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The Impact of Globalization on Trade Dress Protection and Enforcement

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ABSTRACT

This research paper aims to delve into the concept of trade dress as an intellectual property. It will then assess the current state of trade dress protection within the Indian trademark regime, drawing on relevant case laws. The ultimate goal is to determine if trade dress is adequately protected under Indian trademark law or if new legislation is needed. Important ideas and suggestions for trade dress protection in India are also sought after in the article. Given that trade dress is still legally protected as a trademark under the Trademarks Act, and that the laws pertaining to the same are being interpreted dynamically by the courts, this study was undertaken because the laws regarding the protection of trade dress in Indian jurisdiction have not been finalized and continue to be unclear. Therefore, it is crucial to examine the current state of trade dress protection in India in view of the current scenario.

Keywords: Trade Dress, Intellectual Property Rights, Trademark, Trademark Law.

I. INTRODUCTION

Nowadays, consumers consider the product's external visual appeal, including its packaging, look, and feel, in addition to the brand names that appear on the goods, when making purchasing selections. Products are now differentiated and remembered in large part by the way they are presented, or their trade dress. Historically, trade dress was considered nothing more than the labels, packing, or containers that a product came in. That is to say, it was a reference to how the goods was "dressed up" for sale. Things like the product's label, packaging, and display cards were examples. This combination of features gave consumers a mental picture of the goods and, when used to identify its origin, may have the legal protection of a trademark. The original meaning of "trade dress" has evolved over time to encompass more than just the packaging or presentation of a product to consumers; today, it also refers to the product's whole visual exterior look. Therefore, in modern times, trade dress includes not just the packaging but also the overall appearance of the product, and in certain instances, even specific sales tactics. So, to put it simply, trade dress is the public perception of a business. To better understand the current state of trade dress protection within Indian jurisdiction and to propose

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future effective measures for better protection, this paper will first examine and analyze the concept of trade dress, the need for its protection, the requirements to be fulfilled for its protection, and an analysis of related case laws in India.

II. ORIGIN OF THE CONCEPT OF TRADE DRESS

Contrary to popular belief, the idea of trade dress did not originate in the US but rather in the common law notion of passing off, which forbade unfair competition. An unregistered trademark or trade dress can be protected through the common law remedy of passing off. Put simply, there are cases where a merchant has not yet registered their trade dress, but over time, they have gained significant awareness for a certain good or service that uses that unregistered mark. Now, another business owner can't try to pass off his own goods and services as the former owner's by using the same or similar trade dress for them. This is because the law of passing off prevents sellers from doing this and prevents them from misrepresenting their goods and services. No one has the right to pass off the goods and services of another as their own; this is the fundamental principle upon which the remedy is based. So, the rule of passing off prevents other merchants from trampling on the reputation and goodwill built up via the long-term use of an unregistered trade dress.³

III. PROTECTION AND ENFORCEMENT OF TRADE DRESS

(A) Common Law Protection of Unregistered Trade Dress in Passing Off Litigation

The common law remedy of passing off, which aims to limit unfair competition, typically protects the unregistered trade dress in suit for trade dress infringement. In order for an unregistered trade dress to be protected in a trade dress infringement lawsuit, the following three conditions must be met. When claiming unregistered trade dress or unfair competition, it is necessary to meet the three-prong test, which involves identifying components of trade dress and determining whether or not the claim is valid.:

1. Identifying elements of trade dress

Before a plaintiff can sue for trade dress infringement, he must first determine which aspects of the product's packaging and design constitute the trade dress that he is claiming to have been infringed upon or is seeking protection for.

When determining whether aspects of a product's packaging or appearance constitute its trade

³ R. Chakraborty, *Growth of Intellectual Property Law and Trademarks*, SSRN (Jul. 2009, 10:40 am) <https://papers.ssrn.com/sol3/papers>.

dress, the plaintiff must also bear in mind the following:⁴

- If the combination is novel, eye-catching, and serves no practical purpose;
- Is the combination one that can be used to trace the origins of the plaintiff's business or its products or services?
- How similar the qualities are, and whether the defendant is trying to replicate them.

You run the danger of being deemed unprotectable if you provide a needless, extremely lengthy list of all the components that comprise the trade dress. This is because it include components that are functional or common to other firms or goods. Incorporating an excessive number of elements into the list will narrow the scope of protection and make it more difficult to prove infringement. This is because an imitator could easily combine elements from the list, leaving only one or two, to create a similar trade dress and then claim non-infringement based on those changes. Therefore, the breadth and likelihood of obtaining the protection will increase as the number of components decreases. Furthermore, demonstrating the uniqueness of the combo will be less of a challenge.⁵

a) Inherent distinctiveness or acquired distinctiveness (Secondary meaning)

The plaintiff must establish "the inherent distinctiveness or secondary meaning of its trade dress" in order to proceed with the first of the three prongs. Trade dress is considered distinctive in and of itself when it allows consumers to easily distinguish between one product and another, as well as when it shows that the product is made by a specific manufacturer or belongs to a specific brand. There is no need to prove acquired distinctiveness to defend trade clothing that is inherently different. Inherently distinctive only are trade dresses that are whimsical, random, or provocative.

In the case of *Two Pesos, Inc. v. Taco Cabana, Inc.*,⁶ the Court held, that "both the district court and the court of appeals reached the same conclusion: the restaurant's design was already distinctive, therefore there was no need to prove secondary meaning. The court reasoned that startups whose marks have not yet gained consumer recognition would be unfairly penalized if secondary meaning were to be required in cases with intrinsically distinctive trade dress." Conversely, if a trade dress is descriptive rather than distinctive, the plaintiff will need to show that the trade dress has gained secondary meaning or become distinctive after the fact in order

⁴ L. Stevens & S. Hardin, *Protecting and Enforcing Trade Dress*, American Bar Ass. 22 (2009).

⁵ L.A. Heymann, *Overlapping Intellectual Property Doctrines: Election of Rights versus Selection of Remedies*, Stanford Tech. L.R. 115-117 (2013).

⁶ *Two Pesos, Inc. v. Taco Cabana, Inc* 505 U.S. 763, 112 (1992).

to win in their claim and protect their trade dress. The only way to prove that a trade dress has taken on secondary meaning is to show that it has become distinctive and serves an identifying function through long-term and extensive usage, sales and promotion, advertisement, etc. For a design to have secondary meaning, it must be used over an extended length of time so that the buyer associates it with the manufacturer. Marketing and promotion efforts sufficient to persuade the typical consumer to associate the designer with the product. Secondary meaning is defined as the “mentally associating the asserted mark with a certain product among a large portion of consumers and potential consumer”. In order to obtain legal protection for generic trade dress, it is necessary to prove that it has acquired individuality, as generic trade dress is not inherently different.⁷

Even when the product design itself is distinctive, trademark protection for the trade dress of a product design requires proof that the trade dress has taken on a new meaning or become distinctive in its own right. In numerous instances, the courts have ruled that when it's unclear if a trademark is a design for a product or its packaging, it should be treated as a design for a product and secondary meaning must be proven to obtain legal protection. However, if the product can be shown to have either an inherent or an acquired distinctiveness, then its packaging trade dress can be protected. If the product packaging is already distinctive, there's no need to prove that it has additionally acquired a secondary significance, unlike product design trade dress. Both requirements can be satisfied independently of each other; they are not mutually exclusive. To that end, courts spend a lot of time determining whether a case involves product design trade dress or product packaging trade dress when making trade dress decisions. When it's unclear whether a mark is a product design or a product packaging mark, the courts often rule that it's a product design mark, meaning the party seeking protection must prove secondary meaning to get trademark protection.

b) Non-Functionality

In order to win a case involving alleged trade dress infringement, the plaintiff would have to show that the mark in question has no practical purpose other than to adorn the goods and does not enhance its functionality. The defendant may make the case that the claimed trademark is integral to the product's functionality, impacts its price or quality, and that giving competitors the green light to use the trademark would be unfair for reasons unrelated to the defendant's reputation. Therefore, the tests of functionality theory will need to be applied to a trade dress

⁷ M. A. Shpetner, *Determining a Proper Test for Inherent Distinctiveness in Trade Dress*, 8(3) *Fordham I.P. Media & Entertainment L.J.* 990-991 (1998).

in order to ascertain its functional status.

Protecting and facilitating fair competition in the market and clearly differentiating between trademark and patent subject matter are the two obvious goals of the functionality doctrine. The second purpose is to ensure that trademark protection does not jeopardize utility patent protection by granting trademark protection to things that are already subject to patent protection. This becomes an especially big deal when someone wants to trademark anything that is actually subject to an expired utility patent, such as a logo. Here, trademark protection is asserted in order to prolong the duration of intellectual property protection beyond the twenty years allotted by patent law (from the filing date). Patent protection cannot continue indefinitely due to constitutional limitations. The patent office must find that the invention meets the following criteria: it is novel, non-obvious, has industrial application, and complies with the written description and enablement requirements in order to grant patent protection. Trademarks can be protected, with a few restrictions, as long as they are utilized in commerce. Thus, functionality is useful for regulating what can be trademarked and what can be directed toward utility patent legislation.⁸ By ensuring that trademark and patent laws are not overly prescriptive, functionality doctrine promotes fair competition.

The "Comparable alternatives test" is the first functional doctrine test. It asks courts to consider whether there are many similar features that competitors could use to compete in the market if trade dress protection were granted to a particular combination of elements and features. A feature or combination of features is functional if and only if providing trade dress protection does not allow for the existence of any alternatives; non-functional if and only if providing trade dress protection allows for the existence of alternatives that competitors can use for competition.⁹ This criterion stands for the principle that when a product's features prohibit the sale of comparable goods, it unfairly limits and stifles fair market competition.

The second test is named as the "Essential to usage test" and the test asks, as the name implies, if a product's use relies on a single feature or set of features. An essential feature is one that is dictated by the functions to be performed, according to the courts. According to this criterion, a feature is considered functional if it provides an essential and indispensable advantage for the product's operation. For features that aren't absolutely necessary for the product to work, we call them "non-functional features," and they could end up being safeguarding trademarks.

The third test of functionality doctrine is named as the "Relation to Use Test" in the United

⁸ B.I. Johnson, *Trade Dress Functionality: A Doctrine in Need of Clarification*, 34(1) *Campbell L.R.* 125 (2011).

⁹ M.S. Mireless, *Aesthetic functionality*, 21 *Texas I.P. L.J.* 155 (2013).

States, which was established by the Third Circuit Court. The feature's relevance to the product's practical use is the fundamental question under this test. To be considered functional, a feature must be closely tied to the product's intended usage. On the other hand, a feature is considered non-functional if it is not pertinent.

The fourth test for the same is the "Ease of manufacture test" It raises the question of whether, if trademark protection is granted to the disputed feature or combination of features, a competitor may provide them at the same or lower cost. For a product to be considered functional, it must have features that no one else can make.

c) Likelihood of Confusion

After it is proven that trademark rights are there for the specific trade dress in question, the following step is to determine if the plaintiff's and defendant's trade dresses are likely to be confused with one another. This is important because an infringement of a protectable trade dress occurs when there is a "likelihood of confusion" between the two.¹⁰ Therefore, it is necessary to establish that the plaintiff's and defendant's trade dresses are similar enough to cause customers to mistakenly believe that it is sponsored by or approved by one of these parties. A plaintiff may be successful in establishing a probability of confusion by analyzing the factors that increase the likelihood of confusion, even in the absence of evidence of actual consumer confusion, if the plaintiff and defendant have extremely similar trade dress and offer competitive or complementary goods or services to the same or similar target customers through similar distribution channels. The likelihood of confusion being proven by a plaintiff is enhanced when the trade dress is less comparable and/or the parties are not actively competing.-

(1) Due to the similarities in the trade dress, it can be shown that some customers were truly confused about the source, origin, association, or sponsorship.; and/or (2) The company hires a market research agency to find out how confused consumers are. To further demonstrate that confusion is highly improbable, defendants may hire a specialist to administer a survey.

Courts take into account and weigh a non-exhaustive list of considerations, including the following, when deciding whether there is a likelihood of confusion:

1. How powerful the commercial clothing is (more distinctive or famous the trade dress, the wider the range of products)
2. that the party's attire is comparable

¹⁰ J.S. Edelstein & C.L. Lueders, *Recent Developments in Trade Dress Infringement Law*, 40 *The J.L. & Tech.* 109 (2000).

3. the identical nature of the products or services offered under the trademark
4. products or services that are comparable in terms of their distribution networks and target consumers;
5. the product's or service's price and the level of sophistication of the buyer (high-end buyers are more careful when buying pricey items, and more savvy shoppers are less likely to misunderstand trade dress);
6. the same or comparable ways of promoting and advertising the goods or services in question;
7. how the defendant intended to use the plaintiff's trademark (i.e., was it an honest attempt to mimic the plaintiff's style, or was it done with malicious intent); and
8. whether there is proof of consumers' or other relevant groups' actual confusion (which is strong evidence of likely confusion but is not necessary for a likelihood of confusion).

(B) Protection of Trade Dress through Registration as per Statutory Laws

Trademark protection in India is based on the following two criteria: the mark must not serve any practical purpose and must have some sort of inherent distinctiveness or secondary meaning; these are the sole requirements laid out by Indian trademark law. Federal registration does not need proof of the third requirement—the probability of confusion—that would otherwise be required in a lawsuit over an unregistered trade dress violation; all that is required is the proper application of the applicable forms.

a) Claims for trade dress infringement

In order to establish a claim for trade dress infringement, the plaintiff must provide proof of the following: (1) that it owns protectable rights in and to the trade dress; (2) that the plaintiff's trade dress was used before the defendant's similar dress (or, if the dress is not inherently distinctive, that the plaintiff's dress gained secondary meaning before the defendant's dress did); and (3) that the defendant's use of the dress is likely to confuse the public as to where goods or services are coming from or who is endorsing a particular party or its products or services.

b) Defences available to the defendant

- i.* Non distinctiveness of trade dress/lack of secondary meaning: Defense attorneys may state that the trademark in issue is generic and not distinctive enough to warrant protection, or that consumers have not come to associate the trademark with the product's provenance or origin

over time, or that the trademark itself is not particularly unique or noteworthy.

- ii. **Functionality:** We have previously established that a functional element or combination of functions cannot be protected as trade dress. The defendant may be able to use the defense of functionality if he can show that the product feature in question has a practical purpose, even though the trade dress is not registered. It is the burden of the defendant to establish the practicality of the trade dress characteristic if the trademark has already been registered.
- iii. **Fair use:** Fair use refers to two distinct but related uses of someone else's trade dress that do not violate anyone's rights. A "classic fair use" occurs when a junior user describes its own goods and services using a name, word, or gadget, rather than using it as a trademark to differentiate it from others. Another kind of fair use is "nominative fair use," which occurs when a defendant correctly identifies the plaintiff's goods or services by using the plaintiff's trade dress in a way that does not confuse others. To illustrate the goods being contrasted, a comparative advertisement can, for instance, utilize another company's trade dress.¹¹

(C) Protection of Trade Dress through the International Treatise

a) Trade Related Aspects of Intellectual Property (TRIPs) Agreement

Neither the Trade Related Intellectual Property Rights (TRIPS) agreement nor any other agreement, such as the Madrid Agreement for Trademarks, specifically addresses trade dress, despite numerous ideas, debates, and attempts at consensus among international organizations. One thing that most treaties have acknowledged, nevertheless, is that three-dimensional shapes can be registered.

Section 2 of the TRIPs Agreement contains the substantive provisions pertaining to trademarks. "Any sign or any combination of signs capable of distinguishing the goods and services of one undertaking from those of other undertakings" is what a trademark is defined as in Article 15.1 of the TRIPs Agreement. Even though it is well-known that trademarks can cover three-dimensional marks (such as shapes, packaging, and designs), the TRIPs Agreement has not explicitly included or excluded trade dress protection. This is because some shapes, like product

¹¹ A. Tiwari, *Passing off and the law on 'Trade Dress' Protection: Reflections on Colgate v. Anchor*, 10 Journal of IPR 480 (2005).

packaging, can distinguish relevant goods and services by their very nature, and others can likely become distinctive through use.

b) The Madrid Agreement and the Madrid Protocol

The worldwide system for trademark registration has been completely transformed by the Madrid Agreement and the Madrid protocol, collectively known as the Madrid System. Members of the Madrid System are able to protect their trademarks in any of the other member nations for any goods or services by filing a single international application in one language and one location. This necessitates the completion of minimal formalities and the payment of the filing fee in a single currency. The Madrid Agreement allows for the registration of trademarks including three-dimensional forms. As a condition for membership in the Madrid Protocol, member states were required to establish measures to safeguard three-dimensional marks; this requirement serves to highlight the significance of such measures.

IV. PROTECTION OF TRADE DRESS AT THE DOMESTIC LEVEL: INDIAN REGIME

Over the years, trademark law in India has changed significantly. A differentiation between trademark and trade dress was established in the initial phases of development. This differentiation, however, no longer exists because courts have begun to accept the fact that consumers are influenced by more than just the names of brands on products; they are also influenced by the product's overall appearance, the feel and look of its packaging, and its design. To prevent consumers from purchasing one product thinking it is another, trade dress protection seeks to modernize the law by recognizing color combinations and packaging of items as trademarks.

(A) Trade Dress Protection under the Trademark Act, 1999

Under contrast to the United States, where trademark law specifically recognizes trade dress under Section 43(a) of the Lanham Act, trademark law in India does not include any provision for the protection of trade dress. The following definitions were used to introduce the notion of trade dress in India following the amendments made to the Indian Trademark Act, 1999, which replaced the Trade and Merchandise Marks Act, 1958:

m) “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;

q) “package” includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, capsule, frame, cap, lid, stopper and cork.

In Section 2(zb) of the Indian Trademark Act, the idea of trade dress is defined broadly to

include not only the shape of goods and packaging, but also color combinations, as long as these elements can be graphically represented and can distinguish one person's goods or services from another's.

Section 10 of the Act adds weight to this legislative foundation by permitting trademark registration with or without color limitations; in the absence of such limitations, a trademark is considered registered for all colors. Therefore, it is clear that even Indian law incorporates all aspects of trade dress, as outlined in US law, by examining the revised definitions of trademark, mark, and package.¹²

(B) Common Law Protection to Unregistered Trade Dress under the Law of Passing Off and Unfair Competition

The Trademark Act, 1999 safeguards trademarks in India from passing off. This law establishes the right of trademark owners to sue defendants for passing off their goods as the plaintiff's. If the plaintiff wants to win the case, he has to show that his product is well-liked by consumers and that the source is associated with the trade dress he wants to preserve. Following this, the following course of action would be to determine if the defendant's goal in imitating the plaintiff's trade dress was to mislead the public and product buyers into thinking that the defendants' goods originate from the plaintiff, or if the plaintiff has given his approval for the defendants to sell his products using that particular trade dress. Finally, the plaintiff has the burden of proving that their act of passing off their trade dress, which is a form of misrepresentation, has significantly damaged their goodwill¹³

The majority of trade dress infringement actions in India involve the pharmaceutical and medical industries, where defendants are accused of mimicking the look of the drug produced by plaintiffs. In the case of *Novartis AG v. M/S Wanbury Ltd. and Anr.*, The plaintiffs had asked the court to prevent the defendant from using a logo that is too close to the one used on the plaintiff's goods, which are sold under the trademark TRIAMINIC. The Swiss company that brought this case made and sold cough syrup under the brand name CROMINIC, and its packaging was quite similar to the defendant's. Here, the court ruled that the CROMINIC product's packaging was inherently distinct from the TRIMINIC product in every way imaginable, including but not limited to color, font, style, letters, presentation, composition, etc. The plaintiff failed to secure copyright protection for the designs of the carton and label, leading

¹² R. Mohanty, *Trade Dress Protection: An Indian Perspective*, NLU Bangalore, 45-49 (2021).

¹³ T. Sateesha, *Trade Dress- An Evolving Concept Under the Ambit of Intellectual Property Rights*, Indian Journal of Law and Public Policy (Apr. 23, 2022, 11:00 am), <https://ijlpp.com/trade-dress-an-evolving-concept-under-the-ambit-of-intellectual-property-rights>.

the court to conclude that there was no similarity and reject the plaintiff's request for an injunction.

V. JUDICIAL PRONOUNCEMENTS AND CASE LAWS

In recent years, the court's stance on trade dress disputes has evolved. Until recently, the standard practice for determining trademark infringement was to look at how similar the marks were and whether they were copied with or without a label. An other piece of evidence that helped show trademark infringement and bad-faith adoption was the duplication of labels. The courts have increasingly issued injunctions in cases where competing trademarks are substantially dissimilar, even in terms of the form of the goods in question.

1. Cadbury India Limited and Anr. v. Neeraj Food Products, 142 (2007) DLT 724 (India)

Neeraj Food Products, a rival firm, introduced a food item that was comparable to Cadbury's famous "Gems" chocolate bar. The name of their product was "James Bond," and it had many aesthetic and nutritional characteristics with the James Bond brand. Cadbury successfully argued that the Delhi High Court decreed that the defendant's trademark, JAMES BOND, was confusingly similar to the plaintiff's trademark, GEMS, and that the defendant's product packaging was visually similar to the plaintiff's. The court also barred the defendant from using the trademark and packaging as trade dress because of these similarities. Consumers can be led astray into thinking the products they bought belonged to the plaintiff, the court found.

2. Colgate Palmolive Co. v. Anchor Health Beauty Care Pvt. Ltd., 2003 (27) PTC 478 (India)

The use of the trade dress and color combination of red and white in relation to identical products (tooth powder) was the reason for Colgate Palmolive's request for an interim injunction against Anchor Health and Beauty Care Pvt. Ltd. But the two companies' trademarks—Colgate and Anchor—were totally different. The court ruled that it is the consumer's overall perception of the goods' source and origin based on visual cues such as the color combination, shape of the container, packaging, etc. If a customer who is illiterate, uninformed, or easily fooled gets confused about the goods' source and origin because he receives them in a container with a particular shape, color combination, and assembly, it amounts to passing off.

To rephrase, it is considered a case of confusion and amounts to passing off one's own goods as another's with the intention of taking advantage of the other's goodwill and reputation if, at first glance, the product appears to have similar or deceptive ingredients, regardless of the specific details of the color combination, layout, or design on the container and packaging.

In order to prove passing off, it is necessary to look at the similarities rather than the differences. Given the dissimilar meanings of the words "Colgate" and "Anchor," the components of the trade dress, the combination of colors, and the layout of the container or packaging all work together to establish the offense of passing off. A breath of fresh air was the high court's ruling in this case, which reaffirmed the importance of trade dress as a means of product identification and the necessity of protecting it from consumer confusion.

3. Gorbatschow Wodka KG v. John Distilleries Limited, 2011 (47) PTC 100 (Bom) (India)

When it comes to vodka, Gorbatschow Wodka is right up there with the best of them. Russian architecture served as an inspiration for the distinctive bilbous shape of its bottles. Salute Vodka, made by the same Indian company as John Distilleries, has a similar bottle form but a distinct trademark and label color. Despite John Distilleries' claims that their affluent vodka drinkers would never mistake Salute for Gorbatschow, the Bombay High Court ruled that the two brands' bottle shapes are confusingly similar and could damage the plaintiff's reputation if the defendant were to sell the same product. As a result, the court barred defendant John Distilleries from marketing their products using the same bottle design as the plaintiffs', since the defendants failed to provide a reasonable justification for adopting the shape. The court reasoned that further infringers would feel empowered to violate the plaintiff's right if the defendant were permitted to weaken the uniqueness of the plaintiff's mark.

4. L'Oreal India Pvt. Ltd. v. Henkel Marketing India Ltd., 2005 (6) Bom CR 77 (India)

Claims were made that the "PALETTE-PERMANENT NATURAL COLORS" packaging from Henkel Marketing India Ltd. and the "GARNIER-COLOUR NATURALS" packaging from L'Oréal were identical. Because it was a clear and convincing copy of L'Oréal's label or trade dress, L'Oréal filed a passing off lawsuit. The court highlighted how the two goods' trade costumes are confusingly similar, which could lead to customer confusion. Consumers, who tend to fall into the middle class or upper middle class demographic, would not be confused because the trademarks of the two items were prominently displayed in their respective trade costumes. So, L'Oréal lost because there was insufficient evidence of trade dress infringement.

VI. CONCLUSION

The precedential decisions cited above show that the Indian judiciary has evolved its approach to trade dress matters. In a nation like India, where a significant portion of the population lives in rural regions and lacks access to education, the protection of trade dress takes on tremendous importance. That is why the packaging and color scheme are so influential in building consumer

loyalty to the brand. Plus, there's no denying that a product's unique appearance and packaging contribute to its recall. Put another way, trade dress allows marketers to connect with consumers from all walks of life, even those who may have difficulty reading the trademark. Judicial judgments have strengthened the significance of trade dress by making it evident that consumers buy products based on more than just the brand names on the label. It is also clear from the preceding discussion that no case has ever occurred where trade dress has been granted trademark rights through registration in accordance with statutory laws. In contrast, a manufacturer can only seek recognition and protection for their trade dress in a passing off litigation after another party has infringed upon their reputation and goodwill by passing off their trademark as their own. The fact that the common law remedy of passing off in litigations is still in effect and that registration of trade dress through the procedure mentioned in the statutory laws is still not allowed suggests that trade dress does not receive sufficient protection in the Indian jurisdiction within the trademark regime. It follows that there is a dearth of extensive legal precedent on the subject of trade dress at the present time, given that this area of law is still in its infancy and is evolving on the fly as a consequence of the various trends in judicial interpretations of trade dress cases. Right now, it seems reasonable to suggest that trade dress be recognized as its own field or given its own identity as an intellectual property within the trademark regime. This can be done through legislative amendments, as the jurisprudence surrounding trade dress is still developing. Once there is a substantial body of precedent, a sui generis system of protection can be put in place to safeguard trade dress as its own intellectual property, with streamlined procedures for registration.
