

Non Conventional Trademark – A Brief Insight

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Trademark law is one of the maximum fascinating subjects beneath the realm of intellectual property and there have been such a lot of trends on this specific place of law currently. A hallmark is largely an intellectual property that allows purchasers discover a particular logo, provider or goods within the market. It protects the producer or owner of the goods from unlawful imitation of the product and preserves the hobby of the clients as well as enables avoid undesirable confusion. Usually, trademark protection is given to standard marks like trademarks, symbols, snap shots, captions, signs and symptoms, names, and so on. However due to the competitive and ever-increasing opposition between manufactures of bodily commodities nowadays, it has come to be extremely important for them to stand out inside the industrial market. As a result, manufacturers have become extra creative and adopted new non-traditional trademarks for identity in their merchandise inside the marketplace.

Non-conventional or non-traditional logos are essentially marks that aren't protected within the traditional set of marks and hence encompass touch, smell, coloration, form, texture, sound, flavor and so forth. Commonly, trademark protection is given handiest to marks which may be graphically represented, yet non-conventional logos are registered and given protection due to the ability of these marks to create a selected degree of identification inside the minds of clients. The registration and protection of logos is governed via the trips agreement and as a long way as the agreement is worried, a hallmark need to be capable of carry out its number one features and it is not mandatory for a trademark to be tangible, visually perceptible or graphically representable. Consequently, registration of non-conventional emblems, in particular sound, has come to be very commonplace in US and European.

As in step with the Indian alternate Marks Act, 1999, registration of trademarks is handiest feasible if it has the capacity to distinguish itself from different merchandise and has the capability to be graphically represented. Inside the case of non-conventional trademarks, even though they perform the primary feature of a hallmark, the registration is thus far a difficult technique inside the United States specifically due to its specialty criterion and its lack of capability to be graphically represented.

The most vital component for an indicator is its forte but in case of non-traditional marks even after gratifying the essential cause of trademark i.e. differentiating the goods and offerings of owner of mark of those from others, non-conventional marks are regularly hard to sign up because of numerous issues along with functionality difficulty, difficulty of graphical illustration and similar other problems, which shall be mentioned beneath.

There also are probabilities that these marks can provide upward thrust to confusion among the consumers, hence defeating the very motive of emblems. But, non-conventional logos remains a developing idea in India and there was lots of debate and discussion whether it may be taken into consideration as a trademark in the absence of its ability to be graphically represented.

DEFINITION OF MOTION MARK AND THEIR PLACE IN NON CONVENTIONAL TRADEMARK

Motion marks, as a subset of non-traditional logos, constitute a dynamic and modern method to branding and marketing. On this particular studies, we'll delve into the definition of movement marks, their characteristics, legal reputation, registration system, strong point, strategic implications, and the

¹ Michal Ziolkowski "Motion Trademarks as an Element of Brand Promotion – IP Law Watch," IP Law Watch, 2016,

<https://www.iplawwatch.com/2016/10/13/motion-trademarks-as-an-element-of-brand-promotion/>.

demanding situations and possibilities they present inside the realm of non-conventional emblems.

²Motion marks are logos that incorporate movement, animation, or dynamic sequences as a part of their visual representation. They cross past conventional static symbols or designs, providing a visually enticing and memorable way to perceive and distinguish goods or services. Motion marks can take various paperwork, such as lively trademarks, shifting characters or mascots, and dynamic sequences used in advertising and marketing or virtual media.

Movement marks are recognized and guarded as logos in lots of jurisdictions, such as the United States, EU Union, and India. Whilst criminal frameworks governing logos extend to movement marks, capturing their dynamic nature for registration functions can be difficult. Trademark workplaces usually require a graphical representation that efficiently depicts the motion or animation related to the mark.

Registering a movement mark includes filing a graphical representation alongside the trademark utility. Trademark offices may also require extra documentation to demonstrate the distinctiveness of the movement mark and its capability to function a supply identifier. Improvements in generation have facilitated the advent and submission of motion mark packages, bearing in mind extra accurate representation of dynamic elements. Like other trademarks, movement marks need to possess uniqueness to qualify for registration. They have to be able to figuring out the source of products or services and distinguishing them from competitors. Once registered, motion marks experience felony safety towards unauthorized use with the aid of 1/3 parties. Trademark owners can put into effect their rights thru prison action in opposition to infringement. Protection extends to the particular motion or animation depicted inside the movement mark, making sure exclusivity for the recognized branding element. Movement marks offer businesses a powerful tool for strategic branding and advertising. They permit organizations

to deliver emblem personality, evoke feelings, and create memorable brand stories via dynamic visuals. Incorporating movement marks in marketing, digital media, product packaging, and multimedia displays can beautify brand recognition and patron engagement.

Despite their advantages, movement marks present demanding situations in registration, illustration, and enforcement. Capturing movement in a static graphical layout for registration purposes stays complex. But, advancements in generation, consisting of animation software and digital rendering strategies, offer opportunities for overcoming those challenges and leveraging motion marks effectively in branding techniques.

CONCEPT OF MOTION MARK

Movement marks are new and progressive trademarks which could appeal to customer interest extra effectively than the static -dimensional trademarks, along with figurative marks and word marks, due to their particular characteristics. Movement marks changes shape by means of shifting, at the same time as the observer remains in the equal function, which make them best for advertising on the net, cinemas or tv. As stated in advance, movement marks are labeled as seen-marks, but it's been hard to define them mainly. A few students say that they stand alone, even as the OHIM database categorizes them as 'other' on their internet site. Due to the fact they may be exclusively visual, they're closest to conventional emblem marks, of all the non- conventional trademarks, but they upload motion. Just like sound marks are emblems that can 'communicate', movement marks are emblems which could 'circulate'.

³Motions marks or not cited explicitly in the CTM regulation, TM Directive nor the trips agreement. However, they may be noted in short within the OHIM suggestions and the Singapore Treaty and the rules related to it. Additionally referred to as movement

² Michal Ziolkowski "Motion Trademarks as an Element of Brand Promotion – IP Law Watch," IP Law Watch, 2016, <https://www.iplawwatch.com/2016/10/13/motion-trademarks-as-an-element-of-brand-promotion/>.

³ Guðmundsson, Guðmundur Haukur. (2014). 'Registrability of Motion Marks: Problems and

Possibilities. Social Science Research Network' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512406:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512406

marks, transferring marks and animated marks. "Movement marks" fall below the huge class of "nontraditional" logos, and the term references any trademark or service mark that says movement or motion as a feature of its use in trade. "movement mark" can be used to explain a further subcategory of unconventional marks, as there are several specific forms of trademarks that claim movement as a characteristic. The primary general category of motion marks includes short sequences of computer-generated animation, distinguishable as "shifting photo" marks. These are the most frequent kinds of movement marks and are frequently used by movie, television and internet corporations to designate their goods and offerings. Often, shifting image marks upload animation to previously registered logos created from either words or symbols. Some shifting picture marks additionally contain music or different sounds to accompany the animated sequence, or a specific aggregate of colours. This kind of movement mark is effortlessly marketed to the public via use on digital billboards, in tv classified ads, movie theatre previews, and online advertising. the second form of movement mark includes transferring aspects of the product itself, or a described motion produced by using the products. Within the u.s.a. , the pleasant examples of this type of motion mark are the upwardly-moving Lamborghini doors and the three-dimensional spray of water produced by way of the Yamaha pace boat.

⁴A extra unusual instance is the Peabody inn Chain's provider mark, which is created from its each day "Duck March." a rare instance of a service mark incorporating physical movement, the Duck March is a procession which takes place each day at the Peabody accommodations, related to stay ducks which emerge from an elevator and proceed down a purple carpet earlier than jumping right into a fountain placed within the lodge's foyer. Typically, movement marks incorporating product capabilities may be concern to scrutiny and feasible competition on grounds of functionality. Nevertheless, these marks are exceedingly precise, and constitute the limitless creative possibilities that movement marks manage to pay for to manufacturers and provider companies. The 0.33 form of motion mark is a gesture mark, which entails precise hand movements or a aggregate of

physical actions that suggest the supply of goods or services. although there are presently no registered gesture marks within the united states of America , a recent complaint filed in California federal courtroom seeks injunctive remedy for "misappropriation of a hand signal.' the world over, gesture marks are recognized inside the UK and the Benelux office, and the OHIM just lately authorized registration of Deutsche Telekom's "T" gesture. Gesture marks are primarily used when it comes to provider marks and require a showing of secondary that means. a few gesture marks are also depicted in transferring pix, which includes the Nokia mark constructed from palms coming collectively. Even though now not technically claimed as "gestures," it's far feasible that those marks ought to bridge the gap among physical and photo representation, due to the fact that there is essentially no difference between the computer collection of moving photo marks and corporal overall performance of gesture marks. Moreover, gestures have powerful advertising ability as the maximum simple shape of human communicate. There may be possibly no higher indication that a purchaser population has been reached by means of advertising and marketing than purchasers' mimicking of the trademark proprietor's gesture.

SIGNIFICANCE OF MOTION MARK IN THE INDIAN IP LANDSCAPE

Motion Mark is a performance measurement device for animation. It can be used to measure the performance of an animation in phrases of its body rate, jank, and other metrics. It could be used to evaluate the performance of different animations, and to identify areas where overall performance can be progressed. It could be used on web sites, cellular apps, and other kinds of animations. It may be a short video clip that mixes shifting snap shots and sound. Likewise, a video clip or a fixed of sequential nonetheless images illustrating the movement or exchange of role must be submitted as an illustration of the mark. Whilst nevertheless pics are used, they could have numbers subsequent to them or include a caption that explains the order they ought to be considered in.

⁴ Lesley Matty, 'Rock, Paper, Scissors, Trademark - A Comparative Analysis of Motion as a Feature of

Trademarks in the United States and Europe' (2006) 14 Cardozo J Int'l & Comp L 557

⁵The Act does not provide a definitive definition of what a movement mark is. The draught of the guide of trade Marks does not consist of any remark on the problem either. A movement mark is a kind of mark that, in wellknown, can be understood to be a mark that includes a movement or exchange inside the role of the parts that contain a mark. It may take the form of a brief video or audio clip with shifting visuals and/or sound. in step with the definition that can be observed in segment 2(1)(zb) of the Act, a change mark is “ a mark capable of being represented graphically and which is capable of distinguishing the products or services of 1 individual from the ones of others and can include the form of products, their packaging, and mixture of colours” further, the Act's section 2(1)(m) defines a mark as "which include any aggregate of the following: a tool, trademark, heading, label, ticket, name, signature, phrase, letter, numerical, form of products or packaging, or aggregate of colors or any mixture thereof” regarding the second one situation, the illustration of an indicator for items or offerings represented or capable of being represented in paper shape, which includes illustration in digitized shape, is what the change Marks regulations, 2017 consult with after they define graphical illustration in Rule 2(1)(k). Therefore, so that you can sign up a movement mark, it's far essential for all the shifting elements blanketed inside the mark to be capable of being represented in a paper form. A graphical depiction of the mark is important before it is able to be submitted to the Trademark magazine for guide. Then again, due to this necessity, registering a motion mark can be rather tough. The ideal portrayal of a movement mark ought to contain the motion of the components of the mark in addition to the sound; but, this cannot be completely reproduced on paper

INTERNATIONAL PERSPECTIVE ON MOTION MARKS

Now one of the oldest movement marks still at the U.S. trademark sign up, Columbia photos registered in 1996 its iconic multimedia brand offering a girl

^{5 5} 'Motion Mark under the Trademark Act in India' TutorialsPoint
<https://www.tutorialspoint.com/trademarkprotection-for-motion-mark>

sporting a torch and wearing a drape, called “Columbia, a personification of the us.” motion mark registrations in the U.S. span many formats. Many encompass lively pc sequences and short movies, ranging from an animated Microsoft windows brand, to the United airlines “massive steel chicken” the outlet Lamborghini “wing” door, and the launching Quicken Loans’ Rocket mortgage rocket. A U.S. applicant have to describe the motion mark and offer a drawing that either indicates an unmarried point inside the motion or “up to 5 freeze frames displaying numerous factors in the movement.” The specimen have to show the “complete repetitive motion so one can depict the industrial influence conveyed through the mark (e.g., a video clip, a series of still images, or a chain of display screen photographs)

⁶Multimedia Mark Registrations the ecu Union highbrow property office (EUIPO) updated its regulations in October 2017 to permit less difficult registration of non-conventional marks, by using putting off the requirement of a mark’s “graphical representation.” In 2019, maximum European nations harmonized their laws with the EUIPO directive. Now, a mark wishes best to be represented in a way “which enables the competent government and the public to decide the clear and specific challenge remember of the protection. The illustration should be “self-contained, without difficulty accessible, intelligible, durable and objective.” The motion mark ought to be represented by using either a video document or a series of nonetheless sequential pics displaying the moves or function adjustments. Previous to the brand new guidelines, as within the U.S., Microsoft had effectively registered a motion mark for its emblem series. Exemplary EUIPO registrations under the brand new directive include a mark, owned by means of a Danish pump manufacturer, Granados preserving A/S, providing an lively brand, and Google’s registered hologram of its iconic “G.” After the U.K.’s January 2019 amendments introduced the U.K. Consistent with the EUIPO, Toshiba registered the primary U.okay. Movement mark, offering origami-fashion folding colored

⁶ Belinda J. Scrimenti (2019) ‘Animated “Motion Trademarks” Grow in Popularity and Legal Protection Around The World’
<https://www.pattishall.com/pdf/2019-10%20Pattishall%20Insights.pdf>

triangles. St. Modwen residences a real property developer, additionally registered a complicated animation of its swan brand accompanied via the movement of drawing of an city skyline. Germany carried out the European directive in January 2019, and the French government published February 2019 amendments to conform with the directive¹⁵ which are expected to come back into pressure quickly.

Some Asian jurisdictions have additionally been forerunners in shielding movement marks. Korea calls for proof of received strong point, generally thru widespread evidence of use in Korea over a long length. Despite the fact that, movement marks and holograms were registered there years ago, which includes Sony's nearly decade-antique lively "Make.agree with" brand and a Korean product certification hologram. Considering that 2015, Japan has permitted registration of "dynamic layout" marks, so long as forte is validated. Numerous movement marks have due to the fact that registered, along with United's "massive steel fowl" mark, primarily based on an worldwide Registration beneath the Madrid machine. Canada and Mexico's lately amended trademark laws now formally permit such registrations. Canada's new law, effective June 17, 2019, specially authorizes "transferring image" marks and an array of other non-traditional marks. Even before implementation, the Canadian Trademark workplace granted a totally few transferring photograph registrations, such as the famed James Bond gun barrel series.

Despite the fact that, protection for movement marks is some distance from universally time-honored. Development is sluggish in much of Latin the US and numerous Asian international locations, wherein many non-traditional marks are nonetheless prohibited. However the most obtrusive exception to protection is China, where such marks are nevertheless expressly barred from registration. Till that modifications, workarounds consist of copyright protection of works analogous to films, and submitting for a chain of emblems reflecting static photographs of steps in a mark's animation. General, the good news is that worldwide trademark laws are making development in

keeping up with the realities and needs of advertising and marketing.

ANALYSIS OF TRADEMARK ACT WITH RESPECT TO MOTION MARK

"Section 2(1) (zb) of the Trademark Act, 1999 defines a trademark as a mark which capable of being presented graphically and is capable of distinguishing⁷ goods or services of one person from those of others and may include the shape of products, their packaging and combination of colours. Thus, the definition of the trademark under the Indian Trademark Act is an inclusive one and covers within its ambit anything that is capable of being graphically represented and distinguishing any product."

It must be noted that motion mark cannot be presented in its pure form; it will have to be presented before the registrar as a combination of marks for example sound and movement are to be presented together, like in the case of Sony Ericsson and Nokia.

The Indian Trademark Law and Practice have expanded its purview to accommodate protection of various and different types of non- traditional.

M/S. Lakme Ltd. v. M/S. Subhash Trading and Others [1996 (16) PTC 567 (Del)]⁸ • "...Section 2 of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the Act). The word 'Mark' is defined under sub-clause (i) Section 2 whereas the word 'Trade Mark, is defined under Section 2(v). The definition of the word 'Mark' as given in the Act is an inclusive definition which includes a device, brand, heading, label, ticket, name, signature word, letter or numeral or any combination thereof."

The court referred to Section 2 of the Act, which defines the term 'Mark' under sub-clause (i), and 'Trade Mark' under Section 2(v). The definition of the term 'Mark' provided in the Act is an inclusive definition, which means that it encompasses various elements such as a device, brand, heading, label, ticket, name, signature word, letter, numeral, or any combination thereof.

This case is significant because it clarifies the broad scope of what can be considered a 'Mark' under the Trade and Merchandise Marks Act, 1958. The

⁷ Archi Bhatia (2017) 'Registration of Motion Mark as Trademark' <https://blog.ipleaders.in/motion-mark-as-trademark/>

⁸ M/S. Lakme Ltd. v. M/S. Subhash Trading and Others [1996 (16) PTC 567 (Del)]

inclusive definition ensures that different types of identifiers used in commerce can be protected under the law, thereby safeguarding the interests of businesses and consumers alike.

Assam Roofing Ltd. and Ors. v. JSB Cement LLP and Ors. [AIR 2016 Cal 41]⁹ • "...Section 2 (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; ...Section 2(m) of the Act gives an inclusive definition of 'mark'"

The analysis of this definition is crucial in understanding the breadth of what constitutes a 'mark' under the Trade Marks Act. By providing an inclusive definition, the Act aims to cover a wide range of identifiers used in commerce that may be eligible for trademark protection. This inclusive approach ensures that different types of marks, including non-traditional trade marks are recognized and protected under the law. Despite the fact that motion markings were not the focus of these rulings, the Court's interpretation establishes acceptable reasons for the inclusion of a motion mark as a mark in accordance with the Act.

A SHIFT IN PERSPECTIVE OF TRADEMARK REGISTRY

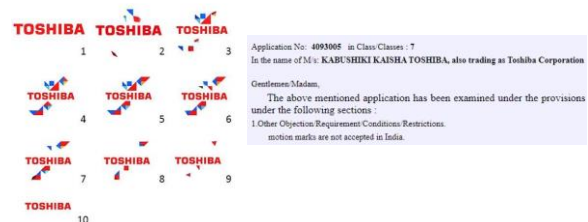
¹⁰"The 'CONNECTING HANDS' mark owned by Nokia was the first motion mark to be submitted for registration in India, and it was given the number 1246341. On the other hand, the records of the Registry reveal that the mark was submitted for registration as a device mark as opposed to a motion mark.

⁹ Assam Roofing Ltd. and Ors. v. JSB Cement LLP and Ors. [AIR 2016 Cal 41]

¹⁰ S.S. Rana & Co. "Importance and Challenges of Protecting a Motion Mark- India."



In a recent case, the Trade Markings Registry in Delhi first raised an objection to an application submitted by the Toshiba Corporation for their motion mark for 'TOSHIBA' (Application No. 4093005) on the grounds that "motion marks are not approved in India." In spite of this, the Registry ultimately decided to reconsider its stance, and as a result, the mark was eventually approved and is now registered as a motion mark¹¹.



CHALLENGES IN ESTABLISHING DISTINCTIVENESS AND FUNCTIONALITY OF MOTION MARK

The criterion of uniqueness is one of the most important standards for the registration of a trademark. A mark is registrable beneath the trademark regime only if it's far unique and able to distinguishing the goods or services of one owner from those of others. However, the distinctiveness of a mark can either be inherent distinctiveness or obtained uniqueness. The criterion for assessing the distinctiveness of a non-traditional mark isn't always specific from that implemented for conventional shape of trademark. In case of non-conventional marks, the trademark office should undertake a cautious method in getting access

<https://ssrana.in/articles/importance-and-challenges-of-protecting-a-motion-mark/>

to the distinctiveness of mark because there are a number of category of non-traditional marks which might be though not inherently specific however had acquired forte or secondary which means thru vast popularity either by use or the context wherein they are used.

¹¹Apart from proving the individuality and additionally that the public acknowledges the change mark and buddies it with unique items/services, it is important to determine the capability of the motion trade mark while determining the registerability of the movement mark. It should be stated that a trade mark need to be able to undoubtedly affect the income and/or profit of a brand because of its use. but, the owner of the alternate mark isn't allowed to monopolise general functions which might be normally not unusual and critical to all the traders inside the industry and have to no longer limit the opposite traders from claiming the general functions within the market. at the same time as a completely unique 'vehicle door movement holds the capacity to influence the logo's expenses and sale numbers, capability of the movement have to now not placed competitors at a disadvantage of not being capable of claim widespread features in a marketplace.

ISSUES WITH GRAPHICAL REPRESENTATION OF MOTION MARK

Beneath the criteria of graphical illustration of a mark, it states that that allows you to are seeking for safety, a mark must be capable of being represented graphically. The criterion of graphical representation of a mark is vital as it offers a clean, precise and specific reference about what the mark is. The graphical illustration is also vital to certainly outline and discover the mark and its scope. The Indian Trademark Act, 1999 at the same time as defining the phrase trademark below segment – 2(1)(zb) consists of the phrases, "able to being represented graphically" this means that that the mark must be capable of being represented on paper and ought to be such that it is able

to be posted within the authentic journal of the trademark. Here, the criterion of graphical representation is often referred as not an goal idea because it's miles nowhere precisely mentioned that what's going to render it identifiable. However, a cursory studying of the applicable provision reflects that the illustration of the mark should be such that it is enough to permit complete and effective implementation of the equal. The employer's commitment may be in the form of personnel recruitment and increase.

Looking on the Indian scenario, now with the alternate in time the state of affairs in India is also converting. Inside the recent Trademark rules 2017 notified by the Ministry of commerce and industry, it had opened new path for the registration of non-conventional marks with the aid of supplying extraordinary supplementary necessities which might be to be submitted together with the graphical illustration requirement to make it greater particular and clear.

¹²Motion mark in India can most effective be represented via a series of collection photographs displaying the movement or exchange of function forming the sequence for which the applicant is in search of registration. But, this might no longer usually be viable because, in certain situations, the pictorial representation might not precisely painting the motion for which the applicant seeks to sign in the alternate mark. Many logos would possibly also be rejected on this ground. but, to triumph over this, India may additionally start adopting the legal guidelines of different jurisdictions which includes the ecu or US, in which they have got eliminated the requirement of graphical illustration and began accepting even the video files of the marks, which would enable the examiner as nicely different 1/3 parties to exactly apprehend the movement of the trade mark for which registration is sought and lift objections/oppositions. In positive instances, it may now not be possible to establish the ideal movement from the outline furnished together with the representation, and therefore, figuring out the individuality of the mark

¹¹ Komal, Dr. (2020). Protection of Non-Conventional Trademarks: Issues and the Road Ahead. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 11(3)

¹² Komal, Dr. (2020). Protection of Non-Conventional Trademarks: Issues and the Road Ahead. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 11(3)

would become tough. Also, inside the case of elevating objections or proving the infringement, it might be hard to establish the similarity among the motions.

MOTION MARK IN THE EUROPEAN UNION

¹³“In the European Union, previously, according to Article 2 of the EU Directive 89/104/EEC[1], the capability of representing a trade mark graphically was an important factor in determining the registrability of a trade mark. In several cases, the registration of a motion mark was refused by the EUIPO because the stills in the application combined with the written description did not clearly show the motion in the mark and, accordingly, it was not sufficiently clear how the motion moved forward between the various stills. However, now, the requirement of graphical representation is no longer a requisite while applying for a trade mark. According to Article 4 EUTMR(2), a trade mark should be able to distinguish the goods or services of one undertaking from the other and should be able to be represented in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection. Further, according to Article 3(3)(h) EUTMIR[3] a motion mark may be represented by means of electronic video file such as MP3, MP4 format etc which allows showing the motion mark in its natural state or by series of sequential still images showing movement or change of position (with still images being numbered or accompanied by a description explaining the sequence). This means that the representation may still be done by the means of written description of the mark however, this is no longer a mandatory. Further, EUIPO has stated that a motion mark may only be refused registration under Article 7(1)(a) ELUTMR(4) when a person with normal levels of perception and intelligence would not be able to understand precisely what the mark on the EUTM register consists of, without expending a huge amount of intellectual energy and imagination.

¹³ S.S. Rana & Co. "Importance and Challenges of Protecting a Motion Mark- India." <https://ssrana.in/articles/importance-and-challenges-of-protecting-a-motion-mark/>

In the case of the Danish biotech company Nuevolution A/S, the court has refused to register the motion mark on the ground that it did not satisfy the requirement for graphic representation. It was held that it was not possible to grasp the movement described in the description of the mark from the sequence of images, the contrast from image to image is not sufficiently sharp and the design looks the same in each image. However, it also stated that, after the amendment, Nuevolution "may consider filing a new trademark application with an electronic file of the motion mark" This reflected that the court has recognised the new developed possibility of representing motion marks through video format. With the commencement of the new regulations by EUIPO in 2017, the process of registering a motion trade mark has become simpler as the person applying for a motion trade mark may now submit a video file that shows the movement of the marks, and is not mandatory to represent it through stills”.

MOTION MARKS IN THE UNITED STATES OF AMERICA

“United States of America allows the registration of motion marks, and it is interesting to note that one of the oldest motion marks registered is in US by Columbia Pictures¹⁴ in 1996 for its logo featuring a woman carrying a torch and wearing a drape, known as "Columbia, a personification of the United States.”



POTENTIAL AMENDMENTS TO INDIAN IP LAW

The current laws may not provide a clear definition or specific criteria for registering motion marks.

¹⁴ S.S. Rana & Co. "Importance and Challenges of Protecting a Motion Mark- India." <https://ssrana.in/articles/importance-and-challenges-of-protecting-a-motion-mark/>

Amendments could establish a precise definition of motion marks and outline the requirements for their registration, including guidelines on acceptable formats, duration, and characteristics.

1. **Definition of Motion Marks:** Introduce a clear definition of motion marks within the Trade Marks Act, 1999, to encompass any sign capable of distinguishing goods or services through movement or animation.
2. **Clarification through Circulars or Draft Manual:** The Trademark Registry could issue a circular or include guidance in the Draft Manual explicitly allowing multimedia formats for motion mark representation. This approach wouldn't require formal amendments but would require clear and comprehensive guidelines for consistent application.
3. **Criteria for Registration:** Specify the criteria that motion marks must meet for registration, including distinctiveness, non-descriptiveness, and capability of graphical representation or multimedia representation.
4. **Multimedia Representation:** Amend the Trade Marks Rules, 2017, to explicitly allow for the submission of motion marks in multimedia formats, such as MP4 files, and establish guidelines for their submission and examination.
5. **Examination Process:** Establish procedures for the examination of motion marks by the Trademark Registry, including assessing their distinctiveness, graphical representation, and compliance with the law.
6. **Publication and Opposition:** Outline the process for publication of motion marks in the Trade Marks Journal and provide provisions for third parties to oppose the registration of motion marks on valid grounds, such as lack of distinctiveness or likelihood of confusion.
7. **Registration and Renewal:** Specify the rights conferred by registration of a motion mark, including the exclusive right to use the mark in connection with the designated goods or services, and establish procedures for renewal of registration.

8. **Enforcement and Infringement:** Clarify the enforcement mechanisms available to trademark owners for protecting their motion marks against infringement, including civil remedies, injunctions, and damages.
9. **International Treaties and Obligations:** Ensure that amendments to domestic trademark laws align with India's obligations under international treaties, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to promote harmonization and facilitate international protection of motion marks.

RECOMMENDATIONS FOR STAKEHOLDERS

To reveal that a movement mark is different and suggests source of starting place, the applicant of the movement change mark is needed to publish a specimen that depicts the motion sufficiently to expose how the mark is used with respect to the products/services, and that fits the required description of the mark. The specimen must show the whole repetitive motion through way of a video clip, a sequence of nonetheless pix, or a series of display screen shots, to depict the commercial influence conveyed by the mark.

Further, for a movement mark the Applicant can also submit a drawing that depicts a single factor in the movement, or may submit a square drawing that contains up to 5 freeze frames showing numerous points within the movement, alongside a detailed written description of the mark.

¹⁵Historically, emblems were registered based on graphical representations, such as pictures or designs. But, with the evolving nature of branding, there's a want to conform to new forms of logos, which include non-traditional ones like sound marks, fragrance marks, and movement marks. Enjoyable the criterion of graphical representation could imply accepting a broader range of representations beyond static photographs, making an allowance for the registration of greater diverse forms of emblems. Movement marks, which encompass transferring photographs or animations, present a unique task for trademark registration due to their dynamic nature. Allowing

¹⁵ Guðmundsson, Guðmundur Haukur. (2014). 'Registrability of Motion Marks: Problems and

Possibilities. Social Science Research Network' <https://papers.ssrn.com/sol3/papers.cfm/>

representation of movement marks in multimedia formats like MP4 documents could enable trademark applicants to as it should be depict the motion or animation related to their marks. This transformation might reflect technological advancements and facilitate the registration system for movement marks, making sure they get hold of suitable felony protection.

The decision with the aid of the Board of enchantment within the Sony Ericsson mobile Communications AB v OHIM¹⁶ case offers guidance on a way to represent a motion mark graphically and what standards they're using when valuing registrability, however it also exhibits the troubles. The aggregate of the written description, stills and flipbook helped the examiners in understanding the scope and movement of the motion mark. So as to show the motion of the movement mark, Sony furnished the examiners with a flipbook, which confirmed, to some extent, the motion of the mark if the pages had been flipped hastily, and a CD containing a video record of the motion mark.

However, motion marks are visible marks, which offer them the particular opportunity to be less subjective if the utility method and policies permit them to. The trademark law in India must try to fortify and defend these precise characteristics of motion marks so we are able to optimistically see greater movement marks registrations and possibly later a re-categorization as a 'conventional trademark'. The era is surely to be had, however at the moment, the regulation stands in the way.

CONCLUSION

Logos assist purchasers in recognizing product starting place and thereby assist in the building of goodwill, emblem picture, popularity, and so forth. Emblems are also in all likelihood to create emblem loyalty amongst purchasers. Businesses, in recent times, as a result spend a considerable amount of their time, money and attempt in making their goods and services particular so that you can distinguish them from those of competing corporations manufacturing and promoting similar products. But, long past are the times when product differentiation become brought

approximately merely through conventional logos. Nowadays, all viable senses of a purchaser which include scent, sound, taste, touch, etc. are centered and utilised by corporations in this regard. In any such scenario, there's an improved threat of trademark infringement, passing off, and so on. For you to negatively effect agencies. This is where unconventional trademarks come into the image. However, the concept of unconventional marks has not been nicely explored in India and there is as a result a dearth of legal jurisprudence in this regard. despite the existence of several legal guidelines and law in the united states pertaining to trademarks together with alternate Marks Act, 1999; exchange Marks guidelines, 2017 and Draft guide of trade Marks practice and system; no longer all forms of unconventional marks have acquired adequate criminal attractiveness

¹⁷It need to be noted that, even though India does not bar any registration of movement mark, the method of registration of a motion mark is slightly cumbersome as compared to other jurisdictions. With the appearance of era, the proper step is to undertake new techniques and methods to determine the registerability of a change mark, like use of movies similar to audio clips for sound marks. If graphical representation of an alternate mark is not a pre considered necessary for registration of an exchange mark, then certainly we can see a growth within the applications relating motion marks. An aggregate of shifting images to depict the animation alongside the sound is the primary requirement for a accurate representation of motion trademark and for this reason it's far safe to say that Trademark Act, 1999 is jogging obsolete with admire to the development in technology. Leading and revolutionary brands are not as free in expressing their brands via innovative

¹⁶ Sony Ericsson Mobile Communications AB v OHIM [2010] OHIM Case R 443/2010-2

¹⁷ Archana Bhatiya "Registration of Motion Mark as Trademark." iPleaders,

<https://blog.ipleaders.in/motion-mark-as-trademark/>