Redefining Brand Identity in India

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Madhu Rewari talks about the challenges of protecting shapes, smells and tastes as trademarks in India, as brand owners look for ever more novel ways to differentiate their goods and services. As the choice of products available to consumers increases, brand owners in India, as well as elsewhere, are looking for ways to develop and protect their brands more creatively and innovatively. To do this, they are using nontraditional trademarks, such as shapes, textures, colors, sounds, smells, and motion. This article describes the evolution of the Indian legal regime as it has adapted to the development of nontraditional trademarks. This article illustrates the various forms of nontraditional trademarks recognized in India and issues related to the recognition of certain forms of nontraditional trademarks, for example, olfactory or gustatory marks, due to the inability to represent these marks graphically on paper. This article also analyzes the present legal regime in terms of its readiness to evolve and examines instances where courts have demonstrated willingness to adapt to this newer paradigm of trademark protection.

India's Trademark Regime

Although the scope of protection given to nontraditional trademarks in India has not been defined, the principles governing their protection and enforcement have evolved through various judicial pronouncements and also the definition of a trademark given in the Trade Marks Act, 1999. That definition of a trademark reveals the intention of the legislature to give flexibility and augment the scope of protection. After the ratification of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the Indian trademark regime has been regulated by the Trade Marks Act, 1999, which replaced the Trade and Merchandise Marks Act, 1958. Among other positive changes, the new law provided an enabling environment for registration of nontraditional trademarks, in which shapes of goods, packaging, color combinations, 3D marks, and sound could be registered. *Read the article in INTA Bulletin.*

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