Rising Prominence of Store Layouts in IP Disputes

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Prachi Agarwal and Mishthi Dubey examine the jurisprudence around store layouts and provide practical advice for their protection in an article for India Business Law Journal

It is seemingly often that a reference to a certain restaurant or a store strikes in the mind an associated imagery including the storefront, layout, colour combinations, décor and interiors. The pertinent question, therefore, is whether such consistent layouts and décor may, over time, qualify as **store layout as a trademark in India**, functioning as source identifiers much like any other trade dress.

The earliest such judicial inquiry was in *Weinstock, Lubin & Co v Marks*, where the defendant was enjoined from using a mark similar to the "MECHANIC'S STORE" mark of the plaintiff, and was also required to distinguish his store, which was found to be identical to the plaintiff's, which employed a series of arches and alcoves.

Under section 2(1)(zb) of the Indian Trademarks Act, a trademark means a mark capable of being represented graphically, and which is capable of distinguishing the goods and services of one person from those of others. Therefore, a store layout would fall under the purview of the definition of a trademark if the same had become a source identifier of a business. In fact, the same may be registered as a device mark, and multiple such applications have been filed before the Trademark Registry in India.

In 2019, Merwan's, a well-known bakery in Mumbai, asserted its rights in the unique décor, layout and design of their store across all their 24 franchisees against one M/s Sugar Sweet at the Bombay High Court on the ground that the same as a whole formed a part of the trade dress of their business and products.

As per Merwans, M/s Sugar Sweet (their erstwhile franchise partner, and also engaged in a bakery business) was infringing their rights in the said trade dress due to the use of generic brown tiles, store layout, décor and design, despite a lapse of their franchise agreement. It was held that there was no likelihood of confusion as per the facts of the case, and observed that a product feature with an impact that is only decorative and aesthetic, with no source identifying role, cannot be given exclusive rights under the trade dress law.

While the development of jurisprudence on the independent existence of a store layout as a proprietary right is still awaited in India, scattered references to the same in context of trademark

infringement cases can be found.

In the Hérmés case for instance, Hérmés obtained an injunction against use of the word "Herpes", along with the "Duc-Carriage with horse logo", which was displayed on the window of the defendant's restaurant, as well as photographs from the advertising campaign of Hérmés and their "Evelyne Bag", which were prominently displayed as part of the décor of the defendant's restaurant, thus implying that confusion may be caused if a trademark/logo is used as a part of the store layout of another.

Further, a chain of restaurant under the name "Dom's Pizza" and "Dom's Pizza King" found itself under the scanner when the plaintiff, Domino's, alleged that they were trying to imitate the plaintiff's successful chain of restaurants.

Since the Trademark Law recognises the protection of intellectual property rights in store layouts, it is pertinent for the aspiring business owners with quirky stores, distinctive layouts and unique ideas to protect and enforce their creation as per below:

1. File a trademark application for the store layout through its graphical representation to secure your right and put the public on notice;
2. The claimant must also establish consistent use over a period of time regarding the layout, and how the same has come to be associated with the claimant and its business;
3. Establish that the store layout is an artistic work under the purview of a copyright; and
4. The brand owners must also include references to store layouts while asserting their intellectual property rights.

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