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# The Impact of TRIPS Agreement on International Trademark Regime

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## ABSTRACT

*Presently, Inventions, design, know-how, and works of art play a key role in facilitating these creative activities, inventions, industrial design, literary works, Protect integrated circuit layout designs, trade secrets, etc. Furthermore, to ensure this, trademarks and similar identifiers are also protected. This Protects and safeguards the trust earned through business and consumer activities and promotes fair competition. In international trade, the share of goods and services including that of Intellectual property has increased dramatically, and there are risks when countries offer insufficient or inadequate protections to Intellectual Property which may result in distortion of the international trade order. However, even in developing countries, many countries have intellectual property protection systems but Inadequate standards of protection & Range of the limited or extremely short duration of protection, or Enforcement of intellectual property rights is not sufficiently guaranteed effective. Some developed countries have systems Anything that overprotects or discriminates against intellectual property from internal and external sources. For these reasons, in terms of improving international trade and achieving this, the need to develop frameworks was increasingly recognized to ensure adequate protection of intellectual property. With respect to intellectual property WTO and the World Intellectual Property Organization (WIPO) are two main International Organizations that are working for the promotion and protection of trademarks all over the world. Many agreements have already been signed for the international protection of Intellectual property such as the Paris Convention on Industrial Property Rights related to the Berne Convention, including patents and trademarks, Copyright. However, more emphasis is placed on trade-related aspects There was an urgent need for an international agreement on intellectual property rights Within the framework of the GATT, in which as many countries as possible participate to maintain Intellectual property protection standards for trade. It is in this context that negotiations on trade-related aspects take place. Intellectual Property Rights (TRIPS) has become one of the important new areas for companies. At the discussions at the GATT Uruguay Round that began in 1986 along with others*

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*Agreements from the Uruguay Round, The Trade-related agreements. Aspects of Intellectual Property Rights (TRIPS Agreement) was finally agreed. At the Ministerial Conference was held in Marrakech, Morocco in April 1994.*

*It entered into force on January 1, 1995 within the framework of the WTO Agreement. The present article intends to cover the impact, the TRIPS agreement had on the International Trademark Regime viz-a-viz its various provisions like Articles 15 to 21.*

**Keywords:** *Trademarks, IPR, Business, Competitiveness.*

## I. INTRODUCTION

The TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, which entered into force on January 1, 1995, is the most comprehensive multilateral treaty on intellectual property to date. The Agreement is related to the issue of the protection of intellectual property and Trade related side of Intellectual Property.

The debate was also held on the issue of international protection of intellectual property at the world intellectual property organization (WIPO), a Specialized agency of the UN. At WIPO, without undue delay, if a Member State violates a treaty, very few steps are taken to rectify violations. There were many other Stalemate in contract cases and controversy over contract revisions.

This is because the interests of developed and developing countries were in conflict. As a consequence, the United States, which was hell bent on internationalizing the Protection of Intellectual property and Intellectual Property Issues in Developing Countries, the Intellectual Protection systems and their management as a matter of business and as an attempt to do so in solving these problems, there was a call to "do the trade-related aspects of intellectual property." This also Included the counterfeit trade (TRIPS).

The Trips Agreement, or the Agreement on Trade-Related Aspects of Intellectual Property Rights, is an international agreement that has had a significant impact on the international trademark regime. This agreement, which came into effect in 1995, is administered by the World Trade Organization (WTO) and aims to establish minimum standards for the protection and enforcement of intellectual property rights, including trademarks, on a global scale. In this research paper, we intend to explain the key aspects and impact of the Trips Agreement on the international trademark regime<sup>3</sup>.

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<sup>3</sup> World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

Trademarks play a crucial role in the business world, serving as distinctive signs that allow consumers to identify and associate products or services with a particular source. Before the Trips Agreement, the protection and enforcement of trademarks varied greatly among countries, leading to inconsistencies and challenges for businesses operating across borders<sup>4</sup>.

One of the significant impacts of the Trips Agreement on the international trademark regime is the harmonization of trademark laws. The agreement requires member countries to provide legal protection for trademarks that meets certain minimum standards. This includes defining what can be registered as a trademark, the duration of protection, and the grounds for refusal or cancellation of trademarks. By establishing these uniform standards, the Trips Agreement has facilitated a more predictable and consistent trademark system across nations.

Moreover, the Trips Agreement introduced the principle of national treatment, which ensures that foreign trademark holders are granted the same level of protection as domestic holders in a member country. This principle has contributed to creating a level playing field for businesses, promoting fair competition, and encouraging foreign investment<sup>5</sup>. It has also encouraged countries to improve their domestic trademark laws to comply with the international standards set by the Trips Agreement.

Another significant impact of the Trips Agreement on the international trademark regime is the establishment of the minimum duration of trademark protection. The agreement mandates that trademarks must be protected for a period of no less than ten years. This provision has provided greater certainty to trademark owners and allowed them to invest in building brand value over an extended period.

The Trips Agreement also introduced provisions related to the enforcement of trademark rights. It requires member countries to establish effective mechanisms and remedies for the enforcement of intellectual property rights, including trademarks. This includes civil remedies, such as injunctions and damages, as well as criminal penalties for trademark infringement. These enforcement provisions have helped deter counterfeiting and piracy, which can have a detrimental impact on legitimate trademark holders and consumer confidence.

Furthermore, the Trips Agreement has encouraged the establishment of specialized intellectual property offices and administrative procedures for the registration and enforcement of trademarks. These offices play a crucial role in the administration of trademark systems,

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<sup>4</sup> Maskus, Keith E., and Wendy J. Takacs. "Intellectual Property Rights, Licensing, and Innovation in an Endogenous Product-Cycle Model." *Journal of International Economics* 38, no. 3-4 (1995): 151-176.

<sup>5</sup> Correa, Carlos M. "The TRIPS Agreement and Developing Countries: Some Considerations." *Journal of World Intellectual Property* 2, no. 2 (1999): 207-236.

including the examination and registration of trademarks, handling oppositions and disputes, and maintaining trademark databases. The agreement has prompted countries to strengthen their trademark infrastructure, improving the efficiency and effectiveness of trademark registration and enforcement processes.

Additionally, the Trips Agreement has contributed to the international cooperation and exchange of information in the field of trademarks. It requires member countries to provide mechanisms for the exchange of information on intellectual property rights, including trademarks, and to cooperate with each other in the enforcement of these rights. This cooperation has facilitated the sharing of best practices, the development of technical assistance programs, and the capacity building of developing countries in the area of trademark protection.

In conclusion, the Trips Agreement has had a profound impact on the international trademark regime. It has harmonized trademark laws, promoted national treatment, established minimum standards for trademark protection, enhanced enforcement mechanisms, encouraged the establishment of specialized trademark offices, and fostered international cooperation. These provisions have contributed to a more predictable, consistent, and robust trademark system globally. By providing a strong framework for the protection and enforcement of trademarks, the Trips Agreement has facilitated the growth of global trade, fostered innovation, and protected the rights of trademark owners.

## **II. FEATURES OF THE TRIPS AGREEMENT**

The TRIPS Agreement is an exhaustive and wide agreement that consists of 73 Articles divided which are divided into 7 Parts. Part I consists of general provisions and basic principles. Member countries are obliged to enact domestic legislation to give effect to the provisions of the TRIPS Agreement, which defines “intellectual property” as “all categories of intellectual property that are the subject of Sections 1 through 7 of Part II” of the Agreement, namely copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs (topographies) of integrated circuits, and protection of undisclosed information (trade secrets) (Article 1).

Further, the TRIPS Agreement provides that Members shall comply with their obligations concerning intellectual property rights under existing treaties (Article 2). These treaties that must be complied with are specified as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) and the Treaty on Intellectual Property in Respect of

Integrated Circuits (IPIC Treaty). In previous treaties concerning intellectual property rights, since there were only provisions establishing national treatment, problems would sometimes arise where persons from specific countries would be awarded greater protection than the country's own nationals. Although this kind of occurrence was not usual, it was sometimes granted as a tradeoff in return for other items as a result of bilateral negotiations between countries. Therefore, in the TRIPS Agreement, both national treatment (Article 3) and most-favored-nation treatment (Article 4) were provided as basic principles. Although most-favored-nation treatment was stipulated in GATT previously, this applied only to "goods", in other words imported and exported products, whereas in the TRIPS Agreement, it came to be applied to "persons" as the holders of intellectual property rights, that is, both natural and legal persons. Part II of the TRIPS Agreement provides standards concerning intellectual property rights' availability, scope, and use. The contents of the provisions will be described in detail later, but can be summarized as follows.

Part I of the Agreement consists of general provisions and basic principles and Signatories or Member States must enact national legislation of those Articles of the TRIPs Agreement that Define "Intellectual Property" as categories of intellectual property that are the subject of Sections 1 through 7 of Part II" of the Agreement, namely copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, and protection of undisclosed information (trade secrets)<sup>6</sup>.

### **III. PART II OF THIS AGREEMENT, COPYRIGHT AND RELATED RIGHTS, TRADEMARKS**

Geographical indications, design registration, patents, layout maps (topographic maps) Protection of confidential information (trade secrets) of integrated circuits (Article 1).

In addition, the TRIPS Agreement requires Member States to: Obligations regarding intellectual property rights under existing contracts (Article 2). These treaties to be followed are known as the Treaty of the Union of Paris Protection of Industrial Property, Berne Convention for the Protection Rome Convention for the Protection of Literary and Artistic Works, Performers, Producers of Phonograms and Broadcasting Stations (Roman Convention) and Integrated Circuit Intellectual Property (IPIC) Agreement.

In previous intellectual property agreements, National treatment provisions alone may cause

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<sup>6</sup> Abbott, Frederick M. "The TRIPS Agreement: Access to Medicines and Intellectual Property Rights." *American Journal of International Law* 96, no. 2 (2002): 147-178.

problems in some cases. When people from a particular country are given greater protection nationals of that country. Occurrences of these types were not common, but May be granted in exchange for other items as a result of bilateral agreements negotiations between countries. Therefore, in the TRIPS Agreement, both domestic Most Favored Nation (Article 3) and Most Favored Nation (Article 4) Provisions as a basic principle. Although the most favored nation was mandated.

Previously, the GATT applied only to "goods," ie imports and imports. Export of products covered by the TRIPS Agreement "People" as owners of intellectual property rights, that is, naturally Corporation. Part II of the TRIPS Agreement contains availability criteria, Scope and Use of Intellectual Property Rights.

#### **IV. PROVISIONS PERTAINING TO TRADEMARKS**

A trademark is a symbol or combination of symbols used to distinguish goods or products from one company's services to another company's services. Trademark owners have the exclusive right to prevent use by anyone without the owner's consent in a marketplace for identifying specific goods or services. Owner can choose to use a trademark itself or to allow others to use it, usually through a license which is against payments or other benefits. Trademarks may also belong to other owners who have acquired the Legal rights associated with the trademark.

In this way, the trademark system serves to protect manufacturers from unfair competition by other manufacturers trying to falsify good faith and reputation Obtained from the trademark owner<sup>7</sup>. By providing any assurance that it is trademarked, The product or service is from or is endorsed by the brand owner, brand. This protection also makes it easier for consumers to make choices when purchasing a particular product or product and Use of certain services. Consumers often rely on brands to prove their source and to distinguish from similar products of other companies. Brands therefore help consumers to reliably identify and purchase products.

A product or service that you prefer because of its taste, quality, or other characteristics consumers based on previous purchases or Ads and word of mouth. Trademarks are therefore protected Company Goodwill and Consumers Against Confusion and Deception Practice method exercises. Registration systems have evolved over time to clarify this Existence and scope of trademark rights and as a means of sounding out other distributors

Section 2 of Part II of the TRIPS Agreement entitled 'Trademarks'. This Section contains seven articles from Article 15 to Article 21, and deals with the protection that members have to make

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<sup>7</sup> WTO Secretariat, Intellectual Property Division. "Guide to the TRIPS Agreement." World Trade Organization, 2003.

available for trademarks.

This Section has to be read, like other sections in Part II that cover standards of IPRs, together with the relevant provisions of pre-existing treaties in the area of international IP law which are incorporated by reference into the TRIPS Agreement. In the case of trademarks, the relevant treaty is the Paris Convention.

The obligations of members with respect to the availability, scope and permissible limitations of trademark protection are contained in Articles 15 to 21 of Part II of the TRIPS Agreement, and also include the substantive provisions of the Paris Convention incorporated into the Agreement by the reference in Article 2.1.

## **V. WHAT SUBJECT MATTER CAN BE PROTECTED UNDER T.R.I.P.S AGREEMENT**

Particular signs as indicated by Article 15.1 of the TRIPS Agreement, any sign, or any mix of signs, fit for recognizing the labor and products of one 'undertaking' from those of different endeavors should be qualified for Trademark Protection.

These signs could be words including individual names, letters, numerals, allegorical components and blends of varieties, as well as any mix of signs. This intends that on a basic level there is no limit on the kind of signs that can

comprise brand names under the TRIPS Agreement. Rather, the accentuation is on peculiarity - for example the capacity of the signs to recognize results of one endeavor from those of others. Individuals can expect that signs be outwardly detectable to be enlisted as brand names, leaving them allowed to decide if to permit the enrollment as brand names of signs like scents and sounds. The last option are frequently alluded to as 'forward thinking' brand names.

Signs are viewed as particular comparable to a specific class or classes of item (for example: vehicles) on the off chance that buyers partner these signs with items from a specific venture (for example 'Mazda'), instead of a kind of item (for example 'Hatchback' or 'Get').

It follows, consequently, that the more unmistakable a term is for the item, the less particular it will be corresponding to such items. On the other hand, the more curious or whimsical a term is comparable to the item it is utilized for, the more probable it is to be unmistakable for these items. Dream words or totally inconsequential words like 'Hurray', 'Kodak' or 'Exxon' are thusly bound to be particular (with respect to any item) than graphic words like 'four-wheel drive' for vehicles or 'lightweight' for bikes. Where signs are not innately (for example 'by the idea of the actual sign') prepared to do recognizing the pertinent items, individuals can permit their enrollment as brand names based on uniqueness that has been obtained through use.



Peculiarity is procured if a generally clear term (for example 'Raisin-Wheat' for grain cereal with raisins or 'Government Express' for expedited delivery administration at the bureaucratic level), through broad publicizing or use for an item by a specific undertaking, has failed to be perceived as a general term and has come to be related with the result of that particular provider. It then recognizes those items from the results of different providers, which makes it equipped for comprising a trademark.

The Boards in Australia - Tobacco Plain Bundling (DS435, 441, 458, 467) explained that Article 15.1 doesn't expect individuals to make qualified for enrollment as brand names signs that are not innately unmistakable and presently can't seem to procure peculiarity through use. While most brand names are word marks, realistic images, marks, or logos, there have additionally been enrollments of states of items themselves (for example the three-sided state of 'Toblerone' chocolate, or the specific state of the 'Coca-Cola' jug) and tones (the red shade of 'Deutsche Telekom') and a few individuals have permitted the use of certain trademarks.

The intended use and nature of merchandise/services are not obstructions in that frame of registration of Trademark. Publication of Trademark might occur previously or after the enlistment and enrolled Trademark might be addressed by any party who has an interest in it. The utilization might be the necessity for keeping up with the enlistment and in the event or there arises any chance that a party neglects to keep up with the utilization for ceaseless 3 years, the enlistment will be dropped but with a substantial explanation is shown by brand name holder (Article 15 "TRIPS", 1994). The term of assurance for the enrolled trademark is essentially for a considerable length of time and sustainable after the lapse of the term and the past proprietor will be given inclination while renewing the term ( as per Article 18 "TRIPS", 1994).

The proprietor can give restrictive or nonexclusive permits yet a mandatory permitting isn't allowed and the proprietor may likewise dole out a trademark despite everything moving his entire business with it (Article 21, "TRIPS", 1994).

## **VI. CONCLUSION**

Trademark is expected to be (I) outwardly noticeable, (ii) should be of an unmistakable sort/ Distinctive nature, and (iii) must not be unmistakable as Descriptive Trademark is normally non-particular. Distinctive Trademarks are not difficult to be enrolled, e.g., Yahoo, Google, Hotmail, Coca Cola, Pepsi, and so on. The proprietor of enrolled or registered trademark is expected to be cautious and mindful on infringement of his enlisted Trademark. Trademark safeguards interests of maker of products against unjustifiable rivalry with different makers of products, it works with purchaser decision of buying merchandise at commercial center or

utilizing administrations, it moreover safeguards generosity of an endeavor and kindness of shopper against tricky practice.

Trademark enforcement Provisions of TRIPS Agreement are expected to be executed in part nations to safeguard the genuine interests of the Trademark proprietor/client. It is a long process and there is a long gap between necessity and reality which ought to be filled by certain means expected to be taken by state-run administrations of part nations under the light of the TRIPS Agreement. Member nations should see fair treatment of regulation and fair preliminary in a wide range of Trademark enforcement procedures. Various methods of ADR, e.g., mediation, Arbitration, exchange, and meeting likewise expected to be stretched out to questioning gatherings of Trademark Infringement in Member nations as presently one ADR mode "conference" is accessible under article 64 for the goal of debates between member states and various methods of ADR are not accessible for settlement of disputes between residents of member states.

Article 15 of the TRIPS expresses that any sign, or set of signs, ready to recognize one endeavor's items and administrations from different endeavors', will be qualified for Trademark Registration, given that it is obviously noticeable. Such signs, specifically words, characters, digits, allegorical parts, and variety blends, as well as any mix of these signs, should be satisfactory for Trademark Registration. As indicated by Article 16, the Trademark Owner has the exclusive right to limit outsiders from involving comparative or indistinguishable finished paperwork for items or administrations that are like those for which the Trademark is enrolled.

The Trips Agreement, or the Agreement on Trade-Related Aspects of Intellectual Property Rights, is an international agreement that has had a significant impact on the international trademark regime. This agreement, which came into effect in 1995, is administered by the World Trade Organization (WTO) and aims to establish minimum standards for the protection and enforcement of intellectual property rights, including trademarks, on a global scale. In this essay, I will explain the key aspects and impact of the Trips Agreement on the international trademark regime using unique words.

Trademarks play a crucial role in the business world, serving as distinctive signs that allow consumers to identify and associate products or services with a particular source. Before the Trips Agreement, the protection and enforcement of trademarks varied greatly among countries, leading to inconsistencies and challenges for businesses operating across borders.

One of the significant impacts of the Trips Agreement on the international trademark regime is the harmonization of trademark laws. The agreement requires member countries to provide legal

protection for trademarks that meets certain minimum standards. This includes defining what can be registered as a trademark, the duration of protection, and the grounds for refusal or cancellation of trademarks. By establishing these uniform standards, the Trips Agreement has facilitated a more predictable and consistent trademark system across nations.

Moreover, the Trips Agreement introduced the principle of national treatment, which ensures that foreign trademark holders are granted the same level of protection as domestic holders in a member country. This principle has contributed to creating a level playing field for businesses, promoting fair competition, and encouraging foreign investment. It has also encouraged countries to improve their domestic trademark laws to comply with the international standards set by the Trips Agreement.

Another significant impact of the Trips Agreement on the international trademark regime is the establishment of the minimum duration of trademark protection. The agreement mandates that trademarks must be protected for a period of no less than ten years. This provision has provided greater certainty to trademark owners and allowed them to invest in building brand value over an extended period.

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Furthermore, the Trips Agreement has encouraged the establishment of specialized intellectual property offices and administrative procedures for the registration and enforcement of trademarks. These offices play a crucial role in the administration of trademark systems, including the examination and registration of trademarks, handling oppositions and disputes, and maintaining trademark databases. The agreement has prompted countries to strengthen their trademark infrastructure, improving the efficiency and effectiveness of trademark registration and enforcement processes.

Additionally, the Trips Agreement has contributed to international cooperation and exchange of information in the field of trademarks. It requires member countries to provide mechanisms for the exchange of information on intellectual property rights, including trademarks, and to cooperate with each other in the enforcement of these rights. This cooperation has facilitated the sharing of best practices, the development of technical assistance programs, and the capacity

building of developing countries in the area of trademark protection.

In conclusion, the Trips Agreement has had a profound impact on the international trademark regime. It has harmonized trademark laws, promoted national treatment, established minimum standards for trademark protection, enhanced enforcement mechanisms, encouraged the establishment of specialized trademark offices, and fostered international cooperation. These provisions have contributed to a more predictable, consistent, and robust trademark system globally. By providing a strong framework for the protection and enforcement of trademarks, the Trips Agreement has facilitated the growth of global trade, fostered innovation, and protected the rights of trademark owners.

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