

## **Registration of Trademark amid Atmanirbhar Bharat Package**

With the recent Atmanirbhar Bharat package announced by Hon'ble Finance Minister Nirmala Sitaraman and the "Vocal for Local" moto given by Hon'ble Prime Minister, the small and local businesses across the country are exposed to new opportunities. It has given them a booster shot and an opportunity to evolve themselves as a brand.

If you are willing to set up a new business or thinking of entering into a new sector/segment the first thing that you require is a name/brand under which you want to sell your product. You may already be selling your products under a brand/name but are you absolutely sure that you're not using a name that already belongs to some other person/entity and that the other person/entity has sole right to use that name? One needs to be very cautious in choosing the correct name under which he sells or is willing to sell his products or render service. It has been rightly quoted that "the desire for safety stands against every great and noble enterprise" If one is not cautious enough one might land in hot soup.

The name under which a person sells products or render service is a trademark and law dealing with the such mark is the Trademark Act, 1999 and governing Trademark Rules.

Let us now understand the law dealing with trademark and why trademark is considered as the backbone of a business.

### **1. What is a Trademark ?**

The trademark is a mark under which a person sells his goods or provide services. Trademark helps the consumer to identify the product sold by a particular manufacturer and differentiate the products sold by one manufacturer from that of other. It may be in the form of word, design, logo label, ticket, device etc.

### **2. Why register a trademark?**

Once a trademark is registered the proprietor of trademark gets monopoly rights to sell goods or provide services under a name/ brand for which trademark has been obtained. There are 45 classes bifurcated into 34 for goods and 11 for services in which trademark can be registered. It is important to note that registration of trademark in a class gives sole right to the proprietor of trademark in that particular class only. However, if the mark is a well-known mark i.e. recognised by a large chunk of audience using that product monopoly rights over all classes of trademark can be claimed.

### **3. What happens if a person uses the mark identical or similar to your registered trademark on similar or identical products?**

If any person uses the mark already obtained by you then you may approach the court by instituting a commercial civil suit for infringement of Trademark either at District Courts or High Courts (depending on pecuniary and territorial jurisdiction) and since you hold a Trademark and

have already been granted certificate of registration, you will not be under obligation to prove your usage of the mark as trademark certificate is the evidence granting you the sole rights to use the mark. You can also restrict any other person from obtaining identical or similar trademark during the tenure of your mark's registration as you are the whole and sole owner of that mark.

#### **4. Is it mandatory to register trademark?**

Registration of trademark is not mandatory to claim rights over the name/ brand name under which you are already selling the products or rendering services but if some other person uses or is using the same name to take advantage of your goodwill the only remedy available with you is that of passing off.

You will have to institute a commercial suit and prove before the court that you are the one using the brand name/ mark from a prior date, once proved the court will grant you relief. So the advantage of obtaining trademark is that trademark is the certificate and prima facie evidence that gives you a bundle of rights including but not limited to claiming monopoly right of usage of a name over the products.

#### **5. What all remedies do you get if someone unlawfully uses your trademark?**

- Restraining the other party from using the mark
- Claim damage caused due to loss of goodwill
- Destruction of labels, packages, packets, containers etc.
- Claim over undue gains of the person i.e, the revenue generated by selling the goods under your trademark.
- Attracts criminal liability with imprisonment that may extend upto 3 years and fine that may extend upto 2 lakh rupees.

In the nutshell, if you are willing to start a new business or you are already into a business and using trademark be very cautious that the name is not already registered by some other entity, **IF YES** then consult a trademark consultant immediately **IF NO** then it is recommended to get the mark registered immediately to prevent yourself from getting into unnecessary legal battles.

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