



# Dead Marks, Live Assets – The Case for a Registry Supervised Auction of Lapsed Trademarks in India

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India's trademark register is quietly bleeding value. Each year, marks with real commercial recall lapse not because they've lost relevance, but because renewal deadlines are missed, erasing years of built goodwill from the legal record. In this post, Lakshmidevi Somanath argues that instead of letting these assets vanish, India should rethink its approach and create a system to recycle lapsed trademarks back into the market. Lakshmidevi Somanath is a Partner – Litigation & Strategy in Anand and Anand and former Member Judge IPAB, Gol. The views expressed here are those of the author.

## Dead Marks, Live Assets – The Case for a Registry Supervised Auction of Lapsed Trademarks in India

India is quietly losing something valuable every year. Every year, hundreds of perfectly good marks are removed from the Indian Register, not because the brands became irrelevant, but simply because the renewal fee was never paid. The commercial reputation behind them, built up through years of trading, sometimes over a generation, disappears as if it never existed. However, the asset need not be destroyed, rather it can be offered to someone who wants it. Allowing that asset to simply be erased serves no purpose to the industry, the consumer or the government.

### Trademark as Property

In common law tradition, and now under Indian statute, a trademark is classified as a form of intangible property. A trademark is, therefore the legal garment that goodwill wears in public. A trademark is the vehicle through which goodwill is projected and protected, and the two can travel separately. [Section 38 of the Trade Marks Act, 1999](#) makes clear that a registered mark can be assigned with or without the goodwill of the business. This sets Indian law apart from American law. Under [Section 10 of the Lanham Act](#), transferring a trademark without its accompanying goodwill is called an assignment in gross, and courts treat it as void. India takes a more commercially sensible view. The mark is property, capable of being owned, sold, and used independently. The [UK Trade Marks Act 1994](#) takes the same position as India's 1999 Act on the question of goodwill: assignment



with or without goodwill is permitted, and the Intellectual Property Office records transfers on that basis.

### How a Trademark Lapses in India

Registration runs for ten years. If renewal is not applied for, a six-month grace period opens under [Section 25\(3\)](#), with a surcharge, and if this is missed, the mark is removed. [Section 25\(4\)](#) gives the proprietor one more opportunity, whereby an application for restoration can be filed within one year of the original expiry, with fees and a supporting statement. Once that final window shuts without action, the mark is gone. [Section 26](#) states that for twelve months after removal, the lapsed mark is treated as still on the Register for the purpose of blocking competing applications. After that year, the mark ceases to exist as a legal instrument.

The Trade Marks Act, 1999 does not capture what happens to the asset once the owner has effectively abandoned it. The result is two possible outcomes: revival by the original proprietor, or permanent deletion. There is no third option. The practical effect of this gap is felt most acutely by entrepreneurs. Suppose a well-known regional food brand has lapsed because the founding family could no longer manage the business. The brand name is still recognised by local consumers. Under the current law, that business cannot acquire the lapsed mark through the Registry. The only option is to file a fresh application and then wait, potentially for years, while the application is examined and possibly opposed. There is no mechanism by which someone can tell the Registry that they want to take on the lapsed mark. The question is whether a new owner should be able to acquire not just the informal market recognition but the legal status of a registered mark.

### What Happens in Other Countries

To my knowledge, no country has yet established a government-supervised registry auction for lapsed marks. Private platforms including [US Trademark Exchange](#), [IP AuctionHouse](#), [Trademarkia](#), [TradeMarkMarketPlace](#), [1stIP](#), and India's [BuySellTrademarks.in](#) connect sellers and buyers and offer various degrees of transactional support. The activity on these platforms is evidence that demand for trademark acquisition is real, commercially significant, and far from limited to large corporations.

The limitation shared by all these private platforms is clear. A buyer must independently verify that the mark is currently on the Register, that the seller actually owns it, that no third-party interests are attached, and that the assignment will be legally effective. It requires professional assistance, and it introduces risk that many potential buyers cannot absorb. A government-administered auction, starting from marks that the Registry itself has listed after verifying their status, eliminates all of that uncertainty at the point of entry.

### A Proposed Process

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The Registry already has the machinery to record changes of ownership. The first stage is the creation, within the CGPDTM, of a Lapsed Trademark Pool. When the restoration window under Section 25(4) closes without action, the mark would be held in the Pool for 180 days. During that period, the mark's details would be publicly listed on a dedicated Registry portal.

Before any auction, the Registry would take reasonable steps to notify the original proprietor. A 30-day reclamation window would follow, during which the original proprietor could recover the mark by paying all overdue renewal fees plus a meaningful surcharge. If no reclamation application is made, the mark moves to auction.

The auction itself would be conducted online. Any person or entity that can lawfully hold a trademark under Indian law would be eligible to participate. Bidders would be required to submit a brief statement of intended use alongside their bid. A reserve price would be set, pegged at minimum to the standard renewal fee for the relevant class.

The winning bid would be advertised in the Trade Marks Journal. A 60-day objection period would follow, during which any person with a legitimate interest could challenge the transfer before the Registrar. The Registrar's existing power to decline assignments that are likely to cause confusion or deception would apply in full.

At the close of bidding, the winner pays the bid amount to the CGPDTM, and the Registry records the transfer, restoring the mark in the winner's name. A fresh ten-year registration period runs from the date of transfer. The winning bidder gets a fresh registration. They do not inherit the prior proprietor's position, and no goodwill transfers through the Registry's involvement. The rights arising from that transfer run from the date of re-grant. They do not carry forward the priority date of the original registration. Making this explicit in both the statutory amendment and the auction terms would protect the Registry from claims further down the line.

### **Legislative Amendment**

Implementation would need a new sub-section in Section 25 of the Trade Marks Act, 1999, providing that where a mark has been removed for non-renewal and the Section 25(4) restoration window has closed, the Registrar may hold it in a designated pool and offer it for transfer by public auction. The procedural detail would live in the Trade Marks Rules, 2017, i.e. the form of auction listings, the mechanics of bidding, the timeline, the procedure for objections, and the fee structure.

### **Safeguards Against Strategic Conduct**

Caps on how many marks any single bidder can acquire within a defined period would prevent bulk acquisition. Requiring bidders to declare their intended use on the public record creates accountability. The prior proprietor should be restricted from reacquiring the same mark, directly or



through associated entities, for a defined period after lapse. Where acquisition patterns raise genuine market dominance concerns, the existing competition law framework is available as an additional check.

Again, marks formally declared well-known should either be excluded from the pool or held to significantly higher scrutiny. The same logic extends to marks in pharmaceuticals, financial services, and public health-linked goods. Marks caught up in active litigation or insolvency proceedings should also stay out of the pool until those matters are resolved. For marks registered across multiple classes, individual classes can be offered for reallocation separately, avoiding overstating the value of marks whose registration outran their actual use.

### **The Larger Picture**

[India's National IPR Policy](#), published in 2016, set out a vision of intellectual property as a driver of economic development. The trademark auction proposal is a natural extension of that philosophy. It treats the Register as a living document in the service of commerce, not a passive archive of historical entitlements.

Large businesses with professional IP management rarely let valuable marks lapse accidentally. The registrations that disappear through non-renewal are mostly those held by small businesses and individual proprietors. Making those marks available to other entrepreneurs in the same sector is an equitable recycling. For India's startup community, a founder who identifies that a reputed regional brand has lapsed and has the capital to pursue it currently has nowhere to go. The auction mechanism creates that option.

Under the current system, every lapsed mark represents a direct loss to the Treasury. The auction mechanism converts that loss into a gain. The reserve price recovers the renewal revenue, and any competitive premium above that is a net addition to government receipts. Beyond the money, the broader benefit is that valuable assets stop being wasted. An entrepreneur who acquires a lapsed mark and relaunches a dormant product creates employment, expands consumer choice, and adds activity to the market. There is also a cultural dimension. India's commercial history is rich with regional brands that carry genuine cultural identity. Their revival under new ownership, carried out transparently through the Registry, would ensure that the brand continues to be used under proper legal oversight, with the consumer protections that formal registration provides.



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