Protecting Colour as a Brand Asset: Lessons from the Exide-Amara Raja Decision

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Introduction

In today's marketplace, consumers often identify products not merely by their brand names but also by their visual appearance. Colours have evolved from being decorative elements to becoming powerful source identifiers capable of distinguishing one trader's goods from another's. Whether it is the distinctive purple associated with chocolates, the robin-egg blue associated with luxury jewellery, or a particular colour combination used consistently on product packaging, colour can acquire immense commercial significance.

Indian trademark law recognizes this commercial reality. The Trade Marks Act, 1999 permits the protection of colour combinations and, in appropriate circumstances, even single colours that have acquired distinctiveness. However, obtaining and enforcing rights in a colour mark presents unique challenges. Unlike word marks, colour marks are rarely inherently distinctive and often require substantial evidence demonstrating that consumers associate the colour with a single commercial source.

The recent decision of the Calcutta High Court Intellectual Property Rights Appellate Division in *Amara Raja Energy and Mobility Limited v. Exide Industries Limited (TEMPAPO-IPD/7/2025 IA NO. GA-COM/1/2025, GA-COM/2/2025, decided on 2 April 2026)* has once again highlighted the importance of colour as a trademark asset and the critical role played by evidence in establishing proprietary rights in colour-based trade dress.

Understanding Colour Trademarks

A colour trademark refers to a specific colour or combination of colours that functions as an indicator of trade origin. Unlike conventional trademarks such as words, logos, or labels, colour marks belong to the category of non-traditional trademarks.

The rationale behind protecting colour marks is straightforward. Consumers frequently rely upon colours to identify products in crowded marketplaces. Consistent use of a particular colour scheme over a prolonged period may create an association between the colour and the manufacturer,

thereby enabling the colour to perform the essential trademark function of indicating source.

Indian law expressly recognizes colour combinations under the trademark framework. Rule 26 of the Trade Marks Rules, 2017 recognizes that an applicant may seek registration of a mark in colour and requires the applicant to specify the colour or combination of colours claimed as a distinctive feature of the mark. Where colour is claimed as an essential element, the representation of the mark and the application should clearly reflect such claim. However, because colours are limited public resources and often serve aesthetic or functional purposes, courts exercise caution before granting exclusivity over them. Consequently, the Applicant must establish that the colour has acquired a secondary meaning in the minds of consumers and is no longer perceived merely as a decorative feature.

The Delhi High Court's decision in *Colgate Palmolive Company v. Anchor Health & Beauty Care Pvt. Ltd.* (2003 VIII AD Delhi 228, 108 (2003) DLT 51, 2003 (27) PTC 478 Del, 2004 (1) RAJ 214) represents a significant milestone in colour-based trademark protection. The Court recognized that Colgate's long-standing use of a red-and-white colour combination on toothpaste packaging had acquired substantial goodwill and consumer recognition. While acknowledging that no monopoly could ordinarily exist over individual colours, the Court held that a distinctive colour combination capable of identifying commercial origin could receive protection under the law of passing off.

In *Christian Louboutin SAS v. Abubaker & Ors.*, [*RFA (OS)(COMM) 13/2018 & CM 29064/2018]* the litigation surrounding Christian Louboutin's famous "Red Sole" trademark became a landmark development in Indian colour trademark jurisprudence. While a Single Judge of the Delhi High Court initially dismissed Louboutin's suit on the ground that a single colour could not constitute a trademark under the Trade Marks Act, 1999, the Division Bench reversed that decision and restored the suit for trial. The appellate court held that the validity and distinctiveness of the Red Sole mark could not be summarily rejected at the threshold, particularly when the mark enjoyed statutory registration and a presumption of validity. Subsequently, the Delhi High Court granted relief in favour of Louboutin and recognized the substantial goodwill associated with the Red Sole mark. The case is significant because it demonstrates judicial willingness to protect non-traditional trademarks where a specific colour placement has acquired source-identifying significance through extensive use and consumer recognition, even while broader questions concerning protection of single-colour trademarks remain unsettled in India.

Further, in *Ferrero S.P.A. v M/s Ruchi International (CS(COMM) 76/2018))* the Delhi High Court protected the distinctive trade dress of Ferrero Rocher chocolates, including their characteristic gold foil wrapping, transparent packaging, colour scheme, labels, and overall visual presentation. Ferrero argued that these elements had acquired substantial goodwill and distinctiveness through long and extensive use, and that the defendant's "Golden Passion" chocolates closely imitated this appearance, creating a likelihood of consumer confusion. The Court held that the overall combination of packaging features functioned as a source identifier and granted a permanent

injunction restraining the defendants from using the impugned trade dress, while also awarding damages.

The decision is significant because it reaffirmed that trademark protection extends beyond word marks to encompass the overall visual appearance of a product, including colour combinations and packaging elements that have acquired secondary meaning and serve to identify the commercial origin of goods.

The Importance of Claiming Colour in Trademark Applications

One of the most overlooked aspects of trademark filing strategy is the decision whether to seek registration with a colour limitation or condition.

Many Applicants file trademarks in black and white without adequately considering whether colour forms a critical aspect of their brand identity. While black-and-white registrations offer broader flexibility, they may not adequately capture the distinctiveness arising from a specific colour scheme.

Where colour is an essential feature of the mark or packaging, claiming colour in the trademark application provides several strategic advantages.

- A colour claim expressly identifies the colour as a feature of the mark. This enables the proprietor to argue that the colour itself contributes to the distinctiveness of the trademark and deserves protection.
- When colour forms part of the registration, it becomes easier to demonstrate that a competitor has copied a significant element of the proprietor's branding. This is particularly useful in trade dress disputes where colour constitutes a major source-identifying feature.

The Exide-Amara Raja Decision: A Significant Development

The dispute between Exide Industries and Amara Raja concerned the alleged imitation of Exide's established battery trade dress, including its visual presentation and predominant use of red colour in conjunction with other distinctive elements. The case involved allegations of trademark infringement and passing off arising from the use of similar branding features in the automotive battery market.

A central issue before the Court was whether Exide could claim exclusive rights over the colour red as used on automotive batteries.

The appellant argued that no trader could monopolize the colour red, particularly where such colour had not acquired independent secondary meaning and where multiple market participants used similar colours. The appellant further contended that Exide had employed various trade dresses over the years and therefore lacked exclusive rights in red.

The Court, however, did not treat the dispute as one involving colour alone. Instead, it examined the overall trade dress, including the colour scheme, visual presentation, and other distinctive indicia associated with Exide's products. The Court ultimately upheld the injunction in favour of Exide, recognizing that colour may form an important component of protectable trade dress when viewed together with other identifying features and placed importance once again on side-by-side comparison of the products once placed in a shop.

The judgment reinforces that while a trader may not automatically obtain a monopoly over a colour, consistent use of a colour as part of a distinctive trade dress may justify legal protection where consumers associate that visual presentation with a particular source.

The Central Role of Evidence in Colour Mark Protection

Perhaps the most important takeaway from the above case is the decisive role played by evidence.

Colour marks are rarely self-proving. Unlike invented words or arbitrary logos, colours generally require proof that consumers perceive them as indicators of origin and are distinctive to the brand.

Accordingly, businesses seeking protection for colour marks should begin creating evidence from the very inception of their branding strategy. This includes storing product packaging samples; historical advertisements in colour; catalogues; brochures; product photographs and website archives. Such materials help establish continuity and consistency of use.

Consumer surveys, market studies, dealer declarations, and customer testimonials may be used to demonstrate acquired distinctiveness and secondary meaning. Further, press reports, industry publications, awards, and independent references identifying products through their colour scheme can significantly strengthen a claim.

In the instance case, division bench of Justice Debangsu Basak and Justice Md. Shabbar Rashidi found that Exide's extensive and continuous use of red for over a century had, on a preliminary basis, created a strong association with its products. The court granted the injunction not because Exide owned the colour red itself, but because their distinctive combination of colours and artistic elements had become a source identifier. This is the critical distinction: the court clarified, wasn't granting a monopoly over red itself but rather protecting the distinctive combination of colours and marks constituting Exide's trade dress. Yet that protection existed precisely because Exide had the evidence to prove secondary meaning.

Without compelling evidence of secondary meaning, claims to exclusive rights in colours are unlikely to succeed. This principle reflects an important policy concern. Colours are finite resources and should remain available for legitimate commercial use unless a trader can establish a compelling proprietary claim.

Conclusion

Colour has emerged as one of the most valuable yet complex forms of trademark protection. While Indian law recognizes the ability of colours and colour combinations to function as trademarks, courts remain cautious in granting exclusive rights absent compelling proof of acquired distinctiveness.

The Calcutta High Court's decision in *Amara Raja Energy and Mobility Limited v. Exide Industries Limited* underscores that colour can play a significant role in trade dress protection when supported by long-standing use, consumer association, and accompanying distinctive elements. At the same time, the case demonstrates that the success of any colour trademark claim ultimately depends upon evidence.

However, for brand owners, if colour is an integral part of your brand identity, claim it strategically, use it consistently, and preserve evidence relentlessly. The strongest colour trademark is not merely the one that is registered—it is the one that can be proved.

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