



DELHI

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Delhi

Civil Law - 2

Volume 1



DELHI JUDICIAL SERVICES

CIVIL LAW – 2 VOLUME -2

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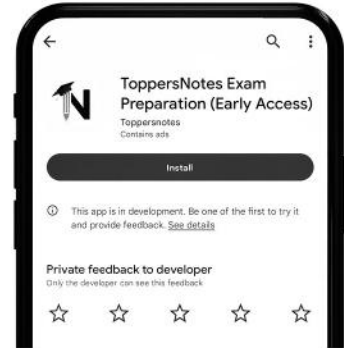
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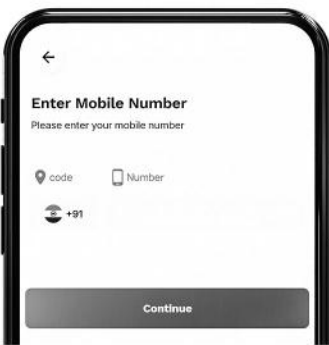
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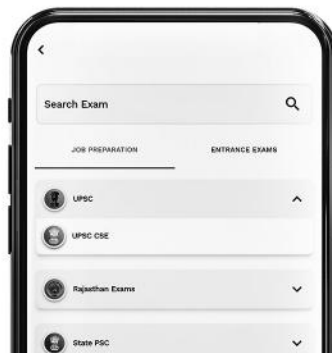
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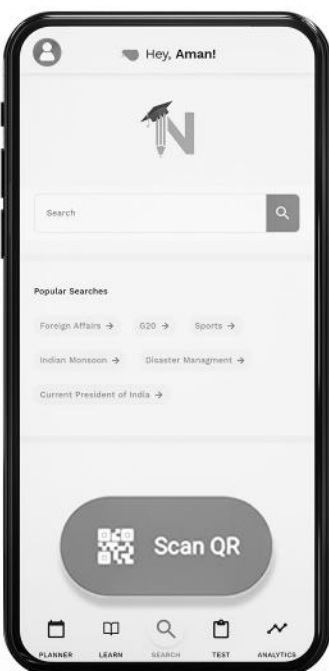
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Trademark is a branch of intellectual property rights. It is represented by the symbol TM or ® or mark is a distinctive sign or indicator of some kind which is used by an individual, business organization or other legal entity to identify uniquely the source of its products and/or services to consumers, and to distinguish its products or services from those of other entities. It includes a name, word, or sign that differentiates goods from the goods of other enterprises. Marketing of goods or services by the procedure becomes much easier with a trademark because recognition of product with the trademark is assured and easier. The owner can prevent the use of his mark or sign by another competitor.

Trademark law in India

According to Section 2(1) (zb) “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

- (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and
- (ii) in relation to other provisions of the trademark Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

Before 1940 there was no law on trademarks in India. A number of problems of infringement of registered and unregistered trademark arose which were resolved under **Section 54 of the Specific Relief Act, 1877** and registration was adjudicated under the **Indian Registration Act, 1908**.

To overcome these difficulties, the Indian Trademark law was enforced in 1940. After the enforcement of the trademark law, demand for protection of trademarks increased as there was major growth in trade and commerce.

The Trademark law was replaced with the **Trademark and Merchandise Act, 1958**. It provides better protection of trademark and prevents misuse or fraudulent use of marks on merchandise. The Act provides registration of the trademark so that the owner of the trademark may get a legal right for its exclusive use.

This previous Act got replaced with the Trademark Act, 1999 by the government of India by complying it with **TRIPS (Trade-related aspects of intellectual property rights)** obligation recommended by the World Trade Organization. The aim of the Trademark Act is to grant protection to the users of trademark and direct the conditions on the property and also provide legal remedies for the implementation of trademark rights.

The Trademark Act, 1999 gives the right to the police to arrest in cases of infringement of the trademark. The Act gives a complete definition for the term infringement which is frequently used. In Trademark Act, it provides punishments and penalties for the offenders. It also increases the time duration of registration and also registration of a non-traditional trademark.

Types of Trademark

1. Service mark

A service mark is any symbol name, sign, device or word which is intentionally used in trade to recognize and differentiate the services of one provider from others. Service marks do not cover material goods but only the allocation of services. Service marks are used in day-to-day services:

- Sponsorship
- Hotel services
- Entertainment services
- Speed reading instruction
- Management and investment
- Housing development services

A service mark is expected to play a critical role in promoting and selling a product or services. A product is indicated by its service mark, and that product's service mark is also known as a trademark.

2. Collective mark [Section 2 (1)(g)]

A collective mark means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;

Two types of collective marks for distinguishing with other goods or services of similar nature:

- Collective mark indicates that the marketer, trader or person is a part of the specified group or organization. Example – CA is a collective trademark which is used by the Institute of the chartered accountant.
- Collective trademark and collective service mark are used to indicate the origin or source of the product.

A collective trademark is used by the single members of a group of an organization but is registered as a whole group. Example- CA is the title or mark which given to the member of Institute of a chartered accountant. That collective mark may be used by the group of association. This was added to the Trademark Act, 1988.

3. Certification mark Section 2(1)(e)]

A certificate mark is verification or confirmation of matter by providing assurance that some act has been done or some judicial formality has been complied with. A certification mark indicates certain qualities of goods or services with which the mark are used is certified, a certification mark is defined in the Trademark Act, 1999.

Certification trade mark means a mark competent of identifying the goods or services in connection with which it is used in the manner of trade, which is certified by the owner of the mark in respect of source, body, mode of manufacturer of goods or performances of assistance, quality, accuracy or other characteristics.

4. Trade dress

Trade dress is a term that refers to features of the visual appearance of a product or design of a building or its packaging that denote the source of the product to customers. It is a form of intellectual property. Trade dress protection is implemented to protect consumers from packaging or appearance of products that framed to imitate other products.

Essential of trade dress

- Anything that makes an overall look or overall dress and feel of brand in the market.
- The consumer believes that trade dress is the main indicator of differentiation of one brand or goods from others.
- The requirement for the registration of trade dress is the same as the registration of the logo, mark. The features in trade dress are size, colour, texture, graphics, design, shape, packaging, and many more.



THE TRADE MARKS ACT, 1999

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THE TRADE MARKS ACT, 1999

ACT NO. 47 OF 1999

An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—



1. Short title, extent and commencement.—

- (1) This Act may be called the Trade Marks Act, 1999.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation.—

- (1) In this Act, unless the context otherwise requires,—
 - (a) “Appellate Board” means the Appellate Board established under section 83;
 - (b) “assignment” means an assignment in writing by act of the parties concerned;
 - (c) “associated trade marks” means trade marks deemed to be, or required to be, registered as associated trade marks under this Act;
 - (d) “Bench” means a Bench of the Appellate Board;
 - (e) “certification trade mark” means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;
 - (f) “Chairperson” means the Chairperson of the Appellate Board;
 - (g) “collective mark” means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932) (9 of 1932) which is the proprietor of the mark from those of others
 - (h) “deceptively similar”.—A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;
 - (i) “false trade description” means—
 - (i) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied; or
 - (ii) any alteration of a trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect; or
 - (iii) any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or metres than there are contained therein standard yards or standard metres; or

- (iv) any marks or arrangement or combination thereof when applied—
 - (A) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;
 - (B) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or
- (v) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials—
 - (A) is or are not a trade mark or part of a trade mark; and
 - (B) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorised the use of such name or initials; and
 - (C) is or are either the name or initials of a fictitious person or some person not bona fide carrying on business in connection with such goods or services, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;
- (j) “goods” means anything which is the subject of trade or manufacture;
- (k) “Judicial Member” means a Member of the Appellate Board appointed as such under this Act, and includes the Chairperson and the Vice-Chairperson;
- (l) “limitations” (with its grammatical variations) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode or area of use within India or outside India;
- (m) “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;
- (n) “Member” means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairperson and the Vice-Chairperson;
- (o) “name” includes any abbreviation of a name;
- (p) “notify” means to notify in the Trade Mark Journal published by the Registrar;
- (q) “package” includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;
- (r) “permitted use”, in relation to a registered trade mark, means the use of trade mark
 - (i) by a registered user of the trade mark in relation to goods or services—
 - (A) with which he is connected in the course of trade; and
 - (B) in respect of which the trade mark remains registered for the time being; and
 - (C) for which he is registered as registered user; and
 - (D) which complies with any conditions or limitations to which the registration of registered user is subject; or
 - (ii) by a person other than the registered proprietor and registered user in relation to goods or services—
 - (A) with which he is connected in the course of trade; and
 - (B) in respect of which the trade mark remains registered for the time being; and
 - (C) by consent of such registered proprietor in a written agreement; and
 - (D) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject;

- (s) “prescribed” means prescribed by rules made under this Act;
- (t) “register” means the Register of Trade Marks referred to in sub-section (1) of section 6;
- (u) “registered” (with its grammatical variations) means registered under this Act;
- (v) “registered proprietor”, in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;
- (w) “registered trade mark” means a trade mark which is actually on the register and remaining in force;
- (x) “registered user” means a person who is for the time being registered as such under section 49;
- (y) “Registrar” means the Registrar of Trade Marks referred to in section 3;
- (z) “Service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;
- (za) “trade description” means any description, statement or other indication, direct or indirect,—
 - (i) as to the number, quantity, measure, gauge or weight of any goods; or
 - (ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade; or
 - (iii) as to fitness for the purpose, strength, performance or behaviour of any goods, being “drug” as defined in the Drugs and Cosmetics Act, 1940 (23 of 1940), or “food” as defined in the Prevention of Food Adulteration Act, 1954 (37 of 1954); or
 - (iv) as to the place or country in which or the time at which any goods or services were made, produced or provided, as the case may be; or
 - (v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided; or
 - (vi) as to the mode of manufacture or producing any goods or providing services;
 - (vii) as to the material of which any goods are composed; or
 - (viii) as to any goods being the subject of an existing patent, privilege or copyright, and includes—
 - (A) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters;
 - (B) the description as to any imported goods contained in any bill of entry or shipping bill;
 - (C) any other description which is likely to be misunderstood or mistaken for all or any of the said matters;
- (zb) “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—
 - (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

- (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;
 - (zc) “transmission” means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;
 - (zd) “Technical Member” means a Member who is not a Judicial Member;
 - (ze) “tribunal” means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is pending;
 - (zf) “Vice-Chairperson” means a Vice-Chairperson of the Appellate Board;
 - (zg) “well known trade mark”, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.
- (2) In this Act, unless the context otherwise requires, any reference—
- (a) to “trade mark” shall include reference to “collective mark” or “certification trade mark”;
 - (b) to the use of a mark shall be construed as a reference to the use of printed or other visual representation of the mark;
 - (c) to the use of a mark,—
 - (i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;
 - (ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;
 - (d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;
 - (e) to the Trade Marks Registry shall be construed as including a reference to any office of the Trade Marks Registry.
- (3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.
- (4) For the purposes of this Act, “existing registered trade mark” means a trade mark registered under the Trade and Merchandise Marks Act, 1958 (43 of 1958) immediately before the commencement of this Act.

The Register and Conditions for Registration

3. Appointment of Registrar and other officers.—

- (1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act.
- (2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act as he may from time to time authorise them to discharge.

4. Power of Registrar to withdraw or transfer cases, etc.—

Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

5. Trade Marks Registry and offices thereof.—

- (1) For the purposes of this Act, there shall be a trade marks registry and the Trade Marks Registry established under the Trade and Merchandise Marks Act, 1958 (43 of 1958) shall be the Trade Marks Registry under this Act.
- (2) The head office of the Trade Marks Registry shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of trade marks, there may be established at such places as the Central Government may think fit branch offices of the Trade Marks Registry.
- (3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Trade Marks Registry may exercise its functions.
- (4) There shall be a seal of the Trade Marks Registry.

Registration of Trademark

Any person claiming to be the owner of the trademark or supposed to used the trademark by him in future for this he may apply in writing to the appropriate registrar in a prescribed manner. The application must contain the name of the goods, mark and services, class of goods and the services in which it falls, name and address of the applicant and duration of use of the mark. Here the person means an association of firms, partnership firm, a company, trust, state government or the central government.

According to section 6 “The Register of Trade Marks”

- (1) For the purposes of this Act, a record called the Register of Trade Marks shall be kept at the head office of the Trade Marks Registry, wherein shall be entered all registered trade marks with the names, addresses and description of the proprietors, notifications of assignment and transmissions, the names, addresses and descriptions of registered users, conditions, limitations and such other matter relating to registered trade marks as may be prescribed.

- (2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies diskettes or in any other electronic form subject to such safeguards as may be prescribed.

Conditions of registration

- (3) Where such register is maintained wholly or partly on computer under sub-section (2) any reference in this Act to entry in the Register shall be construed as the reference to any entry as maintained on computer or in any other electronic form.
- (4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.
- (5) The register shall be kept under the control and management of the Registrar.
- (6) There shall be kept at each branch office of the Trade Marks Registry a copy of the register and such of the other documents mentioned in section 148 as the Central Government may, by notification in the Official Gazette, direct.
- (7) The Register of Trade Marks, both Part A and Part B, existing at the commencement of this Act, shall be incorporated in and form part of the register under this Act.

7. Classification of goods and services.—

- (1) The Registrar shall classify goods and services, as far as may be, in accordance with the International classification of goods and services for the purposes of registration of trade marks.
- (2) Any question arising as to the class within which any goods or services falls shall be determined by the Registrar whose decision shall be final.

8. Publication of alphabetical index.—

- (1) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods and services referred to in section 7.
- (2) Where any goods or services are not specified in the alphabetical index of goods and services published under sub-section (1), the classification of goods or services shall be determined by the Registrar in accordance with sub-section (2) of section 7.

9. Absolute grounds for refusal of registration.—

- (1) The trade marks—
- (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;
 - (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
 - (c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered: Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.
- (2) A mark shall not be registered as a trade mark if—
- (a) it is of such nature as to deceive the public or cause confusion;

- (b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;
 - (c) it comprises or contains scandalous or obscene matter;
 - (d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).
- (3) A mark shall not be registered as a trade mark if it consists exclusively of—
- (a) the shape of goods which results from the nature of the goods themselves; or
 - (b) the shape of goods which is necessary to obtain a technical result; or
 - (c) the shape which gives substantial value to the goods.

Explanation.—For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.

Test of similarity

For the conclusion, if one mark is deceptively similar to another the essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if they are of such a character to prevent one design from being mistaken for the other. It would be enough if the disputed mark has such an overall similarity to the registered mark as it likely to deceive a person usually dealing with one to accept the other if offered to him. Apart from the structural, visual, and phonetic similarity or dissimilarity, the query needs to be viewed from the factor of view of man typical intelligence and imperfect collection secondly. It's regarded as an entire thirdly it is the query of his impressions.

In the case of Mohd. Iqbal v. Mohd. Wasim it was held that “it is common knowledge that ‘bidis’ are being used by persons belonging to the poorer and illiterate or semi-literate class. Their level of knowledge is not high. It cannot be expected of them that they would comprehend and understand the fine differences between the two labels, which may be detected on comparing the two labels are common. In view of the above, there appears to be a deceptive similarity between the two labels”.

10. Limitation as to colour.—

- (1) A trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.
- (2) So far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

Relative grounds for refusal of registration

Section 11 states that

- (1) Save as provided in section 12, a trade mark shall not be registered if, because of—
 - (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
 - (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.
- (2) A trade mark which—
 - (a) is identical with or similar to an earlier trade mark; and

- (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.
- (3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—
- (a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or
 - (b) by virtue of law of copyright.
- (4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.
- Explanation.**— For the purposes of this section, earlier trade mark means—
- (a) a registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;
 - (b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.
- (5) A trade mark shall not be refused registration on the grounds specified in sub-sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.
- (6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—
- (i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;
 - (ii) the duration, extent and geographical area of any use of that trade mark;
 - (iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;
 - (iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;
 - (v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.
- (7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—
- (i) the number of actual or potential consumers of the goods or services;
 - (ii) the number of persons involved in the channels of distribution of the goods or services;
 - (iii) the business circles dealing with the goods or services, to which that trade mark applies.
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- (8) Where a trade mark has been determined to be well known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for registration under this Act.
- (9) The Registrar shall not require as a condition, for determining whether a trade mark is a well-known trade mark, any of the following, namely:—
- (i) that the trade mark has been used in India;
 - (ii) that the trade mark has been registered;
 - (iii) that the application for registration of the trade mark has been filed in India;
 - (iv) that the trade mark—
 - (a) is well-known in; or
 - (b) has been registered in; or
 - (c) in respect of which an application for registration has been filed in, any jurisdiction other than India; or
 - (v) that the trade mark is well-known to the public at large in India.
- (10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—
- (i) protect a well-known trade mark against the identical or similar trade marks;
 - (ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.
- (11) Where a trade mark has been registered in good faith disclosing the material informations to the Registrar or where right to a trade mark has been acquired through use in good faith before the commencement of this Act, then, nothing in this Act shall prejudice the validity of the registration of that trade mark or right to use that trade mark on the ground that such trade mark is identical with or similar to a well-known trade mark.

12. Registration in the case of honest concurrent use, etc.—

In the case of honest concurrent use or of other special circumstances which in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of the trade marks which are identical or similar (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

13. Prohibition of registration of names of chemical elements or international non-proprietary names.—

No word —

- (a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished from a mixture) in respect of a chemical substance or preparation, or
- (b) which is declared by the World Health Organisation and notified in the prescribed manner by the Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name, shall be registered as a trade mark and any such registration shall be deemed for the purpose of section 57 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

14. Use of names and representations of living persons or persons recently dead.—

Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the Registrar with such consent.

15. Registration of parts of trade marks and of trade marks as a series.—

- (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.
- (2) Each such separate trade mark shall satisfy all the conditions applying to and have all the incidents of, an independent trade mark.
- (3) Where a person claiming to be the proprietor of several trade marks in respect of the same or similar goods or services or description of goods or description of services, which, while resembling each other in the material particulars thereof, yet differ in respect of—
 - (a) statement of the goods or services in relation to which they are respectively used or proposed to be used; or
 - (b) statement of number, price, quality or names of places; or
 - (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
 - (d) colour, seeks to register those trade marks, they may be registered as a series in one registration.

16. Registration of trade marks as associated trade marks.—

- (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods or services is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may, at any time, require that the trade marks shall be entered on the register as associated trade marks.
- (2) Where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration in the name of the same proprietor, in respect of goods and services which are associated with those goods or services, or goods or services of that description, sub-section (1) shall apply as it applies as where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services.
- (3) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 15, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.
- (4) All trade marks registered in accordance with the provisions of sub-section (3) of section 15 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.