Leading Evidence in a Trademark Case in India

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In part two 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: documents, mode of proof and final arguments and other issues. It is not essential to file original documents, but they may be produced at the time of the trial and can be shown and taken back. If this is done, then the copy on the court record will be marked as "original seen and returned." If the document pertains to something in a government office like the Registrar of Companies or the Registrar of Trademarks, a certified copy can be filed. To prove the turnover of a company, one should ideally file an audited report. One could include the turnover in the evidence affidavit, but if cross-examination is on a particular turnover entry, it would be essential to rely upon an audited report or an extract from the annual report. In the past, witnesses would have to carry books of accounts and show entries in the same, but now, no one actually insists on this, nor would a court take the absence of such a proof as of any serious consequence. It is a good idea to make a list of points on which you scored well and then summarize the questions and answers on those points. Such an analysis will help prepare the final arguments in the case. Always use as many assisting techniques as possible such as list of dates, PowerPoint presentations or animations, graphics to show family charts or comparison of infringing marks with the original or pictures demonstrating a mode of display, etc. Part one: Proving Your Trademark Case *This article was published in Asia IP June 2015.* Read more

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