injury to the Company, which cannot be compensated in pecuniary terms.*

*Here the principle is that the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. If this principle is made available to the case, it can be said that there is no possibility of deception or confusion to the purchasers.*

*The High Court’s judgment in such a case is that it cannot be said that both are identical and similar which is likely to cause deception or confuse to public, who intend to purchase Jewellery items.*

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**In S.B.L. Ltd. v. Himalaya Drug Co.,** reported in AIR 1998 Del. 126. The Supreme Court has considered the two words 'Liv. 52' and 'Liv.T', there it was observed that the common feature 'Liv', abbreviation made out from the word 'Liver' is descriptive in nature and common in usage. It is further observed that both the products have no phonetic similarity and both the products were found to have distinctive features. Therefore, it was observed that the proprietor of 'Liv. 52' would not be entitled to injunction restraining the use of 'Liv. T'. It was also observed that there are about 100 drugs in the market using the abbreviation 'Liv' made out of the word 'Liver', which is the organ of the human body.

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