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Trademarks and Religious Feelings: An Issue That Needs to be Raised

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ABSTRACT

This article is about how Trade Marks and religious feelings are interrelated; nowadays, a layman sees many religious gods' names used as the name of companies, if not very big companies, then small ones. However, we see these things happening. We see a typical shop with the name of religious gods, like Bansiwala Sweets, a well-known sweet house. Nobody objects to it, but if we hear about a company named Ganesh Beedi, some people's religious feelings are hurt. It hurts sometimes, but we as laymen do not know what to do against it; we are unaware of our laws and rights; therefore, through this article, one will get to know what they can do. One will also get to know if anybody has raised his voice related to it, and one will also get to know whether one can go to court related to it and on what merits the court will give its decision. One will also learn about the court's previous decisions related to this matter. This article will give an insight into this matter.

I. INTRODUCTION

(A) Trade mark defined

It is one of the types of intellectual property, it typically shelters the identity of company, product etc. Trade mark can be any symbols, logos, phrase, words that denote specific product etc which helps in determining its company, product etc.

It is used to distinguish between goods and services from all others of its kind, basically it legally differentiates it from all other product. it also facilitates public in making their purchasing decision

Example: - as an Indian citizen we all trust TATA (a well-known trade mark), we all are well known to its quality of car, because we already know that tata also has a steel co. which is of very good quality this is how trademarks help to distinguish between goods and services of others of same kind.

India has enacted a law relating to trademark known as Trade Marks Act, 1999.

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According to sec9(2)(b) of Trade Marks Act²

If a mark contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; it shall not be registered and it is an absolute ground for refusal of registration of such trade mark

It does not allow commercializing religious symbols therefore registration is refused on this ground.

II. MY VIEWPOINT

But being a normal girl, I have seen many local companies using symbols, images, signs of some Hindu deities which are questionable and can hurt religious feelings of public like there is one brand of beedi (Asian cigarette) named after Lord Ganesha (a Hindu deity), and in our local areas we have observed many times that there are some shops or stores named after God like “Maa Jag Damba Store”, “Shiv Paan Wala” one must be thinking that it is ok that Ganesh beedi or shiv paan wala can hurt religious feelings but how store named after a name of god can hurt religious feelings let me explain it to you with an example lets assume that we have bought sweets from Maa Ambe sweet corner and there is picture of Maa Ambe drawn on its packing then it will be very difficult for one to throw or dispose it of that too in very large quantity because now days photographs of gods are drawn in many places like invitations cards, sweets boxes, newspapers etc.

Therefore, use of photos or pictures of God as trademark are likely to harm religious feeling.

III. LEGAL VIEWPOINT

In Mangalore Ganesh Beedi Works v. District Judge³

Allahabad High Court analysed the phrase “any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India.”

After listening to both the parties, court held that Ganesh Beedi did not threaten any religious sentiments and were not likely to hurt the religious feelings.

In the same case only, court said that no religious feelings are hurt when one throws the pictures of god which are drawn on boxes, packings etc.

² DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE, <https://ipindia.gov.in/acts-rules-tm.htm> (last visited: April 11, 2023)

³ KHURANA & KHURANA ADVOCATES AND IP ATTORNEYS, <https://www.khuranaandkhurana.com/2021/03/09/the-contours-of-religious-susceptibilities-for-trademarks-introduction/?amp=1> (last visited: April 11, 2023).

Where as in *Bhole Baba Milk Food Industries Ltd. v. Parul Food Specialities Pvt Ltd*⁴

Delhi High Court while dealing with the word “Krishna” said that there can be no monopoly rights on the word Krishna as it is name of a deity, therefore no trademark can be registered after his name.

Delhi High Court was affirmed by the Supreme Court in the case

*Lal Babu Priyadarshi v. Amritpal Singh*⁵

In this case word “Ramayana” was in question, it has to be determined whether it can be registered as a trade mark or not.

The Supreme Court held that names of holy books cannot be used as trademarks, therefore trademark of word Ramayana was not allowed to be registered. And in the same case only Court also emphasized that such names cannot be used even with the inclusion of any prefix or suffix.

Court Further added that from the photographs, we find that the photographs of Ram ji, Sita ji, and Lakshman ji (Hindu Deities) are also shown in the label which is a clear indication that the appellant is taking advantage of the Gods and Goddesses which is otherwise not permitted.”

Same reasoning was carried forward in the recent case of

*Freudenberg Gala Household Product Pvt. Ltd. v. GEBI Products Ltd*⁶

here it was held that the names of the deities are not exclusive and hence, no one can have monopoly over it, or no one can exercise exclusive rights on the name of deities.

IV. CRITICISM

It is held by court that one can not register any trademark on name of the deity, but in Hindu Dharma gods do not have one name but many, even some gods have more then 100 names therefore its is killing many options for a person to choose a trademark.

According to Trade Marks Act 1999, one is not allowed to register any trade mark which is likely to hurt religious feelings but what about those unregistered names, symbols, etc used, which do hurt the religious feelings.

V. MY ANALYSIS

As India is a diverse country having different religion that too being secular one, it is very important to give correct judgement in the matter related to religion and we do not know that

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

how a single wrong decision can affect lives of many people as India is very sensitive in terms of religion and we never know what decision acts as a catalyst in happening of communal riots. The Trade Marks Act, 1999 imposes restrictions on registration of trade mark and it gives an absolute ground on refusal for registration of trademark if they affect any religious feeling but what about those trademarks which are unregistered and working independently and there by affecting religious sentiments without any checks and control.
