

Transborder Reputation of a Trademark in Indian Context: Mapping the Evolution and Complexities

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Abstract

The present paper intends to, macroscopically, decipher the working of trademark protection in a country in tandem with the two quintessential principles of trademark protection; the Transborder reputation and how the jurisprudence around it is developing through various judgements in this domain. The paper is divided into four parts. First part of the paper takes up concept of Transborder reputation of the trademark and international principles of such protection drawing contrast against the territorial nature of trademark regime of the Intellectual Property rights. Second part of the paper explores the touchstones or the parameters which are essential to assess the standards of the mark and the various criterions which must be met. Third part of the paper engages with a peripheral study of proof of Actual Confusions and protection of intellectual property within the ambit of trademark and copyright law. Lastly it will be discussing the deposition of parties in various cases and the standpoints on which they were refuting the claims of each other. This paper will therefore also analyse the several judicially developed safeguards that are the basis of such protection. The paper concludes with some suggestions and a possible way forward keeping in mind the overall evolution and integration of such protection into the law relating to Trademarks.

Keywords: *Transborder reputation, Passing off, International Standards, spilling over, well-known trademark, confusion.*

Introduction

In the contemporary economic development paradigm, intellectual property rights (IPR) are crucial especially the trademarks. Trademarks assist firms with their objectives and serve the crucial purpose of identifying and publicising goods and services with regard to their source, degree of quality, safety standard, etc. The significance of trademarks is clearly demonstrated by the impressive number of recent trademark registrations and the enormous number of trademarks now in use².

A trademark is an imprint which addresses the merchandise, items or administrations in a graphical way. It assists in building on image name or business trademark graphically and in a manner which is interesting to the natural eye. It is a simple portrayal which means the brand name or business trademark with a mix of varieties, state of merchandise and begat terms. It assists with recognizing the labour and products of one merchant from the other and furthermore mean the beginning of the merchandise. Long-term use of a trademark in connection with a specific industry helps the trader build a reputation and goodwill for that specific trademark in relation to a product. The general public eventually learns about and becomes familiar with a brand name or trade name, and they begin to link that particular trademark with a particular set of goods and services. In this way, a particular brand develops its goodwill and reputation, which eventually spread to a wider area, making the trademark well-known worldwide. The transborder reputation of a trademark refers to such widespread brand recognition. We all are well aware of this fact that the the companies thrive to create a household name something that Maruti Suzuki has done with Alto or Tata with Safari. They intend to create a valuable good which the company and whole commercial sector tries to exploit for next decades.³

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Trans-border reputation exists when a trademark and the item connected with the trademark outperform the actual borders of the locale and gain reputation across the border or past the regional restriction of the geographical district because of its advancements, business exposure, notices and its presence in the market overall. Even if the advertisement does not coincide with the availability or usage of the product in the market, the dissemination of information about a trademark connected to a product through media exposure and advertisements counts as use of the trademark. The information's origin or method of dissemination is irrelevant in this case. In modern times, there has been an expansion in globalization and advancement because of which the idea of trans-border reputation was given portrayal in the general public. No individual has the position to emulate or take on a trademark which is probably going to create turmoil or beguile the overall population and individuals in like manner exchange. The peculiarity of trans-border reputation assists a merchant in safeguarding its very much rumoured trademark worldwide.

Today consumers recognize particular products as brands of having a celebrity status, the dove of soaps or Swift of cars is what luxury is in minds; and companies employ branding techniques such as managing, trade marking and launching their product lines to enhance their perceived value and brand equity.⁴ It is stated that trademarks have a variety of purposes, including protecting artistic creation, individual identification, and the objectives of propertization and efficiency.⁵

As the Indian economy opened up to the rest of the world and new issues arose, Indian law and Indian courts recognised actions brought by foreign plaintiffs based on the reputation of their goods or services on foreign soil, departing from the conventional notion that success in a passing-off action requires use of the trade mark or registration in India. This concept of "transborder reputation" is based on the reputation of trademarks around the world. According to this, the owner of a trade mark can contest the registration even if it is not utilised or registered in the country in question, and he can still oppose it.⁶ Transborder reputation in the Indian context protects foreign trade marks based on their global reputation.⁷ The concept of transborder reputation in India can never be understood properly without discussing the case of "Whirlpool", which opened the doors for goodwill protection of big brands in India.⁸

Ascertaining Transborder Reputation: Relevancy Of The Timeline

The Whirlpool lawsuit has made a significant contribution to India's attention being paid to transborder reputation. The case of Whirlpool, Prius and the Mountain dew are the three musketeers of this domain. Whirlpool case was the first in which Transborder reputation got recognised. In India, the Delhi High Court heard a lawsuit brought by the American Whirlpool Corporation⁹ and the Indian business TVS Whirlpool against N.R. Dongre along with other defendants¹⁰. Since 1937, The Whirlpool Corporation has been the owner and exclusive user of the "whirlpool" trademark. For their electrical products which included washing machines, they utilised the aforementioned trademark and they got this trademark registered in India in 1956, and it was periodically renewed. However, in 1977, the company neglected to renew it, and as a result, the registration became null and void. In order to market machines, the American multinational firm The Whirlpool Corporation and the Indian company TVS Whirlpool (respondents, initially the plaintiffs) formed a joint venture in 1987. The machines had previously been sold with the Whirlpool label to the US embassy in India. In order to market certain goods, including washing machines, N.R. Dongre and others (appellants, initially defendants) requested for registration of the trademark "whirlpool" with the registrar in the year 1986. The trademark was then first advertised in the trademark journal in 1988. The respondents then submitted an objection, which the registrar rejected on the grounds that the trademark "whirlpool" is not well-known or used

in India. Furthermore, it was claimed that N.R. Dongre's use of the trademark "whirlpool" to promote his wares would not cause any market confusion.¹¹ The Defendants manufactured and sold washing machines under the "Whirlpool" (mark) name. Whirlpool Corp. asserted that they were the mark's original users and that the mark's use conveyed the appearance that the products were being promoted by Whirlpool Corp. on a global scale. The striking point here is that whirlpool Corporation had neglected/failed to renew its trademark registration in India at the time the lawsuit was filed. However, N.R. Dongre managed to register the mark "Whirlpool" in India during this time. The contention here was that Whirlpool Corp. consistently promoted its products in India and they even fought the defendants' attempt to register the mark but the Assistant Registrar at that time rejected the protest and awarded registration to N.R. Dongre and others. At that point of time these suits used to get filed under passing off as trademarks law was at the nascent stage in India and it was considered as a passing off remedy. Whirlpool Corp. initially filed the passing-off lawsuit before the Single Judge at the Delhi High Court. After that the Division Bench heard an appeal regarding this and a temporary injunction against N.R. Dongre and others using the mark "Whirlpool" was granted by both benches so they went to the Supreme Court. WHIRPOOL's reputation in India and the public's association with the goods offered under this mark, a washing machine, were the court's initial findings in this case. The court held that widespread advertising of a mark in a nation where the goods bearing that mark are not really present qualifies as trademark usage and promotes the development of cross-border reputation. Finally, when the N.R. Dhongre and others moved to supreme court and argued before the Supreme Court that they were the trademark's registered owners and would continue to be so throughout the passing-off lawsuit. The Supreme Court concluded that since the trademark "Whirlpool" has long been connected to the company's products, any loss to Whirlpool Corp.'s image and goodwill would be irreparable. Additionally, the Delhi High Court's verdict was upheld by the Supreme Court, which decided in favour of Whirlpool Corp. Whirlpool claimed that any items offered with the use of the mark conveyed the appearance that they were a good marketed by it based on earlier use of the mark and a global reputation. The Court determined that the mark Whirlpool had long been connected to the respondents and that its international reputation reached India. It is pertinent here to mention the star power article wherein the author makes a statement about the economic system and relationship between trademarks since it is advantageous for everyone when the market is set up to stop the misleading use of brands and trade names. When companies project their trademarks as big brands, they do so by employing the pictures and symbols that customers identify with the brand when using or buying it. Influencers, Celebrities or well-known athletes are used to for the promotion of that trademark and to spread the message because their fans and other people emotionally identify those individuals in their roles as opinion leaders, hence a huge investment goes for that.¹² Chronopoulos makes the case that trade mark law should be expanded to safeguard rights holders' competitive interests regardless of whether there is consumer misunderstanding while still fostering the effectiveness of competition for consumers.¹³ Moreover, the Bombay High Court rendered a significant ruling in the Kamal Trading Co. case wherein, the Court stated that goodwill is not restricted to a certain nation because trade is widespread throughout the world, resulting in the swift transportation of products and its name from nation to nation.¹⁴ This generosity is not restricted to nations where products are freely accessible because they are nonetheless heavily advertised in media outlets in nations where they are not. The Court determined that goodwill did not depend on being accessible in a certain nation. Therefore, the reputation built up does not stand destroyed when a manufacturer temporarily suspends operations in a country. This case opened doors for marks that had gained fame in India not through sales or use but rather through print media or advertisements, to be protected under Indian trademark law and recognised the domain of sec 29(1).¹⁵

The Supreme Court's ruling in the Milmet Oftho case¹⁶ further solidifies this argument. Ocuflax, an eye medication, was produced by both a foreign and an Indian pharmaceutical company. In 1992, the foreign corporation utilised the mark for the first time. Following that, it promoted the goods internationally but it hadn't yet made its way into the Indian market. The foreign firm sued the Indian manufacturer for passing off when the Indian company submitted an application to register the mark in 1993. According to the court, if the foreign corporation had entered the global market first, their failure to use the mark in India would not have mattered. After Whirlpool case's many judgements thereafter relied on the verdict, be it Delhi High Court's 2006 decision in case of Austin Nichols and Co. v. Arvind Behl¹⁷, its 2012 decision in Las Vegas Sands Corp v. Bhasin Infotech & Infrastructure¹⁸, or its 2014 decision in Mind gym Ltd. v. Mindgym Kids Library Pvt. Ltd.¹⁹ all relied on the Whirlpool ruling. Even, the Delhi High Court's 2005 injunction prohibiting the use of the mark Wal-Mart even before the retailer entered the Indian market also seems to support this.²⁰

Touchstones To Assess The Standards Of The Mark

A trademark safeguards a company's reputation. A company cannot profit from the reputation of another company under trademark law. Leading IP firms presented the argument for each party in a well-defined discussion of the transnational reputational issue. The strategy employed, the type of evidence presented by both parties, and how it influenced the decision of the case in this case are all things worth observing and understanding. The next most prominent case which decided the evolution of Transborder reputation in India is regarding the 'PRIUS' where a multinational giant lost the legal battle against the Indian party even when it dragged it all the way to the supreme court. The evolution and development of transborder reputation in the Indian arena were determined by the Delhi High Court's decision in the case of the 'Prius'²¹.

The Supreme Court reaffirmed that IP rights are "territorial" and not "global," which is a ground-breaking step for Indian trademark law. The "Prius" brand, under which Toyota sells its top "hybrid" vehicle, was at issue in the case before the court. According to the court, just because Prius is well recognised outside India does not imply that it has a similar "reputation" inside the country and it needs to be established independently. The court's ruling is delightful to read, not the least of which is how clear it is. Thankfully, this is one of the few IP cases that has survived the "interim" phase. In fact, this case, which was initially filed in 2009, went through a thorough trial before reaching the Supreme Court.

It is very important to mention the developments of this case. Toyota is a Japanese multinational automotive manufacturer, the headquarters of Toyota is in Toyota City, Aichi, Japan. It is one of the largest automobile manufacturer and trusted brand across the world. They manufacture cars since 1960s. The name Prius is used by Toyota first time in 1990 and they registered their mark 'Toyota Prius' and 'Prius' in various jurisdictions. They sold the first hybrid automobile of its kind in the whole world under the brand name Prius in the year 1997. Toyota applied for the trademark "Prius" in India by the end of first decade of 21st century.²² The protection was sought under Class 12 for automobiles. The defendant in this case was a manufacturer and spare part supplier whereas the plaintiff is an automobile conglomerate.²³ The automobile giant when came to know that the same name has been registered in the Indian domain by the appellants under the same class 12 for auto parts and accessories. It filed for injunction against the appellants for restraining them from manufacturing or trading in auto parts bearing the name "Prius" as they are identical and deceptively similar to the marks of Toyota. The plaintiff asserted that it was the sole owner of the trademark "PRIUS," which was the subject of the dispute. It's interesting to note that the defendant had registered this mark in 2001

whereas the plaintiff had no registration in India. Toyota submitted the number of registrations they have made across the countries and hence claimed the prior use. The following is the list of the countries in which they have registered their trademarks earlier, along with the date of the registration and application number.

Country	Trademark	Registration No.	Class	Date of Application
Japan	PRIUS	2711749	12	19-06-1990
Australia	PRIUS	536892	12	26-06-1990
Austria	PRIUS	177995	12	28-07-1998
Canada	PRIUS	TMA 549035/0885545	12	27-07-1998
Denmark	PRIUS	VR199901879	12	28-07-1998
Germany	PRIUS	30080083	12	30-10-2000
Greece	PRIUS	137862	12	29-07-1998
Hong Kong	PRIUS	199917115	12	07-08-1998
Italy	PRIUS	846265	12	12-08-1998
Malaysia	PRIUS	98010695	12	17-09-1998
Singapore	PRIUS	T98/08116E	12	13-08-1998
Sweden	TOYOTA PRIUS	338556	12	27-07-1998
Switzerland	TOYOTA PRIUS	457305	12	27-07-1998
United kingdom	PRIUS	2173173	12	27-07-1998
United States	PRIUS	2485614	12	11-08-1998

During this time period Toyota also got 'Prius' registered in various other jurisdictions such as Benelux, Brunei, Finland, Ireland, Indonesia, Iceland and many more. This shaped the argument of Toyota that they have 'prior use' over Prius. The defendant spare part company gave the argument in their written statement that since they were the first to produce "Add on Chrome plated Accessories," they conceptualised this attempt as "Prayas" which is a Hindi word for Attempt. They searched for a name, 'Pehla Prayas' that could accurately and completely characterise their initial effort. After doing some investigation, they discovered that the definition of the term "prius" was "to come first." This was rationale behind them in choosing their name "Prius" for their company. The judgement of the single bench was simple and clear, which held that Toyota is a global name and the information available about their names is available globally through advertisement, print media and the brands penetration in huge number of countries. Hence it must be held that Transborder reputation in India has permeated.²⁴

The spare part company appealed to the division bench. When this matter reached the division bench there was some technical issues which came into the consideration of the court. The first basic issue which got discussed was whether prius enjoys the Transborder reputation in 2001 and secondly, the ambit of relevant timeline for determining such reputation. Concerning trans-border reputation, the court stated, "The judgments were to the effect that if the product is not sold in India but information related to it is available in the print media, especially magazines bought by consumers interested in the specific category of goods, it would be good evidence of trans-border reputation having entered in the municipal jurisdiction of India²⁵. The internet essentially tore down the domestic barriers in trade and business, which led to an expansion of the law of

trans-border reputation in the post-internet era. On the internet information posted on a website whether by the product's producer or another party can be found through search engines. The bench comprised of Hon'ble Justice Pradeep Nandrajog and Hon'ble Justice Yogesh Khanna and they reversed the decision in favour of the appellant. The judgement explained that just acquiring goodwill globally would not be sufficient and that it is important that the mark has earned goodwill in India at the relevant time, i.e. before the date of the opposite party's adoption of the mark. This is how trans-border reputation, or the global reputation of the brand when spilling into India, is defined. The Court came to the conclusion that the 1997 introduction of the 'Prius' was widely covered around the world after taking into account the evidence presented in the form of publications and articles. However, contrary to what the automobile giant stated, it did not catch the public's attention. The Court noted the following as a result: "The weight of the evidence led by Toyota would be that it has simply established that the event was reported as a news item in different countries, including India, but not with such prominence that the public at large became aware of the same when it launched the hybrid car Prius in the market in Japan in 1997"²⁶. This view was further approved by the Supreme Court²⁷.

The court's decision is strong and well-founded. This decision by the top court will help to restore some balance given the recent excessive expansion of IP rights and the move away from the "customer confusion" model to an unrestricted capacity to control any and all third party uses of the mark (whether or not the consumer was confused). And return trademark law to its fundamental principles by curtailing the trans-border reputation doctrine's extensive overreach.

Proof of Actual Confusion: The Must Haves

The next development which is worth noticing and requiring attention is the case, where PepsiCo has suffered a blow in its 16 year long legal battle to secure trademark rights for its famous soda, 'MOUNTAIN DEW'. The Additional Chief Judge of the City Civil Court of Hyderabad ruled that the Hyderabad-based Magfast Beverages enjoys prior user rights over an identical trademark for their packaged drinking water ('PDW') business.²⁸ There were certain issues that may require more attention like in this case Syed Ghaziuddin, the complainant, stated that he made the decision to build a PDW plant in 1997-1998 and that he named it Mountain Dew because he thought the name suggested something pure, coming from natural sources. Since its start in 2000, the company has grown in popularity and won numerous awards for upholding high standards of quality. His company Magfast Beverages (also known as "Magfast") received a legal warning from PepsiCo reps in 2003 after they filed a lawsuit against Magfast for trademark infringement. PepsiCo was then sued by Magfast for passing off; with the latter contending that it had no rights to the trademark because it had not been used in India prior to 2003. Magfast stated that the multinational Corporation (PepsiCo) cannot forbid them from selling its Packed drinking water under that trademark since it does not market its drink under the name "Mountain Dew" but rather under the name "AQUAFINA." They accused PepsiCo with misrepresenting its products as belonging to Magfast and also for conspiring with the Times of India and the Telugu weekly 'Vartha' to publish negative articles on Magfast that resulted in loss of reputation and mental anguish, and it demanded damages of Rs. 25 lakh. PepsiCo vehemently denied committing any acts intended to discredit Magfast. It stated that Mountain Dew, a citrus soda, has been sold since 1940 and is incredibly well-liked all over the world. Additionally, it has 100 registered trademarks for the term, some of which date back to 1985 in India. As a result, it charged Magfast with violating laws. The court used four documents to determine whether Magfast had trademark rights over MOUNTAIN DEW:

- an advertisement for the PDW plant's opening from November 2000 published in the Urdu language daily 'Siasat'
- a certificate from the branch manager of the Central Bank of India stating that Magfast has been using credit facilities since July 2000;
- a tax document demonstrating a 3.75 lakh turnover; and
- a certificate of small scale industry registration.

It was discovered that Magfast has been using the mark since 2000. The court decided in Magfast's favour by citing the Supreme Court's judgement in *Syed Monideen v. Sulochana Bai*²⁹, which recognised the common law principle of primacy in adoption prevailing over registration. Regarding the infringement of these trademark rights, the court noted that Magfast had argued that since PDW and citrus soda are two different products, there is no risk of customer misunderstanding in the concurrent infringement lawsuit launched by PepsiCo against it (OS No. 95/2004). The court went on to rule that Magfast could not "blow hot and cold" by now stating that confusion is likely since the two goods were of the same class, even though the two items do come under Class 32. Regarding the issue of publishing defamatory articles, the court determined that the aforementioned news pieces just reported on the Delhi High Court's proceedings and couldn't be considered defamatory. The trademark infringement and defamation defences were rejected, and the lawsuit was dismissed without any compensation or costs. After the pronouncement of this judgement, according to PepsiCo, the High Court will hear a case contesting this ruling. Notably, there are several aspects in the argument that do call for more thought.

Prior Use rights

Even though the judgement of the court is based on prior use rights, it did not make any reference to Section 34 of the Trade Marks Act 1999, which implements this regulation. The exclusive rights granted to the registered owner of a trademark under Section 28 are restricted by this section. It states that the registered user of a trade mark (in this case, PepsiCo) cannot stop any other user (in this case, Magfast) from using an identical or similar mark if the other user has been using the mark continuously before either the first-mentioned trade mark's use date of 2003 or its registration date of 1985, whichever came first. The appellant in *Syed Monideen* who asserted rights through registration had begun using the mark in 2007 and had achieved registration in 2008. But because the respondent's ongoing usage predates the earlier of the two instances, i.e., use by the appellant, it was determined that it was the "prior user" under Section 34. As a result, Magfast cannot claim this benefit because its continuing use predates PepsiCo's registration in 1985 and not just its initial use, which is not the case in this instance. The question then arises: How can this rule be enforced given the clear discrepancy?

Honest Adoption

PepsiCo has said Magfast's justification for registering the trademark is improper and unsatisfactory³⁰. Even in *MAC Personal Care case*³¹ the Indian defendant was prevented from using a trademark dishonestly by the Delhi High Court because it was unable to adequately justify the adoption of a similar (identical) mark. The Supreme Court's *NR Dongre v. Whirlpool* judgement also considered this issue³². Nevertheless, it is important to remember that PepsiCo's Mountain Dew had been on the market for 60 years and had trademarks filed in various nations, including India, before Magfast started its operations in 2000. In 1994, the company's PDW brand Aquafina was introduced. That Magfast did extensive research before settling on a name that just so happens to be the same as the 60-year-old citrus soda brand of a renowned MNC that is actively selling other products in India.

In order to balance the territorial aspect of trademark law with the obfuscation of market boundaries in the digitalized, post-liberalization period, courts developed the notion of trans-border reputation. The doctrine, which was established in the Whirlpool case, states that a trademark is entitled to protection from those who might free-ride on its reputation when it has a reputation that has crossed international borders to become well-known among Indian consumers despite the absence of any actual business here. It was decided that a trademark's registration in several foreign countries, its promotion in international media, and its substantial earnings were all reliable signs of such a reputation. According to the Supreme Court's ruling in *Milmet v. Allergan*, if a foreign trademark holder with a good reputation can demonstrate that they intend to conduct business in India, the fact that they haven't been using the mark there is irrelevant as long as they entered the global market with the mark first. In the more recent case of *Toyota v. Prius*, restrictions were placed on the doctrine's pervasive overreach by demanding evidence of the local goodwill of the worldwide trademark. For the time being, *Magfast* has prevailed, but with these concerns looming large over what is shaping up to be yet another conflict between a foreign juggernaut and an indigenous brand, it is unclear what direction this conflict will go.

Conclusion and Suggestion

Courts have developed the notion of trans-border reputation to balance the territorial aspect of trademark law with the obfuscation of market boundaries in the digitalized, post-liberalization era. According to the Whirlpool doctrine, a trademark is entitled to protection from others who would free-ride on its reputation if its reputation has spread across national borders to the Indian market and is recognised by customers notwithstanding the absence of any actual economic activity here. It was decided that a trademark's registration in numerous foreign countries, its promotion in international media, and significant income were all reliable signs of such a reputation. According to the Supreme Court's ruling in *Milmet v. Allergan*, if a foreign trademark holder with a good reputation can demonstrate that they intend to conduct business in India, the fact that they haven't been using the mark there is irrelevant as long as they entered the global market with the mark first. In the more recent case of *Toyota v. Prius*, restrictions were placed on the doctrine's widespread overreach by demanding evidence of the local goodwill of the worldwide brand. It was decided that given the limited online exposure at the time, this local reputation could not have been built in the short time between the global release of the Toyota Prius in 1997 and the launch of the defendant's product in 2001. However, there is a 60-year gap that is far wider between the global launches of PepsiCo's Mountain Dew and *Magfast's* Packaged Drinking Water, allowing customers to get familiar with the former's product through other media. It is therefore entirely probable that PepsiCo will use this philosophy as a defence. Additionally, the same markings are applied to the same Class 32 of items. A difference in products has not always been sufficient to allay worries about the probability of consumer confusion, even if the court has not specifically addressed this matter. In *Aktiebolaget Volvo Sweden v. Volvo Steels Ltd.*, the Indian steel trader had been forbidden from using the VOLVO trademark despite the same international mark in question belonging to a car company once the presence of a trans-border repute had been established. For the time being, *Magfast* has prevailed, but with these concerns looming large over what is shaping up to be yet another conflict between a foreign juggernaut and an indigenous brand, it is unclear what direction this conflict will go.

Endnotes

¹ World Intellectual Property Organization (WIPO), Facts and Figures (2020) (in 2019, the global trademark filings reached 15.2 million); United States Patent and Trademark Office (USPTO), FY 2019 Performance and Accountability Report (2020) (in the fiscal year 2019, in the United States (U.S.), were registered 396,836 trademarks); EUIPO, EUIPO Statistics in European Union Trade Marks (2021) (in 2020, the European Union Intellectual Property Office (EUIPO) registered over 153,000 trademarks), (last visited on August 20, 2022).

² Hajo Rupp, "Who Owns Celebrity - Law and the Formation of Fame", 12 Entertainment and Sports Law Journal (2014).

³ Pappas B., "Star power, star brands. Forbes Global", Forbes Magazine, March 1999, available at: <http://forbes.com/global/1999/0322/0206060a.html> (last visited on June 3, 2022).

⁴ Greg Lastowka, "Trade mark's Daemons", 48 Houston Law Review 779-822 (2011).

⁵ Supra note 3

⁶ Sec 35, The Trade Marks Act, 1999 (47 of 1999)

⁷ N.R Dongre v Whirlpool Corporation (1996) 5 SCC 714.

⁸ The name in the official documents is 'Whirlpool Corp'.

⁹ Supra note 8.

¹⁰ Ibid.

¹¹ Brindusa-Mariana Amalancei, "New Trends in Brand Strategies", 81 Procedia - Social and Behavioral Sciences 275 – 279 (2013).

¹² Apostolos Chronopoulos, "Goodwill Appropriation as a Distinct Theory of Trade mark Liability: A Study on the Misappropriation Rationale in Trade mark and Unfair Competition Law", 22 Texas Intellectual Property Law Journal 253-310 (2014).

¹³ Kamal Trading Co., v. Gillette, UK Ltd., 1988 PTC 1.

¹⁴ Section 29(1) in The Trade Marks Act, 1999 (47 of 1999)

¹⁵ (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

¹⁶ Milmet Oftho Industries v. Allergen Inc. 2004 (12) SCC 624

¹⁷ 2006 (32) PTC 133 Del

¹⁸ 2012 (51) PTC 260 Del

¹⁹ 2014 (58) PTC 270 Del

²⁰ Prius Auto Industries Ltd & Ors vs Toyota Jidosha Kabushiki Kaisha MANU/DE/3405/2016

²¹ Toyota's application No.1891316, filed in 2009 Trademark Public Search available at <https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx> (last visited on August 20, 2022)

²² Supra note 22

²³ Supra note 22.

²⁴ Ibid.

²⁵ Supra note prius

²⁶ AIR 2018 SC 167

²⁷ MagFast Beverages v. PepsiCo I.A. 7456/2020 in CS (COMM) 350/2020

²⁸ 2016 (66) PTC 1 (SC)

²⁹ Para 15

³⁰ MAC Personal Care v. Laverana GmbH and Co

³¹ Supra note Dhongre

