



A trademark infringement claim can only arise when the same is registered and the concerned owner brings in proceedings related to contraventions. If the same is not registered, then a claim can be made on the basis of common law on grounds of misrepresentation or any other legislation governing unfair procedure of carrying out trade only. [Section 29](#) of the [Trade Marks Act, 1999](#) is the provision that talks about infringement of trademarks. When the confusion carries into the court, it is on the plaintiff to prove the infringement of his trademark. In the process of doing so, he must make the court believe that the trademark he owns has gained a social standard and importance among the people and therefore, has a priority over that of the defendant's mark. The plaintiff must also provide reasonable grounds that the defendant's mark is most likely leading to puzzlement among the consumers of those goods or services.

Every trademark issued by the Principal Register of the concerned court provides along with it absolute right to the owner of the trademark to use it without any fear of safeguarding the same. This very justification is often a rebuttal in the court of law when cases regarding trademark infringement arise. The most obvious thing the court takes into notice is the degree of similarity between the two marks in conflict. Following this, the other factors that are looked into are the marketing skills, advertisement techniques, the intention of the defendant in embracing the mark, the purchasing skills of goods and services among the consumers and so on. These often make the process of coming to a decision easier for the courts.

Remedies

Remedies act as a measure for infringement of both the registered as well as unregistered trademarks. In the former case, it acts as an action to initiate the proceedings of infringement in a court of law while in the latter case, it helps in passing off the infringement to the hands of common law. In India, it is Section 29 and [Section 30](#) of the Trade Marks Act, 1999 which lays down remedies for infringement of trademarks. The remedies discussed below are the ones which are adopted according to the facts and circumstances of the case in hand.

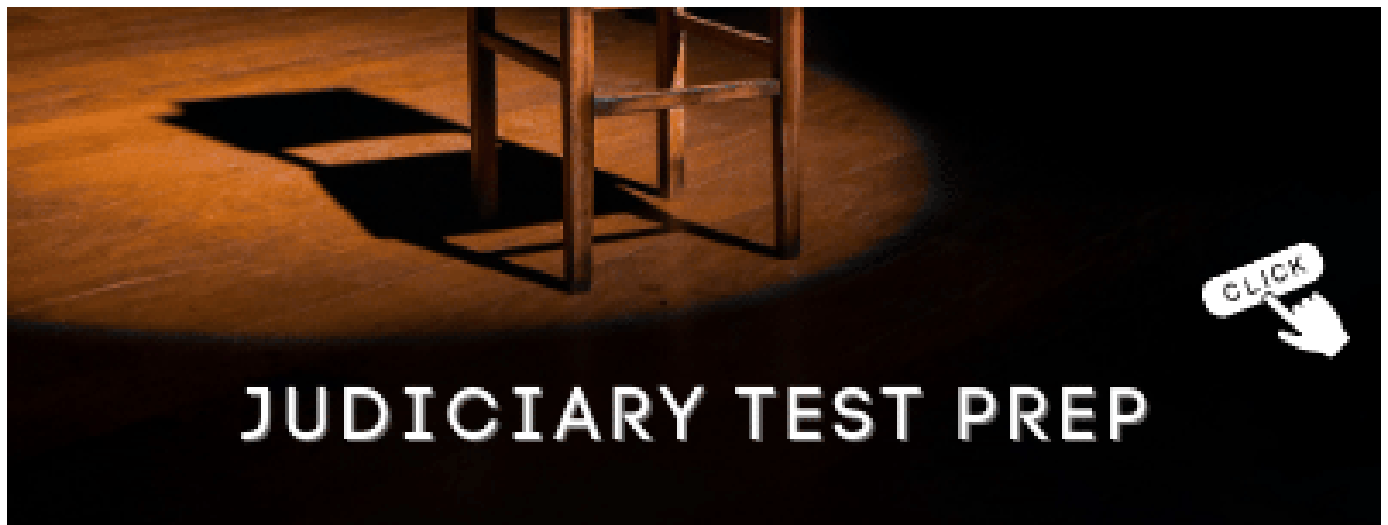
Civil remedies

The Trade Marks Act, 1999 lays down certain civil remedies to be given to the ones whose trademark has been infringed. They are:

1. Injunction or authoritative direction by the court of law is a common civil remedy that can be provided with. The two kinds of injunction that can be granted are perpetual and temporary injunction. Perpetual injunction is granted depending on the suit concerned and when the same is supposed to be decreed and therefore is of permanent nature. In the case of a temporary injunction, a specified time frame comes into the consideration which in this case will be till the court passes its final orders regarding the matter. The same can be asked for under [Order 39 Rule 1 and 2](#) of the [Code of Civil Procedure](#). This rather nullifies the purpose of filing the suit and thus allows the defendant to continue usage of the mark similar as that of the plaintiff.
2. Damages can be claimed by the aggrieved party on grounds that the exclusive right of using the trademark he owns has been ceased and this subsequently has led to him or his enterprise suffering losses.
3. A civil remedy that is often claimed is handling of the profit accounts along with a command for delivery or removal of the products that have been infringed.

[Section 135](#) of the Trade Marks Act, 1999 provides statutory identification towards the Anton Piller Order which in turn prevents the defendant from taking off assets from the court's jurisdiction. The concerned court often appoints a local commissioner in order to seal the goods or materials that are infringing in nature as an execution of a civil remedy. So in case of civil remedy, the court either provides for the grounding of the defendant's goods or services that is responsible for causing confusion in the minds of the consumers or makes him pay the damages caused to the plaintiff. At times when civil remedies do not succeed in fulfilling the loss of the plaintiff, the court resorts to civil remedies.





Criminal remedies

If we take a look at the Trade Marks Act,1999, it can be viewed that there are several provisions that can be counted as a criminal remedy for the infringement of trademark. The following are laid down below:

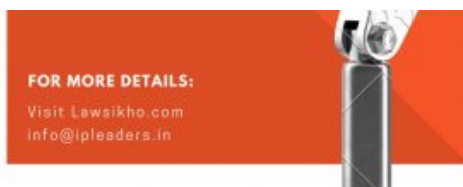
1. [Sections 103](#) of the Act lays down criminal remedy for the contravention of the trademark of any individual or entity which lays down a period of six months of imprisonment which can be extended till a time frame of three years for infringing trademark rights.
2. [Section 104](#) of the Act talks about penalties that need to be provided as a sanction against an infringement. The section mentions a fine of fifty thousand rupees which can be increased till an extent of two lakhs in case someone is found to transgress the trademark rights.
3. An inflating version of punishment is laid down under [Section 105](#) of the same Act.
4. A seizure of powers of the person liable for infringing can be carried out as a criminal remedy for an efficient adaptation to the above provisions. This procedure carried out by police is subjected to reasonable grounds of proving the infringement only.

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Administrative Remedies

It has always been observed that criminal remedies are much more relevant compared to that of civil remedies. Along with civil and criminal remedies, administrative remedies are also available as a remedy for the infringement of the trademark. The remedies which are available under the palate of administration are provided below:

By opposing a mark that is similar to the original mark, which can be carried out under [Sections 9\(1\)](#) or [11](#) of the Trade Marks Act, 1999. If such a situation arises, interrogations are carried out by the examiner upon the trademark registration. A trademark opposition is always filed by a third party, thereby opposing the existing trademark in the trademark journal after the completion of its registration procedure.

2) Another way of carrying out administrative remedy is by correcting the trademark which is already registered. This in a way eliminates confusion of trademarks.

3) As the remedy is administrative in nature, it is carried out by keeping a check in the trade activity of the goods that bear an infringed trademark. Thus, import as well as export of goods that are labelled with a trademark that is fraudulent by nature is restricted in order to avoid hesitation. These three ways of carrying out administrative remedy is often useful in preventing trademark infringement.

Landmark Judgment

There have been several judgements passed by the courts that stand responsible for changing the destiny of remedies available for trademark infringement and clearly laying down the intention behind the judgements delivered by the court. One of such cases are [DM entertainment v Baby Gift House and ors](#). In this case, a question arose relating to publicity rights and character retailing. The plaintiff, a popular singer Daler Mehndi who owned a company with the same name possessing all associated rights, alleged that the defendant by creating miniature toys of the public figure was carrying out an unapproved activity and was in turn encouraging a detrimental effect on the reputation of the company and the singer. As there exists no provision specifying description of passing off, the court relying on precedents declared a compensatory sum of Rs. 1 Lakh to

the plaintiff by the defendant.

Further in the famous case of [*The Coca-Cola Company Vs. Bisleri International Pvt. Ltd*](#), the Delhi High Court was firm with the fact that if there exists any amount of infringement, then the court's jurisdiction is likely to be present in order to entertain the concerned suit. With the confusion of a brand-name MAAZA being passed off from the plaintiffs' company to that of the defendant's, brought in the solution to the case. The defendant used the trademark both in domestic as well as foreign countries. Further, it was the plaintiff who filed a permanent injunction, thereby claiming losses suffered by the company. The court inferred that the defendant is liable for infringement due to usage of trademark beyond the permissible extent and as a result it issued an interim injunction against the defendant.

Delhi High Court in another famous case called [*Makemytrip \(India\) Private Limited v. Orbit Corporate Leisure Travels*](#), declared a judgment based on the law of acquiescence, thereby not restraining the defendant to carry on with its trademark. The facts of the case goes as the plaintiff company filed a suit claiming that the defendant cannot carry on using a mark named GETMYTRIP, for the plaintiff claimed that the mark was deceptively similar to theirs. But knowing the same, the plaintiff carried on their activity till one fine day they filed the suit. On this ground the court quashed the suit thereby allowing the defendant to carry on. This case was indeed remarkable for it made it clear that awareness and knowledge is important before proceeding with a suit. Hence, ignorance is not welcoming when it comes to infringement of trademarks.

Conclusion

In India, there is a growing need for registration of trademarks day by day, clearly indicating the awareness developing among people to safeguard their own products. Trademark infringement is a common sight nowadays. Although there exists several remedies to cope up with the same, not many are implemented the way they should be. Loopholes in every procedure being carried out to eliminate infringement ultimately hinders the law in hand. Violation of any kind of trademark leads to a negative impact on the individual or the entity thereby reducing the brand value. Along with direct infringement, there arises indirect infringement as well. Although there are no provisions related to indirect infringement, liabilities exist abiding by the principle of universal law. Hence, what is required is a little bit of awareness among individuals in order to avoid facing any kind of infringement on their own product and overcome the same swiftly with legal help and guidance.