

DILUTION OF TRADE MARK AND TRADE MARK SQUATING

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Abstract

Trademarks can incorporate the item name, a realistic logo, a snappy motto, or maybe even the unmistakable state or contours of an item that consumers readily recognize. Organizations depend on these imprints to enable the consumers to recognize their items and readily distinguish them from those of their rivals. The public often depend on them to recognize among contending makers and to decide realness – they are thus a very useful tool for marketing, new product launch and sales propagation in newer territory as well. Businesses often encounter a problem when they see possibilities in different markets and try to enter them. They may own a trademark which has a good recognition in its native market. But when they are prepared to venture into one of those business sectors in another country, they find another person/s has effectively enlisted their trademark there. Not only they are thus faced with a situation where they cannot enroll their very own image, but also the present proprietor may now really control the capacity to fabricate and prevent movement of the original bonafide owner's items in that nation. It may seem bizarre, but numerous organizations across the world have actually stood up to circumstances like this throughout the years. This is known as trademark squatting. We'll take a look at its various facets in the subsequent sections; with special reference to emerging markets like China and India.

Introduction

Taking up trademarks of others, in circulation in developed markets and registering them in developing markets with the sole objective of holding the real owner to ransom when he tries to enter that market is a common misuse of trademarks these days. “It’s an activity known as “*bad-faith trademark filing*”- sometimes also referred to as “*trademark squatting*”¹ – in essence it is a form of dishonest trademark documenting akin to squatting meaning “unauthorized occupation”. Generally organizations having a sizable business comprehend that trademarks are vital to their business. The World Intellectual Property Organisation (“WIPO”) defines Trademark Piracy (Squatting) as “*the registration or use of a generally well-known foreign trademark that is not registered in the country or is invalid as a result of non-use*”². According to Professor Doris Long has stated, a trademark squatter is a person who seeks to register third-party marks domestically before their legitimate rights holders have an opportunity to secure their rights.³ “What organizations often missed in the past is that trademarks, similar to licenses and patents, are regional. Protection got from trademarks exist just inside the nation whose laws conceded the rights. Research directed quite a long while back in the 90s by the United States Patent and Trademark Office (USPTO) uncovered that just 15 percent of private ventures working together abroad realize that a U.S. trademark gives insurance just in the United States.

This absence of information about territoriality was found make huge issues for U.S. organizations, particularly in the context of worldwide economy. Trademark squatting is the point at which one entity deliberately documents a trademark application for a second entity's enrolled trademark in a nation where the second party does not as of currently hold a trademark enlistment. This is no longer targeted at trademarks of the developed world like U.S. or E.U. but increasingly to popular marks in developing economies as well”⁴ They usually exploit the “*first-to-file*” trademark framework (if available) in that nation but can do so in “*first-to-use*” jurisdictions as well by limited marketing or pushing inferior quality products. “While the

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¹ Scott Baldwin, *Don't Sit and Wait: Stopping Trademark Squatters*, USPTO, (Feb. 2013), <https://www-byr-dgr.uspto.gov/learning-and-resources/newsletter/inventors-eye/dont-sit-and-wait-stopping-trademark-squatters?cv=1>.

² *WIPO Intellectual Property Handbook*, World Intellectual Property Organization, 90 (2008), <https://www.wipo.int/publications/en/details.jsp?id=275&plang=EN>.

³ Doris Estelle Long, *Is Fame All There Is? Beating Global Monopolists at Their Own Marketing Game*, 40, GEO. WASH. INT’L L. REV. 123, 140 (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214751

⁴ *supra* note 1.

United States has a '*utilization/use based*' trademark framework where trademark rights are gained by 'priority of use' many nations around the globe have a first-to-document framework, granting trademark rights to the primary candidate."⁵ At the point when dishonest filers acquire enlistments in a specific nation, they are treated as legitimate trademark proprietors in that nation. A dishonest filer's expectation is more often than not to motivate the genuine trademark proprietor to buy the trademark enrolment; rather than to manufacture and markets products bearing that mark himself. However, there can be honest intent and choice of mark and this coupled with and honest effort to market his products can be considered as bona-fide use. The debate begins from here.

Generally, trademark squatting is a special region in trademark right debate – whether it strictosensoviolates any law or not. It has been seen that for the most part enlistment is a noteworthy barricade for remote organizations as once they increase the overall reach; various nearby infringers attempt to enroll their trademarks so as to move their items with other's marks and make tremendous benefits. Regarding the general principle, the select privileges of a trademark proprietor is regional in nature and also apart from rights, laws relating Trademark changes from one geographical area to the next. Trademark squatters exploit such extraordinary law authorization, which turns into an obstacle for genuine businesses when organizations move toward becoming multi-nationals. It tends to be troublesome, exorbitantly costly, and tedious to have such a dishonestenrollment dropped or to continuously keep filing for ones own marks across nations. Also, as the proprietor of the imprint, the dishonest filer can even implement his or her rights against the genuine proprietor for trademark encroachment. The dishonest filer could likewise request that the customs authorities in his area of operation should prevent the goods of the genuine proprietor bearing the mark from being imported to that country. Any organization, extensive or miniscule, is a potential focus for dishonest filers – if it has a trademark that is well recognized or has a special reputation or both. Now and again, one's very own maker, wholesaler, or retailer in another nation may choose to petition for obtaining the bona-fide owner's trademark in that country; usually without permission from the real owner.

In different cases, it could be an individual who approaches him at a public exhibition or trade fare, inquires about the arrangements for development and marketing in another nation, and after that enrolls the unsuspecting proprietor's imprint first in that market. These are only few of the numerous ways trademark squatters can get access and rights concerning one's mark

⁵ *Ibid.*

and even register it with mala-fide intention. Trademark squatting isn't new to the business world. Practically every industry has been influenced by such mala-fide deals in trademarks and digital trademark squatting also called cyber squatting. Trademark squatting thus alludes to enlisting names comparable or indistinguishable to prevalent exchange marks, with the aim to coerce the trademark holder to pay up for getting the same or prevent it from circulation. Trademark Squatting is to a great extent observed in China. It pursues a "first to file" framework rather than the "first to use" framework of the U.S. In a 'first to use/utilize' framework the primary client of the Trademark gets the elite right, while, in a 'first to file/record' framework, the main individual enrolling it gets the directly all rights to the Trademark. Thus, firms foreseeing possible venture into such nations, especially China which is a large and lucrative market, ought to apply for enrollment at the soonest. Also, brands should enlist their trademarks in the separate transliterations too. "Like the People's Republic of China, India has a 'first to file' rather than 'first to use' enrollment framework. Under China's Trademark Law of 1983 and India's Trade Marks Act of 1999, 'first to file' rule,"⁶ where in a situation at least two candidates apply to enroll indistinguishable or comparable trademarks for use on the equivalent or comparative merchandise or administrations, the first/main application for enlistment will normally be granted the trademark. However, despite the fact that India permits the 'first to record' arrangement of security of rights, it gives due weightage to utilization. But in India, the permissible arrangement of applying for trademarks on a 'proposed to be utilized' premise encourages trademark squatters to enlist the trademark with no real confirmation of utilization.

It is just when the real owners of the trademark try to get some answers concerning it, that the issue emerges. With worldwide organizations the nearness of incalculable number of trademarks in various nations can be an overwhelming issue to sort out and check. It is more regrettable when the squatters move their very own items and malafidely trick the general population into trusting that they are from a confided-in universal brand. Because of the noticeable quality the Indian trademark law provides for utilization, there is a protection somewhat akin to that in the U.S. for a bonafide user, but a protracted legal encounter, involving tortuous court proceedings and delay, may be unavoidable – leading to loss of business opportunity cost.

⁶ Saloni Jain & Khushboo Sukhwani, *Trademark Squatting in India and China*, INDIA LAW NEWS (March 1, 2013) <https://indialawnews.org/2013/03/01/trademark-squatting-in-india-and-china/>.

Nature and Types of Squatting

Classification

In general, all outsider registrants of trademarks are considered together under the basic rubric of ‘trademark squatters’; yet truth be told, the registrants can be isolated into five particular classifications, and the fitting action to be taken by the real owner (and the probability of accomplishment of success) varies with the category in which they fall. They are described in detail in the following sections. A squatter can, “in general:

- a. Sell the trademark back to the real owner at a premium;
- b. Distribute products labeling the trademark to consumers who believe the products are real;
- c. Exclude the real owner from the market by establishing a claim of a trademark infringement; or
- d. Use the trademark to market products which are different from those sold by the real owner.”⁷

Examples of specific countries, especially China and some from India, have been considered to exemplify the classification and bring out the differences between them.

Class One – The Extortionist

These squatters proceed to register trademarks that are widely recognized in other locations, with the sole objective to extort and hold the original business to ransom when they try to enter the market in question. While this can happen in convoluted ways in all jurisdictions, those with ‘first-to-file’ trademark laws are particularly susceptible.

For example, China's free enterprise frame of mind towards dishonest trademark enrollments has made an almost house-industry for various bad-faith people who register brand names having a distinction belonging to foreign organizations; and after that hold those brand names for payoff. Any entity that manages or deals in China trademarks can be potentially running into this kind of trademark squatter. They usually document several different applications, for a wide assortment of brand names and in a wide scope of “*Nice*” classes. The enrollments might be for various sorts of products or services than what the original brand is known for. The trademark squatter has no association with any of the brands, and no expectation of

⁷ Samantha D. Slotkin, *Trademark Piracy in Latin America: A Case Study on Reebok International Ltd.*, 18 LOY. L.A. INT’L & COMP. L. REV. 671, 671 (1996), <http://digitalcommons.lmu.edu/ilr/vol18/iss3/8>.

consistently utilizing them in business. They are a great non-rehearsing element, and their sole goal is to adapt the trademark enlistment and then pitching it to the actual owner for a high price when in trying to enter the China market, he is confronted with the astounding fact that it is already taken. They will now and again approach the trademark proprietor, or they may pitch the trademark to another outsider on one of China's trademark clearinghouse sites. The costs can change but US\$10,000/enrollment can be a typical beginning offer. Such enlistments are the very meaning of dishonesty, but can be difficult to discredit by law. But China is gradually showing signs of improvement at managing these circumstances, and yet still now even in grievous cases, it's a long way from satisfactory enforcement. The run of the mill course includes a nullification suit and an appeal and re-appeal. The majority of this can take years and cost large sums, and there's no certainty of solution. It is thus not difficult to perceive why numerous genuine brand proprietors simply pay the cash and proceed onward, much like an annoyance claim. On the other hand, some genuine brand proprietors will hold up three years and record a non-use crossing out; if the squatter has not actively marketed using the brand in the meantime.

Class Two – The Counterfeiter

As if the first is not enough there is a second rung of squatters thereafter. These squatters have enlisted outside organizations' trademarks not to hold them for payment, however but to utilize them in business. In reality, these squatters' plan of action is often to create fake merchandise they can move in the country e.g. a trademark reputed in U.S. in China (or in whatever other nation where the outside organization has not enrolled its trademark) without any dread of response from the genuine brand proprietor – in light of the fact that the squatter legitimately possesses the trademark in the other country! Some of the time they will move indistinguishable sorts of merchandise from the genuine brand proprietor, some of the time not – everything relies upon how understood the brand is, and what the squatter thinks will create more cash for him and where quicker money can be made.

Customarily one can see these squatters register more than one outside brand names in the target country, all in similar classes of merchandise. This is on the off chance that while one outside brand is great in the other country – say China, four are better. It is typically progressively costly for the genuine brand proprietors to buy these malafieenlistments – due to the possibility that the enrollments are worth more to the trademark squatter who makes money on a continual basis. Additionally, a non-use wiping out application will not succeed, in light of the fact that the imprints are really being utilized in business. At times the genuine owner may

prevail with a dishonesty refutation suit; however this will to a great extent depend on whether the specific imprint was notable in the other country, which is a troublesome thing to demonstrate in court. Like for a long time, the accepted Chinese position has been that if outside brand proprietors thought about their imprints in China, they ought to have enlisted them there. Here, the supposed trademark squatter is actually utilizing the imprint in business and presumably additionally generating employment and covering regulatory obligations by paying taxes and otherwise following all generally accepted business practices. That looks significantly preferable to Chinese experts over a sole-owner non-marketed brand.

Classification Three – The Competitor

The third classifications of squatter looks a great deal like the second class – they document trademarks covering a specific, genuinely tight arrangement of products. However, this sort of squatter is certifiably not a forger and has no plans to utilize the imprints in dishonest business; but in genuine manufacturing and marketing of products of same category. Or maybe, this squatter is a rival, and their objective is to keep the bona-fide entity from entering the other market, for example a U.S. brand to the Chinese market (at any rate under his favored image or name). The more particular the market, the more probable this is to happen in light of the fact that everybody knows the majority of alternate players. More often than not, the Chinese producers in a specific industry register the trademarks of all its European and American contenders.

They at that point offer the contenders a Hobson's decision: purchase the trademark at a terribly expanded value (upwards of \$250,000) and assign the contender as their selective merchant in China, or bid a fond farewell to their brands in China for ever. The competitor will likewise regularly try to prevent items produced with its trademark by the genuine owner or by any other individual doing so in outsourcing mode; from leaving China; which is a favoured sourcing and production destination for western brands. As it were, they may effectively pressurize to close down one's whole business worldwide by interfering with the sole generation and production point. Brands that are in reality surely understood in the new country may have some possibility of getting back in wresting trademark enrollments from such registrants; however as noted over that it occurs only once in a while. Most outside brand proprietors in this position are in a tough situation. The contention that these trademark squatters gamed the framework won't get much footing in legal fora due to the prevailing laws.

Classification Four – The "Supportive" Supplier

Here and there organizations will find that their image and names have been enrolled by a recognizable entity – their very own provider or merchant in the other country e.g. the agent/distributor of a well known U.S. brand of cigarettes or cellphones in China. On the off chance that the provider or merchant is as yet delivering or appropriating products for the organization, the proffered clarification is generally of a specific kind: the provider or wholesaler enrolled the imprint to keep any fraud squatters from doing as such first. This might be valid, yet the brand proprietor should ask why the provider/merchant didn't advise them first as well as inquire as to whether the brand proprietor needed to enroll the imprint itself. In any case, if the relationship is as yet positive, it is a moderately clear procedure for the provider/wholesaler to appoint the imprint to the brand proprietor. A few providers/wholesalers will endeavor to hold responsibility for trademark; however this ought to be stood up to. On the off chance that the relationship has turned revolting, which is typically the situation when the trademark proprietor is a previous provider/wholesaler, a straightforward task of getting back the mark might be hard to secure. However, this circumstance is the least demanding one in which to demonstrate a dishonest enlistment. Insofar as one can demonstrate the presence of a business association with the provider or wholesaler (e.g., through buy requests, contracts, and other documentation), it is very likely the squatter will be compelled to surrender the enrollments. Obviously, the procedure is much simpler in the event that the original manufacturers have a well-documented arrangement or wholesaler contract in which the provider explicitly concurs not to enlist the proprietor's IP.

Classification Five – The Coincidental Copycat

The last classification isn't generally a conventional trademark squatter and ostensibly shouldn't be considered a downright dishonesty as others. At times, somebody in another country, say in China enlists the trademark of one in another country say U.S. since the first party thought it out all alone freely and independently. This usually occurs with word marks – but rather unlikely that two candidates would think of a similar logo by visually impaired possibility. In these cases, the coincidental trademark proprietor might be ok to sell out the trademark, however on the off chance that he is not willing to do so, there's little that the original bonafide owner can do about it. The registrant essentially pursued the premises of China's Trademark Law here: that they were the first to document (not the other side), thus they get the opportunity to keep the imprint. In total: on the off chance that someone finds that his businesslogo/image has been taken by a trademark squatter in another country, he should first

decide the classification they fit in, and afterward plot his system of action to get the mark back, in the most suitable manner. Even better, to register one's own trademark without losing time in all potential countries that can be a market and forestall having to strategize by any means.

Cyber Squatting

Trademark proprietors likewise face digital squatting or domain name squatting—an issue not restricted to China or India; but even in developed nations. Such digital squatting includes essentially enrolling a cyber-space host name of comparable similarity or name-wise indistinguishable to an outstanding and well-noted enlisted trademark with the aim to exploit the altruism in that trademark. India has seen numerous cases where the internet domain-names of well-understood trademarks or names similar to that are enrolled by squatters in the expectation of selling them to the proprietors of those imprints (or adversary proprietors) or basically, to exploit the fame appended to those imprints – by the most profitable means; selling or usage. Area names are of significant proprietart value for each organization in each sector of industry – for business promotion or even as operations and supply channels. With the headway in web correspondence being made like never before, the space name might prove to be as vital as a trademark. Taking everything into account, organizations intending to enter the Indian market must take the careful steps required to be accompanying the move; early filing, registering in suitable classes and obtaining the internet domain name – along with actual usage. Any organization's name, little, medium or vast, is a potential name-in-demand for tricky trademark filers; if there is a familiarity associated to it. At times, the maker, retailer or wholesaler in another nation may choose to enroll the trademark domain. These numerous ways domintheft are possible with an entity's name or trademark. Thus trademark squatting circumstances, for the most part emerges when an individual in an outside nation enrolls a trademark which has been enlisted by its original proprietor in its major nation of operation. There have been different occurrences of squatting because of which some notable organizations are not ready to get into litigation to recover their trademarks or domain names and need to pay a weighty cost to such unscrupulous organizations or people to stop the utilization of the trademarks.

Legal provisions in China and India – a Comparative Analysis:

We have already stated that trademark squatting is more prevalent in developing countries and fast-growth economies. We shall now proceed to take a look at the legal provisions in the two major economies in the world China and India; to see how the law provides to tackle the same. Both are “first to file” systems but India provides for certain legal provisions and case

laws which tend to place it mid-way between a typical “first to file” jurisdiction like China and a typical “first to use” system like U.S. We shall not consider the legal provisions of “first to use” countries like U.S. here as squatting is considerably more difficult over there.

China

The superseding goals of the Trademark Law amendments in 2014 were to:

- streamline techniques related with getting trademark rights;
- enhance security for legitimate proprietors; and
- alleviate issues faced by genuine owners, brought about by trademark squatters.

Since the modification, point by point controls, legal elucidations and examination principles have additionally been operationalized. The modified law has been utilized to handle dishonest filings and tries to counter the most recent patterns in such cases. Those universal brand proprietors which don't as of now have a trademark enlistment in China for the merchandise or administrations to which the debate relates should hope to take advantage of Article 32 of the reexamined law (Article 31 of the 2001 Trademark Law) so as to contradict or nullify marks recorded by trademark squatters. Under this article, the adversary must demonstrate that its imprint has accomplished a specific level of acclaim in China, which is a noteworthy obstacle, particularly for brands that don't yet have a solid nearness in China. Be that as it may, the modified law likewise presents choice of routes for brand proprietors to battle against trademark hunching, particularly for the most well-known conditions in which a trademark is pre-emptively documented.

The general rule of good confidence was first presented in Article 7 of the Trademark Law and states that “the application for trademark enrollment and the utilization of trademarks ought to pursue the standard of trustworthiness and validity”. About four years after its execution, authoritative experts appear to consider this just as an all-encompassing standard and are hesitant to depend on it so as to dismiss or refute a trademark. At times, however, the experts have adopted a progressively adaptable strategy, considering diverse factors so as to discover an infringement of the rule of trustworthiness and validity. For instance, in the China Trademark Office (CTMO) Opposition Decision 0000012861 (2016), the CTMO rejected the enlistment of the blemish on the premise that the candidate had connected to enlist numerous imprints which are indistinguishable or like others' enrolled imprints; it was hence trying to pull a fast one and in break of Article 7.

In CTMO Opposition Decision 0000001877 (2017), the CTMO rejected the enlistment of the imprint AMWAY as apparatus dependent on Article 7, considering:

- the acclaim of the adversary's imprint in China;
- the high level of likeness between the imprint in debate and the adversary's imprint;
- the close association between the assigned products and ventures; and
- that the candidate gave no sensible clarification to why it had embraced the imprint.

All the more frequently, though, the thought of dishonesty is utilized as a factor in augmenting the claim of other explicit arrangements at infringement, misleading or other ill-advised acts – particularly on the ground of "deceptive or other improper means" under Article 44(1) – and in finding comparable imprints for comparative products and ventures under Article 30. Utilization of Article 44(1) against substantial scale squatters Article 44(1) gives that any imprint that has been enrolled through misleading or other ill-advised methods might be negated. Despite the fact that this article existed in the 2001 Trademark Law, it was viewed as pertinent just to negate enrolled imprints, instead of a ground on which to contradict applications. In any case, following the usage of the changed law there has been an expanding dependence on Article 44(1) so as to dismiss or discredit trademarks where the candidate has duplicated others' popular imprints.

Practically speaking, the CTMO, the Trademark Review and Adjudication Board (TRAB) and the courts once in a while use Article 44(1) in mix with Article 7. In TRAB choice 0000055952 (2017), the TRAB decided that the way that the registrant had connected for more than 300 imprints indistinguishable or like other unmistakable or surely understood imprints implied that it expected to duplicate others' notable marks through inappropriate methods as per Article 44; such ill-advised trademark enrollment would upset the typical request of trademark enlistment and reasonable challenge and in this way broke the guideline of good confidence. The CTMO for the most part settles each case individually. Be that as it may, Guangzhou 4399 Information Technology Limited Co had documented in excess of 9,000 trademark applications, 210 of which were tested by various rights holders. The CTMO arbitrated 39 of the restrictions together and dismissed all applications on the premise that the candidate's huge scale trademark squatting was a demonstration of dishonesty. Remote brand proprietors might be consoled by this pattern, but considerable number of trademark squatting exercises is

worked by expert agencies holding many trademarks at one go. Of late, progressively advanced squatters have been enlisting distinctive organizations' marks so as to hold trademarks in the name of many separate business entities, in this way bringing down the absolute number of imprints held by each organization.

Brand proprietors may then need to demonstrate that the candidate is identified with understood squatters, which might be troublesome if the syndicate utilizes distinctive people (eg, relatives or companions) to go about as executives of the trademark holding organizations. Extent of earlier dealings in dismissing applications the updated Trademark Law has augmented the conditions in which the experts may dismiss or discredit a trademark on the ground that it was hunched down on by a gathering identified with, or which has had earlier dealings with, the legitimate proprietor. Article 15(1) of Chinese Trademark law gives provision that a trademark ought not to be granted to its supplier or distributor ("Agent") without the proprietor's authorisation. Such "Agent" is additionally characterized in Regulation 15 of the 2017 Supreme People's Court's (SPC's) Interpretation on Issues Relating to Administrative Trademark Litigation Involving the Grant and Determination of Trademark Rights to include:

- the trademark operator or delegatee;
- the deals operator or merchant; and
- family individuals from the operator or agent.

Article 15(2) of the amended law grows this main-operator relationship, giving that any endeavor to enlist an imprint by an agency that has an authoritative, business or other association with the trademark proprietor and knows about the imprint ought to be prevented from grant. "Authoritative or business relationship" incorporates a wide scope of exercises, as indicated by Part 11.3 of the Examination Standards issued by the TRAB in 2016, including:

- sale and buy;
- a contract for production;
- a establishment (trademark permit);
- an financial specialist, support or co-coordinator of a joint occasion;
- business visits or dealings;
- advertising organization;
- other business dealings; and
- family individuals.

Further, in accordance with Regulation 16 of the SPC elucidation, “other connections” incorporate relatives, work connections and geological nearness of places of work. The above would incorporate conditions in which the gatherings are in exchange for an essential office or business relationship however has no legitimate relationship. Part 11.3 of the Examination Standards gives instances of proof required so as to demonstrate such connections (eg, contracts, letters, exchange archives and acquisition data which show an assent or business bargain, corporate finance, work contracts, social protection, medicinal protection materials and family unit enrollment endorsement). Practically speaking, where a previous investor or executive of the first hardware producer (OEM) or wholesaler sets up another shadow organization in Hong Kong and registers the brand proprietor's trademark in China, legitimate proprietors might probably persuade the court through a point by point chain of proof.

A case of a total chain of proof to demonstrate an earlier relationship would include:

- a circulation contract between the OEM or wholesaler and brand proprietor;
- a business contract or different records between the trademark candidate and OEM;
- documents appearing between the brand proprietor and trademark candidate to show the candidate's learning of the brand; and
- where the trademark candidate is an organization, proof to demonstrate the connection between the previous investor or chief of the OEM or wholesaler and the candidate.

While the above arrangements have extended the lawful extent of security to the legitimate proprietors, it stays hard to demonstrate that the candidate of the trademark is a relative of the individual who has been in contact with the legitimate proprietor. Individual documentation, for example, a marriage authentication or individual ID card, is hard to get. Inventive utilization of Article 10(1)(7) against imprints that are free-riding others' popularity can be useful. Article 10(1)(7) of the modified Trademark Law denies the utilization of tricky imprints which would deceive the lay consumers with respect to their source. This was planned as an outright ground for all refusals counteracting marks that contain deceiving or misleading components as such. By and by, the experts have likewise expanded Article 10(1)(7) to apply where the exact origin of the restricted mark is tricky to determine.

India

The details of trademark squatting prevention laws in India based mainly on the principle of “well known trademark”. Part of it is statutory while part is laid down in a series of case laws from various High Courts as well as the Supreme Court of India. The trans-border fame rule is additionally relied on in India, which recognizes the popular knowledge of the brands of an entity. Since there is an association between different nations, it is an intelligent assumption that such measures which reduce transaction cost of a customer by easing of decision making are important to be guaranteed and that the common knowledge of one party don't make benefit or hurt other parties. Such situation can happen when both sides belong to the country, between a domestic and an international party and even between two foreign entities. This is the place the significance of ensuring trans-boundary or overflow of global trademark fame of foreign organization emerges. As the changing situation and progression in innovation, it has turned out to be essential to secure the licensed innovation rights among different nations. Issues in regards to encroachment of protected innovation rights in India, which was existing in some other nation, have been managed numerous points of reference. The Supreme Court in this issue has set down in different cases that an organization, having its trademark rights and its fame in some other nation can ensure its licensed innovation rights in India. At the point when Walmart tested an organization that was utilizing the trademark “Wall Mark”, the retail chain could get an order of record of its worldwide knowledge and got injunction. Despite the fact that it is difficult to set up trans-border knowledge, and it tends to be expensive and more regrettable, tedious to have the squatter's enrollment dropped. India likewise perceives and pursues the “well-known” standard.

*In Apple Computer Inc. vs Apple Leasing & Industries*⁸ the Delhi High Court had held that “if the reputation of a trader, trading or carrying on business in another country, had travelled to a country where he carried on no business, this reputation having been acquired. On the basis of extensive advertisements and publicity, then another trader could be enjoined to protect the reputation of the trader who was not trading in the country.”⁹

The Supreme Court then conclusively established the law related to the transborder reputation in the case of *Milmet Oftho Industries & Ors. Vs. Allergen Inc.*,¹⁰ by laying down, “the

⁸ Apple Computer Inc. v. Apple Leasing & Industries, (1993) IPLR 63 (Del).

⁹ *Ibid.*

¹⁰ Milmet Oftho Industries & Ors. v. Allergen Inc, (2004) 12 SCC 624.

mere fact that the respondents have not been using the mark in India would be irrelevant if they were first in the world market.”¹¹

The provisions name-based trademark protection across borders of is provided in Section 35 of the Indian Trade Mark Act, 1999 and offers protection to foreign trade marks on the basis of their international reputation of names. This can be seen in cases like *Kamal Trading v. Gillette*.¹² In the present global communication era, a brand that ends up famous in one nation can turn into the equivalent in another without really moving or effectively promoting the items in that nation. The internet ensures that an item well known in one country gets noticed in others as well. Thus it is astute to enroll the trademark in different nations, after the main attainment of the brand, particularly in the developing markets. Quick trademark enlistment ought to be a basic need for any brand needing to enter the Indian market. Enlistment is a moderately cheap option in contrast to suit. India, does however, has an option in contrast to indicting the squatter in courts. “The Ministry of Commerce has a trademark ‘dispute resolution’ system for enrolled trademarks. In what could be stressing news for organizations, however, the Commerce Ministry revealed in 2011 that it had more than 126,000 trademark question cases pending and came up short on the labor to inspect them.”¹³

Exemplary Cases on Cyber Squatting:

“In 2012, Apple confronted an issue with its Trademark enlistments because of Trademark Squatting and needed to pay a robust measure of \$60 million to the proprietor of the 'iPad' Trademark in China. A conceivable question of a similar sort could emerge in India as for Amazon. Amazon has presented Prime, Echo and Prime Music in India can't continue further with the enrollment at the Indian trademark office. It has connected for these trademarks under class 9, which is principally identified with PCs, programming and hardware.”¹⁴ In 2016, Michael Jordan won a case against Qiaodan Sports for his tradename. Again while Pfizer did manage to acquire the trademark Viagra in China, it failed to get it back in Vietnam.

Generic Methods against Trademark Squatting

Trademark opposition can be filled in the trademark office against the individual or organization hunching down trademark amid the production time of the organization that would keep the trademark from being enlisted effectively. As the official courtroom pursues

¹¹ *Ibid.*

¹² *Kamal Trading Co., Bombay v. Gillette U.K. Limited*, U.K. (1988) PTC 1 (Bom-DB).

¹³ *Supra* note 6

¹⁴ Digbijay Mishra, *Amazon's Prime, Echo hit trademark hurdles*, THE TIMES OF INDIA, (APR 7, 2018, 10:01 IST), <https://timesofindia.indiatimes.com/companies/amazons-prime-echo-hit-trademark-hurdles/articleshow/63650805.cms>.

the standards which are set somewhere around the Paris tradition and Madrid convention which denies the utilization of imprint if the trademark is enrolled and known internationally. It is prescribed to the proprietor of the trademark that once they register their trademark in the nation, their organization is enrolled they ought to apply for trademark enlistment in the nations their item is being sold in. They ought to never pause; ought to at the same time record for worldwide trademark right away. When the individual has chosen to seek after trademark security in different nations, there are a few different ways to apply, including: Recording specifically with the national (or local) trademark office or to contact his trademark lawyer to do likewise. Utilizing a trademark enrollment application issued by the Indian Trademark Office as a reason for application through the Madrid Protocol, which gives a financially savvy and productive route for trademark candidate to ensure their imprints in different gathering nations by recording one application just, in one language, with one lot of charges in a single cash of the endorsed money referenced in the trademark application under Madrid Protocol.

WIPO Arbitration in Addressing Cyber squatting Cases

Litigation is a foreign country is, after all a difficult process to enforce trademark rights. There can be procedural difficulties and high cost burdens. An alternate dispute resolution forum is provided by WIPO in the form for WIPO Arbitration and Mediation Center since 1994; which uses binding arbitration when both parties submit to its jurisdiction. “The WIPO Arbitration and Mediation Center provides a mechanism comprised of two sets of rules: the arbitration rules and the expedited arbitration rules. It specializes in technology, entertainment, and intellectual property disputes. The Center provides services to meet the need for quick and inexpensive ways of settling commercial disputes. When administering arbitration cases, WIPO arbitration is guided by the following priorities: flexible procedural framework, active case management, efficiency, expertise, and integrity. In addition, the Center maintains an updated directory of arbitrators who are experts in intellectual property law, as well as having an understanding of technology. As a result, real trademark owners may want to use WIPO arbitration to resolve trademark squatting disputes, rather than domestic litigation.”¹⁵

Conclusion

A number of countries are taking action at governmental levels to help organizations take action in a concerted manner against trademark squatting across the globe. The USPTO gives know-how to little and medium businesses on securing and upholding licenses for

¹⁵ *WIPO Arbitration Rules*, WIPO.INT, <http://www.wipo.int/amc/en/arbitration/rules/>.

trademarks.¹⁶ Much of the time, it is conceivable to enlist your trademark before you have even begun to work together in another nation. Counsel your lawyer or utilize the available national program like for U.S. - STOPFakes International IP Advisory Program to determinethe most viable option for an entity. The Conventions for the protection of trademarks that are “well-known” such as the Paris Convention,¹⁷ The TRIPS Agreement,¹⁸ The Madrid Protocol as well as the WIPO Joint Recommendation Concerning Well Known Marks,¹⁹ are not always enough to provide ground-level relief across jurisdictions with respect to bad-faith trademark acquisition. Indian law in this regard largely hinges on to the “Trans-border Reputation” principle. While in India "use-based" trademark framework is pursued, this implies the trademark directly in India is viewed as obtained by first document premise however on account of Well-known trademark once earlier use is demonstrated its entitlement to utilize the imprint goes before from that of the candidate.

¹⁶ *Id* at 1.

¹⁷ The Paris Convention for the Protection of Industrial Property, Mar. 20, (1883).

¹⁸ Agreement on Trade Related Aspects of Intellectual Property Rights, Jan.1, (1995).

¹⁹ *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks*, WORLD INTELLECTUAL PROPERTY ORGANISATION, Sept. 20-29 (1999).