Proving Your Trademark Case

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In part one of a two part series Pravin Anand highlights some practical do's and do-not's in a typical trademark litigation in India. The article focuses on particular aspects of trademark litigation: affidavits, witnesses and local commission proceedings. Practitioners are advised to always take a file inspection before recording evidence so that the documents that need to be exhibit marked can be identified and flagged, saving several hours during evidence proceedings. This is particularly useful if there are foreign witnesses, as an over-flow of a few hours may compel a second visit to India, causing great inconvenience, hardship and cost. Try to keep witnesses as few as possible. Something like two or three is a good number as the greater the witnesses, the more the chances of contradiction as there is also an exponential increase in the time taken for the trial. Typically, one corporate witness to prove the case set out in the plaint generally including proving the institution of the law suit; a second witness, who in a trademark case would prove the goodwill and in the cases of foreign trademarks, international registrations, user and renown; while a third witness would concentrate on damages and other financials like sales turnover, advertising expenses, etc. Local Commissioners are normally retired judges or senior officers who have been appointed to record evidence. They are less busy than judges and can, therefore, give time in the early hours of the day, say 10:00 am, and go on for several hours only on the case at hand. They can even record evidence on a Saturday and help move forward the process rapidly. Part two: Leading Evidence in a Trademark Case in India *This article was published in Asia IP April 2015.* Read more

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