



Scenting the Future: How India's First Smell Mark Application Aligns with Global Jurisprudence

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In a landmark moment for Indian intellectual property law, the Trademarks Registry has accepted for advertisement the country's first olfactory trademark a floral fragrance reminiscent of roses as applied to tyres. The order represents a paradigm shift in how Indian law perceives and accommodates non-traditional trademarks. It also situates India firmly within an international conversation that has spanned more than three decades and continues to redefine the boundaries of trademark protection.

This decision carries special significance because it draws together three powerful forces:

1. global jurisprudence,
2. scientific innovation, and
3. experienced legal stewardship.

Among the latter, the appointment of Mr. Pravin Anand as amicus curiae was a critical moment in the proceedings. With decades of experience in trademark law and a history of pushing conceptual boundaries, he offered impartial guidance in an area where Indian precedent is almost non-existent. His APAA article "Science, Art and Law Relating to Smell" had already identified many of the challenges posed by olfactory marks demonstrating not only expertise but a degree of vision.

In this case, theory and practice met at precisely the right juncture, helping the Registry navigate an entirely new category of trademark evidence.

The International Stage: Three Decades of Experimentation with Scent Marks

The question of whether smell can function as a trademark is not new. Globally, jurisdictions have grappled with the tension between legal formality and sensory subjectivity for many years.



United Kingdom: The First Rose

In fact, Sumitomo's rose-scented tyres were the first smell mark ever registered in the UK, granted in 1996. The UK Trade Marks Registry at that time accepted a verbal description alone as an adequate graphical representation. That registration stands today as one of the earliest recognitions of olfactory marks anywhere in the world making the present Indian application both novel and historically connected.

European Union: From Openness to Caution

The EU's early jurisprudence was adventurous. In *Vennootschap Onder Firma Senta* (1999), the "smell of fresh cut grass" for tennis balls was accepted again on the basis of a verbal description.

The EUIPO compared smell descriptions to musical notation, an imperfect yet workable way to represent a sensory experience.

However, this openness was curtailed by the seminal *Siekmann* decision (2002), where the Court of Justice held that a smell must be represented in a manner that is clear, precise, self-contained, easily accessible, intelligible, durable, and objective. Since no representation at the time met this standard, the EU effectively closed the door to smell marks for nearly two decades.

United States: Functionality Above All

The U.S. takes a functional approach. A smell can be protected only if:

1. it is non-functional, and
2. it serves purely as a source identifier.

Thus, a plumeria scent for sewing thread or bubble gum scent for footwear may be registrable, but any smell intrinsic to a product's purpose (like perfume or air freshener) is not.

Australia: Open but Demanding

Australia's statute explicitly recognises scent marks, yet the onus is heavy. The applicant must demonstrate non-functionality, distinctiveness, and a sufficiently clear description. Very few scent marks have succeeded.

Scientific Innovation: A Breakthrough in Graphical Representation

The Indian statute requires all trademarks including non-traditional marks to be capable of graphical representation. Historically, this single requirement has defeated every attempt at protecting olfactory marks.

In this case, however, the applicant submitted a groundbreaking scientific visualisation developed at the Indian Institute of Information Technology, Allahabad, and adopted by the amicus. This model, reproduced below, depicts the rose-like scent as a vector in seven-dimensional olfactory space, corresponding to seven fundamental scent categories: floral, fruity, woody, nutty, pungent, sweet, and minty.



This representation is not only innovative but bridges the gap between science and law in precisely the way courts worldwide have long sought. It offers:

- objectivity, through measurable scent-component ratios,
- precision, through dimensional axes,
- intelligibility, via a radar-plot visual structure, and
- durability, as the scientific formulation can be persisted indefinitely.

The CGPDTM expressly found that this model satisfied the mandatory requirement for graphical



representation under Section 2(1)(zb), echoing the Siekmann criteria while enabling India to chart its own path.

Distinctiveness: Arbitrary Scent as Strong Branding

Distinctiveness lies at the heart of trademark law, regardless of jurisdiction. The order emphasises that a rose scent on tyres is fundamentally arbitrary a concept echoed repeatedly in international jurisprudence.

The Registry reasoned that tyres typically emit a strong rubber smell; thus, the sudden, unexpected perception of roses would create an immediate and unmistakable association with a single source. As the order notes, this olfactory contrast would leave “a very strong impression” on consumers, satisfying both inherent distinctiveness and the practical test of source-identification.

This reasoning aligns with cases such as the U.S. registration of scented thread: where a smell bears no connection to the product’s function, its distinctiveness strengthens dramatically.

The Role of the Amicus Curiae: Experience and Vision in Uncharted Territory

The appointment of Mr. Pravin Anand as amicus curiae was a crucial aspect of this proceeding. Known for his deep experience in trademark litigation and his long-standing scholarship on non-traditional marks, he was tasked with offering an impartial, expert assessment on issues with no prior Indian precedent.

What is noteworthy is how closely the issues in the case mirrored those he had previously analysed in his APAA article. There, Mr. Anand argued that smells occupy a unique space where science, art, and law intersect, and that legal systems must evolve to accommodate sensory indicators of origin. His suggestions particularly on the need for technological tools to assist graphical representation found concrete realisation in this case.

Thus, while his role remained purely advisory, this matter demonstrates how scholarship, vision, and practical experience can converge to give direction to novel legal problems.

Conclusion: India Joins the Global Dialogue

The acceptance of India’s first olfactory mark for advertisement marks not only a domestic milestone but an international statement. With this order, India:

- aligns itself with global jurisprudence,



- embraces scientific advances in sensory representation,
- enables businesses to innovate in multisensory branding, and
- signals openness to the evolution of non-traditional trademarks.

As trademark law continues to expand beyond the visual and into richer sensory domains, India's decision stands as a thoughtful, forward-looking contribution to the global legal conversation on what a trademark can and should be.



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