



The importance of goodwill

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A passing off dispute in India has clarified the main points that rights owners should follow when seeking to defend a trademark, as Geetanjali Visvanathan explains. Trademark attorneys anywhere in the world would agree that to succeed in a case of passing off, the plaintiff must establish the classic trinity as laid down by the UK House of Lords in the case of *Reckitt & Colman v Borden*, ie, (i) goodwill or reputation; (ii) misrepresentation; and (iii) damage or its likelihood. So, to cross the first hurdle in a case of passing off, the questions that arise are (i) what is goodwill?; (ii) what is the difference between goodwill and reputation?; and (iii) how does one prove goodwill? The answer to the first two questions can be found in any book on trademark law. As succinctly stated in *Kerly's Law of Trade Marks and Trade Names, Fourteenth Edition*: "Goodwill is the attractive force which brings in custom and is a form of legal property representing the connection between the business and customer. Reputation is a matter of fact and its existence does not require that there should be a business in the said jurisdiction." *This article was published in [World Intellectual Property Review](#).*



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