

NON-CONVENTIONAL TRADEMARKS AND ITS ISSUES RELATED TO REGISTRATION IN INDIA

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Abstract: The topic of intellectual property rights (IPR) has advanced significantly in recent years, especially with regard to trademarks. Different types of trademarks are recognized under the TRIPS agreement. India has also implemented significant legal reforms to bring its legislation into compliance with the TRIPS agreement. Particular types of non-conventional trademarks exist that are beyond the current national and international trademark regulations. In today's commercial environment, unconventional trademarks are starting to carve out their own niche. This has to be registered and protected by any applicable legal regulations. The greatest barrier to the registration of non-conventional trademarks like sound, smell, and colour may be the need of graphical represent ability because these cannot be meticulously documented in writing. Therefore, new approaches to trademark registration have to be pursued, especially considering that many countries' laws now expressly or broadly recognise these kinds of markings as trademarks. As a result, this essay addresses non-conventional trademarks (namely, sound, smell, and colour marks) and critically analyses the issues surrounding their graphical representation and Indian registration process.

Keywords: Non-conventional Trademarks, Graphical Representation, Smell Marks, Sound Marks, Color Marks.

1.0 Introduction

In addition to being important for intellectual property, trademarks are also important for the growth of society as a whole. Trademarks have a multilayered purpose. Because it helps the consumer identify the products or services they want and avoid using others in the future, a trademark has a positive financial impact.ⁱ Furthermore, since that particular trademark is associated with excellence, infringement allegations arise when a different project makes use of a similar markⁱⁱ. This protects consumer interests by preventing the latter from unfairly benefiting from the work and good name of the original mark holder.ⁱⁱⁱ This was limited to pictorial representations in the past, and as a result, only certain designs or logos were registered as trademarks. In any event, it was believed that the trademarks were lacking in one very important area due to the advancement of innovation, technology, and consumer psychology. A growing number of people worldwide are looking at trade marking various combinations as they see the potential that lies there.^{iv} The fundamental feature of these trademarks is that, although they are not visually noticeable, they have been granted trademark status due to certain dimensions requiring differentiating evidence from the perspective of the customer.

In general, a trademark is any mark that is unique to a product and has some connection to its place of origin. Another type of trademark that does not fit within the classic or conventional trademark categories is called an unconventional trademark. These trademarks meet all requirements to be considered trademarks, yet because of their peculiarity, they are challenging to register.

However, due to the volume of trademarks submitted for registration in recent years, the registering authorities have faced several challenges. The increase in the number of non-traditional trademarks might be attributed to the vague legal meaning that is assigned to a trademark.^v Trademark rules, on the one hand, emphasize the need for an open definition of the word, one that gives consideration to the mark's purpose. A trademark can be registered for any mark that fulfills the business requirement of setting the goods in question apart from competing products.^{vi} However, the evolution of trademark law has contributed to a greater preference for conventional and traditional marks. In Section 2(1)(zb), the term "trademark" is defined. This section's definition is broad and just serves as an example. It is noteworthy that the final three categories in this definition—"shape of goods," "packaging," and "combination of colors"—were not included in the previous act's definition of mark. These categories are frequently referred to as "non-conventional trademarks," in contrast to other items on the list that could be categorized as "conventional trademarks."^{vii}

A variety of non-traditional trademarks, including as sound, smell, taste, touch, motion, and holographic markings, have emerged in response to new technology and marketing and advertising tactics.

Certain conditions are required to be satisfied to register an unconventional trademark-

The mark should be intrinsically distinctive.

The mark should be able to distinguish the particular product from other products.

The mark should be capable of graphical representation.

Therefore, the paper discusses the difficulty of registering unorthodox trademarks and outlines ideas to address a few major and very important questions that are crucial to the domain of atypical trademarks:

1. Does their inclusion result in an unfairly competitive and monopolized market, as well as the depletion of resources related to intellectual property?
2. Do these marks meet the trademarks' intended purposes?
3. Lastly, is there any misunderstanding about what has been registered as a result of these markers' lack of visual perception?

2.0 Development of Non-Conventional Trademarks:

Any trademark's ability to leave an impression on prospective buyers of that goods is what determines its viability. A product or its portrayal would catch people's attention and senses remarkable if it had unusual and unique qualities. As a result, the producers have started to use a number of odd trademarks. Furthermore, the growth of the Internet and e-commerce has further broadened the range of signatures that businesses may choose to register as trademarks.

For example, Internet users would be far more receptive to motion and sound markings than to traditional marks, which have become increasingly popular in today's commercial environment. viii

3.0 Issues With Non-Conventional Trademarks

According to section 2(1)(zb) of the Act, a trademark is any distinctive mark that may be graphically represented and is able to differentiate the products and services of one party from those of another. In this approach, the definition lays forth two broad requirements that a mark must meet in order to qualify as a trademark. Since the term "mark" has a broad definition, non-conventional markings may fall under the purview of trademarks if they meet the requirements for both uniqueness and graphical representability.

The registration of non-conventional markings as trademarks is complicated by a few other factors. The uniqueness criteria are the main problem. While customers may reliably recognize some non-conventional trademarks, such as color and form, others, such as scent and taste marks, may not be recognized in the same way, leading to confusion among consumers. However, this is only a practical issue rather than a legal barrier to registration, as a mark can become distinctive via usage and hence satisfy all trademark criteria even if it may not be unique at first.ixThe graphical representability of the mark that has to be recorded is the second problem.

4.0 Non-Conventional Trademarks And Its Graphical –Representation

As mandated by Section 2(1)(zb) of the Act, the sign must be visually portrayed in order for it to be the subject of a legitimate application for registration. The phrase "able to be represented graphically" would suggest that the mark must be able to be registered in a physical structure in a certain format and also published in a journal. xiThe mark is shown by the fixed viewpoint provided by the graphical depiction.xii

The Court elucidated the two primary rationales for the requisite graphical representation criteria in Swizzels Matlow Ltd's Application (number 2):

- a) To provide merchants the ability to clearly identify which products other traders—whether operating in a comparable industry or not—have registered for trademark registration.
- b) To provide the general public the authority to accurately choose the sign that is the subject of a trademark registration.xiii

A mark is considered to be visually represented when three requirements are met.

- i. It is possible to determine the mark from the graphical representation alone, without the need for any illustrative instances.
- ii. The graphical depiction rather than the mark itself may continue to exist.

- iii. It is reasonable to assume that anybody looking through the trademark register or perusing the trademark journal will be able to understand the trademark's purpose from its pictorial depiction. Any color guidelines, scientific measurements, or notation used to represent markings must be precise and
 - a) make it logically possible for framework users to probably have a fair understanding of the mark, and
 - b) Have the ability to accurately compare the sign the applicant is using or intends to use with other signs of a similar nature.^{xiv}

The issue of Graphical Representation of Non-conventional Trademarks is mostly one of practicability rather than law. When combined with uniqueness, it might function as a real roadblock in the process of registering non-traditional trademarks. This is particularly valid for scent, sound, and color markings.

4.1 Smell Mark : This is a very contentious trademark that has received a lot of attention recently. Despite the difficulties in registering scents as trademarks, only a small number of items have been registered as trademarks^{xv}, and numerous scents have recently been withdrawn or rejected from trademark registers across many countries.^{xvi} Ralf Sieckmann v. German Patent Office is one such exemplary instance where the registration of a scent mark was refused due to, among other things, the non-satisfaction of the graphical represent ability standards. In this case, the primary question was whether a smell described as having a "fruity, cinnamon-tinged scent with a balsamic undertone" may be registered as a trademark for particular services.

Following a referral from the German Federal Patents Court, the European Court of Justice (ECJ) determined that graphical representation alone is insufficient for registration and that it must also satisfy the following requirements:

- i. It needs to be precise, comprehensive, and unambiguous in order to make the purpose of the exclusive privilege immediately apparent.
- ii. It should make sense to those who are eager to learn more about the register, such as various producers and customers.

After laying out these requirements, the court noted the additional difficulties in visually portraying scent marks:

- i. It was not feasible to depict as a drawing.
- ii. Representing the material by its chemical formula would be incorrect because it only describes the substance's physical properties, not its aroma.

Storage of a sample of the substance with the registry was not an option because, first, it was not a graphical representation and, second, smells being unpredictable may fade and even vanish over some undefined time frame. In addition, registration by chemical formula requires clarity and accuracy due to the fact that not many people would have the necessary technical knowledge to interpret the smell of a substance from its formula, but also because a similar substance would give distinctive smells at various temperature, concentration, and so on.

Ultimately, the court determined that even while olfactory indications might be unique, they could not be registered as trademarks since a fair and perfect pictorial depiction is impossible for them.^{xvii} In contrast, the Trademark Manual of Examining Procedure in the United States that if a mark consists only of a non-visual element—such as a sound or smell—trademark applicants are not required to provide a sketch of the mark. Instead, it is expected of applicants to include a thorough written statement that clearly explains the non-visual mark.^{xviii} The primary case in the US where scent mark registration was allowed was *In Re Celia Clarke*; however, this judgment did not address pictorial representation. For use with sewing thread and weaving yarn, the applicant requested trademark protection for an aroma that they described as "a high impact, fresh, floral fragrance reminiscent of Plumeria blossoms." Even though the registration was initially denied, it was approved in advance because the appellate board believed that if the applicant's fragrance served to prove its origin, potential buyers might quickly be able to distinguish competing goods from one another among the vast array of scents.^{xix}

Drs. Richard Axel and Linda B. Buck, recent Noble laureates, have shown that every human body's olfactory receptor cell is connected by a single odourant receptor gene. The majority of scents are composed of several odourant molecules, and each molecule triggers a small number of odourant receptors, causing a 'odourant pattern' to form.^{xx} Thus, it is possible to create a precise "odour matrix" (similar to the shade outlines in the Pantone framework) ^{xxi}for the purpose of classifying and differentiating scents. This might address the problem of scent markers' graphical representability to the extent of their likelihood of being represented. Nevertheless, the accuracy of this representation and the viability of maintaining samples with registries remain unclear, which are additional

questions raised by Sieckmann's instance. Although there is now no solution available, the aforementioned finding could provide a means of addressing the problem of expressing scent markings.

4.2 Sound mark : Here is another unconventional trademark that examines the problem of graphical representability. The standard practice for graphically representing a sound mark is to use written descriptions and musical notation. Practically speaking, though, not everyone is able to read written music. Furthermore, written musical notation, although exhibiting pitch, often does not convey tone; nonetheless, various tones can be employed; specifically, musical notation provides a 'description' of the music rather than just the music itself. Depositing a digital audio recording with the registrar in place of a graphical depiction is an obvious approach. However, the INTA rejected this idea as unworkable because, first of all, the Trademark Registry cannot disseminate sound; instead, people must visit the registry in order to hear it, and it would be difficult for the registry to keep track of so many sound samples.^{xxii}

In the US, UK, and Canada, sound markings are legally eligible for trademark registration. Even while the judiciary first took some conventional views on this matter, the registration of sound markings has been the norm in more recent years.^{xxiii} Furthermore, even though sounds may be visually represented using musical notes as a guide, it is a problem because different trademark registries do not recognize sound markings.^{xxiv}

Due to the case of *Shield Mark BV v. Joost Kist h.o.d.n.Memex*, the European Court of Justice (ECJ) noted that when a sound is graphically represented by means of a written description, the registration of graphical representation is not satisfied; this is an indication that the sign consists of the notes that will constitute a musical work.

ii. Evidence that it is an animal's scream

iii. By techniques for arranging notes in a melody

However, if the sound is represented as "a stave divided into measures and showing, in particular, a clef, musical notes and rests whose form indicates the relative value and, where necessary,^{xxv}accidentals," then the prerequisites for graphical representability are met.^{xxvi}

Moreover, sound markings may be required under Indian trademark law. The ECJ's proposed Shield Mark alternatives are too complex to pursue; instead, a practical solution would be to save the sound mark in a computerized trademark library that is accessible to all users. In addition, a written description of the mark in the form of musical notes should be retained with the registration. This will benefit the experts who may review the notations in the unlikely event that a disagreement arises.

4.3 Colour Marks : In two formats, colors can be used as trademarks either as a single color or as a mixture of colors. In a few national statutes, the last one has been specifically mentioned as a mark type that can be used as a trademark.^{xxvii} This incorporation resolves previous disputes over whether a color combination could even be considered a "mark" and whether it could be sufficiently distinctive to be registered as a trademark. The House of Lords addressed these issues in *Smith Kline and French Laboratories Ltd. v. Sterling Winthrop group*.^{xxviii} Examining the ECJ's decision in *Liberal Group BV v. Benelux* is essential to understanding the problem of graphical depiction of non-conventional trademarks.^{xxix} In this case, the question was whether a mark made up of just the color "orange" may be filed for trademark registration. Under the *Ralf Sieckmann* case, the European Court of Justice (ECJ) highlighted the requirements for graphical representation, holding that it must be 'clear, accurate, independent, effectively open, understandable, harsh and target'. The question in this case was identified by a generally known color identification number, a portrayal of the color in phrases, and a sample of the color on a flat surface. The court accepted to determine if this representation meets the previously stated requirements. A color alone sample cannot pass the test easily since it is not durable and will eventually lose its distinct color. However, in order to create a graphical representation, assigning a color using any globally accepted color identification system, such as Pantone, may be taken into consideration, as these codes are thought to be reliable and accurate. The problem was addressed in the ECJ's ruling in the *Libertel* case, and using the Pantone color scheme can be quite helpful in this regard. The Pantone system is a commercial framework that uses amazing, unique codes to classify over a thousand distinct tones and allocates them numerically. India may thus employ Pantone or any other globally known color identification code^{xxx} to address this graphical representability issue while keeping in mind other objectives like avoiding color fatigue and being unfriendly to rivalry.

5.0 Registrability of non-conventional trademarks in India:

5.1 Registration of Sound Trademark: Before the aforementioned Rules were published, sound mark registration was actually quite problematic. The applicant uses to record audio markings by either visually depicting them or by writing out the melody. But now that the Trademarks Rules 2017 have been implemented, there is a way to register a sound mark.

The modified Rules provide for the submission of sound mark registration applications. An MP-3 sound file that is no longer than thirty seconds, together with a visual depiction of its notation, must be sent with the program. According to TM-A, sound markings that depict certain musical notes must be submitted to the address designated for the trademark.^{xxxii}

5.2.Registration of Colour Trademark: The Trademark Act outlines the process for registering a color trademark. The person who must get registration must, first and foremost, submit an application to the appropriate Trademark Registrar for registration with respect to goods or services. The Registrar has the option to approve or reject the application. An advertisement is made regarding the application upon acceptance. The Registrar will register the specific trademark if, following the advertisement, there is no resistance to the application.

5.2.1. Registration of Single colour Trademark : In rare circumstances, a single-color trademark may be registered as most typical customers do not base their expectations about the source of products and services solely on color. It can be registered if two items are present.

- In the event that something in a business or commercial organization is unusual or out of the ordinary
- If buyers recognize that it represents the place of origin of a certain product.

The Trademark Examiner typically questions applications for single-color trademark registration since they are unable to discern specific items from similar products.

5.2.2. Registration of Combination of Colour Trademark : The combination of colors is permitted for trademark registration. For this reason, two requirements must be met:

- They must be distinctive.
- They have the ability to discern between products and services provided by one person and those provided by another.

In order to secure trademark registration for a combination of colors, one must demonstrate that the colors are likely to be seen by consumers as a trade source.

Evidence that clearly demonstrates that a color trademark is capable of representing a product of a particular business organization and that it is solely identifiable with the business alone should be submitted at the time of registration in order to avoid any kind of objection. Single-color trademark registration is quite rare in India. Even though the registration process is the same for both^{xxxiii}, there are many more registrations for combinations of color trademarks than for single color trademarks.

5.3. Registration of Smell Trademarks: A trademark is defined under the Indian Trademarks Act as a mark that may be graphically displayed and that can be used to identify one person's goods or services from those of another. Therefore, in accordance with Rule 25 (12)(b) of the Trademark Rules, 2002^{xxxiii}, a trademark application must include a graphical representation of the mark, and Rule 28^{xxxiv} and 30 stipulate that a mark that is to be protected must be rendered on paper in a durable form.^{xxxv} As a result, this restriction prevents olfactory markings from being accepted in India as valid trademarks. The very fact that scent marks are subjectively defined and constantly up for interpretation is the reason why they are so seldom registered in other countries while they are completely unregistered in India. The notion that subjective judgments are insufficient for determining whether the smell mark serves as a trademark stems from the challenges posed by people's perceptions of scents. One of the hardest trademark categories to get and one of the hardest to depict visually is later scent.^{xxxvi}

6.0 Conclusion And Suggestions

In general, trademark law acknowledges the protection of marks with psychological significance. Any new symbols or marks that have a strong psychological effect on customers' minds and a significant economic bearing should be protected by trademark law. The difficulty of officially registering these marks as trademarks shouldn't prevent their use, and in order to control the expense of protection for the owners of these non-traditional trademarks, new methods for identifying and classifying these marks should be developed. When it comes to scent markings, the majority of odors are composed of several odorant molecules, and each odorant molecule triggers a small number of odorant receptors, causing a "odourant pattern" to form. As a result, it is possible to construct a precise "odour matrix" (similar to the shade outlines in the Pantone framework) for categorizing and differentiating scents. This might address the problem of scent markers' graphical representability to the extent of their likelihood of being represented. Color combinations are even used to identify national flags of nations worldwide. When trademarks are limited to a single color, any globally accepted color coding system, such as Pantone, may be used to create a visual representation of the color as these codes are thought to be reliable and accurate. The Trademark Rules, 2017's Rule 26 provides criteria for the sound trademark's representation. Regarding the specific clause pertaining to the sound mark, it is evident that they have included an mp3 format, with a duration of no more than thirty seconds, and that they also need to include a graphical depiction of the sound mark.

Given that there is no distinct registration process for non-conventional trademarks, it is evident from discussing all of the rules pertaining to non-conventional trademarks that the current legislation has made the registration of non-conventional trademarks more challenging. Therefore, the Legislature must take the required actions to alter the current Trademark Laws in order to facilitate the registration of non-conventional trademarks.

7.0 References

- ⁱ J. Thomas McCarthy, McCarthy on Trademarks and Unfair competition 2-3 (4th ed. 2000)
- ⁱⁱ Zippo Mfg. Co. v. Rogers Imports, Inc., 216 F. Supp. 670, 137 U.S.P.Q. 413 (S.D.N.Y. 1963)
- ⁱⁱⁱ B.V.D. Co. v. Kaufmann & Baer Co., 272 Pa. 240, 116 A. 508 (1922); Palmer v. Harris, 60 Pa. 156 (1869)
- ^{iv} David Vaver, Intellectual Property: The State of the Art, 116 L.Q. REV. 621, 625 (2000).
- ^v *Non-Conventional Trade Marks In India* By Dev Gangjee Vol. 22(1)
- ^{vi} *Unconventional Trademarks: The Emergent Need For A Change* by Harsimran Kalra
- ^{vii} Section (zb) of Trade marks Act, 1999- "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from choose of others and may include shape of goods, their packaging and combination of colours , and
1. in relation to Chapter XII (other than section 107), a registered trade mark or mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark, and

in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate to a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.
- ^{viii} Beyond Tradition: New ways of making a mark,
http://www.wipo.org/sme/en/documents/wipo_magazine/7_2004.pdf
- ^{ix} Absolute grounds for refusal of registration.-
(1) The trademarks –
(a) Which are devoid of any distinctive character, that is to say, not capable of distinguishing the good or services of one person from those of another person.

(b) Which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service.

(c) Which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade. Shall not be registered :

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

^x Section 1 of Trademark Act,1994, UK- Trade marks.

(1)In this Act a “trade mark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

^{xi} K.C. Kailash & Ramu Vedaraman, Law of Trade Marks & Geographical Indications, 2nd edn Wadhwa & company, Nagpur, 2005, p.132

^{xii} Kitchin David, Llewelyn David et al., Kerly's Law of Trade Marks & Trade Names, 13th edn (Sweet & Maxwell, London), 2001, p.10.

^{xiii} Swizzels Matlow Ltd's Application (No.2), (2000) ETMR 58.

^{xiv} UK Trade Mark Registry Work Manual, August 1998 edition, p.18, reinforced by Practice Amendment Circular 2/100 cited in ref.8.

^{xv} In UK, registration has been made by Sumitomo Rubber Industries Ltd for a Trademark described as a floral fragrance/ smell reminiscent of roses as applied to tyres

^{xvi} The odour of the perfume was sought to be registers in UK, but rejected due to technical difficulties in describing.

^{xvii} Case No. C-273/00 before the ECJ, <http://www.copat.de/markenformen/c-273-00EN.pdf>.

^{xviii} http://www.uspto.gov/web/offices/tac/tmep/0800.htm#_TocI00467391.

^{xix} In Re Celia Clarke, USPQ2d 1238(1990)TTAB

^{xx} Barbara Berg, The scent of surprise , <http://fhcr.org/visitor/nobel/buck/article.html>

^{xxi} Frankfurt J. Mishawaka Rubber & Woollen Co. v S S Kresge Co.(1942), cited in Barrett Margreth, Intellectual Property :Cases and Materials (US), 2001, p.674.

^{xxii} INTA Reports, 1997 as cited in Nguyen Nhu Quynh, Special Trade Marks- Legislation & the situation in the European community, Master Thesis, Lund University, Sweden, 2002. <http://www.copat.de/markenformen/engh-kom/quynh.pdf>

^{xxiii} Playboy Enterprises Inc v Germain, 16 CPR (3d)517(1987), where Pinard J observed on the issue of graphical representation of sound mark with musical notes: 'I am of the opinion that, use of a verbal description is not use of a trademark within the meaning of the Trademarks Act. A mark must be something that can be represented visually.

^{xxiv} Like the lion roar for MGM , and the chime of 20th century Fox, which consists of 'Nine bars of Primarily musical chords in the key of B flat :the chords consisting of four ,eight and sixteen notes'.

^{xxv} Arka Majumdar, Subhojit Sadhu and Sunandan Majumdar, The Requirement of Graphical Representability of Non-Conventional Trademarks, Journal of Intellectual property Rights, vol.11, sep. 2006, pp.311-317

^{xxvi} Case No. C-283/01 before the ECJ, http://www.copat.de/markenformen/jj010283_en.pdf

^{xxvii} The definition of mark in section 2(1)(m) and 'trademark' in section 2(1)(zb) of the Trademarks Act, 1999 expressly includes 'combination of colours' as a mark that can be registered as a trademark.

^{xxviii} *Smith Kline and French Laboratories Ltd v sterling Winthrop group*(1975) 2 All ER 578. In this case , the unique combination of colours applied on drug capsules were held to be 'marks' within the meaning of section 68(1) of the Trademarks Act, 1994. Further, the Court ruled that the said colour combinations were distinctive because they were 'adapted...to distinguish SKF'S goods from other manufacturers'. Moreover, the colour combinations of the capsules had acquired distinctiveness through use, and were registrable as trademarks.

^{xxix} Case No. C-104/01 before the ECJ, http://www.copat.de/markenformen/c-104_01en.pdf

^{xxx} The United Parcel Service holds a registration for the colour chocolate brown, which is equivalent of the Pantone colour designated by the code 'Pantone 462 C'.

^{xxxi} Rule 26 of Indian Trade Marks Rules (2017) reads as follows: “(5) Where an application for the registration of a trademark consists of a sound as a trademark, the reproduction of the same shall be submitted in the MP3 format not exceeding thirty seconds’ length recorded on a medium which allows for easy and clearly audible replaying accompanied with a graphical representation of its notations.”

^{xxxii} Dev Gangjee, Non-conventional Trademarks in India, Manupatra, 2010.

^{xxxiii} **Rule 25(12)** -An application for the registration of a trade mark for goods or services shall—

(b) be able to depict the graphical representation of the trade mark;

^{xxxiv} **Rule 28.**- Representation of mark.—

(1) Every application for the registration of a trade mark, and where additional copies of the application are required every such copy, shall contain a representation of the mark in the space (8cm x 8cm) provided on the application form for that purpose: Provided that in any case the size representation shall not exceed 33 centimetres by 20 centimetres with a margin of 4 centimetres on the left hand side.

The trademarks rules, 2002

^{xxxv} **Rule 30.**- Representations to be durable and satisfactory.—

(1) All representations of trade marks shall be of a durable nature, and each additional representation required to be filed with an application for registration shall be mounted on a sheet of strong paper of the size of approximately 33 centimetres by 20 centimetres, leaving a margin of not less than 4 centimetres on the left hand part of the sheet.

(2) If the Registrar is not satisfied with any representation of a mark he may at any time require another representation satisfactory to him to be substituted before proceedings with the application.

(3) Where representation of a trade mark cannot be given in the manner set forth hereinabove, a specimen or copy of the trade mark may be sent either in full size or on a reduced scale and in such form as the Registrar may think most convenient.

^{xxxvi} Angela Dsouza, Smell marks: The New Rage in Trademarks, Intepat, 2016,

https://www.intepat.com/blog/trademark/smell-trademarks-india/?utm_source=Mondaq&utm_medium=syndication&utm