

Legal Issues in ‘Registrability of a Mark’

Issue: Whether mere numerical marks are capable of registration as trademarks?

Relevant Legal Provisions (Contd.)

❖ Section 2(m) of Trade Marks Act, 1999

(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;

Relevant Judicial Decisions

1. *The Tata Oil Mills Company Ltd. vs. Reward Soap Works (22.04.1982 - DELHC) : MANU/DE/0294/1982*

*“5. True, it is doubtful if the numerals 507 per se could be said to be identical with or deceptively similar to the numerals 501, the use of the numerals 507 by the defendant on its wrapper in relation to washing soap of its manufacture in a manner which, having regard to the deceptive similarity between the get-up, the scheme, the colour and the arrangement of lettering in the two competing wrappers gives the wrapper, including the numerals, an over-all effect of deceptive similarity which would prima facie constitute an infringement of the trade marks...
...This deceptive similarity is likely to cause confusion in the course of trade, particularly, having regard to the cause to people who constitute the buying public in relation to washing soap. The admitted extensive popularity of the plaintiff's soap bearing the aforesaid mark and wrapper is a further aggravating factor.”*

3

Relevant Judicial Decisions

1. The Tata Oil Mills Company Ltd. vs. Reward Soap Works (22.04.1982 - DELHC) : MANU/DE/0294/1982 (Conti.)

7. “I would, Therefore, grant an injunction restraining the defendant from manufacturing, selling offering for sale, advertising or dealing in washing soap under the trade mark 501, 507 or any other deceptively similar marks and wrappers as are identical with or deceptively similar to the wrappers of the plaintiff 501 ”

Relevant Judicial Decisions (Contd.)

2. Vrajlal Manilal vs. Adarsh Bidi MANU/DE/0257/1995 : 1995 PTC (15) 88

"10. It is common knowledge that bidis are consumed by illiterates or semi-literates. The numericals 22 and 122, as used by the parties on their labels are in English writing-style. As the labels and the wrapping paper are used on the bundles which are conical and round in shape the possibility of the unwary consumers being led away in purchasing defendants bidis as that of the plaintiffs cannot be ruled out. This is sufficient to give a cause of action to the plaintiffs."

Relevant Judicial Decisions (Contd.)

3. Glossy Color and Paints Pvt. Ltd. and Ors. vs. Mona Aggarwal and Ors. (09.09.2015 - DELHC) : MANU/DE/3850/2015

29. It has come on record that apart from the plaintiffs, there is no other party selling the goods in question, being acrylic distemper, under a numeral mark. The plaintiffs through their predecessors, adopted the mark "1001" in the year 1946 and has been using the same continuously ever since. A mere glance at the marks "6004" and "1001" and the respective labels is sufficient to know that the defendants' had the product of the plaintiffs in front of their eyes and designed and created their own mark and label in such a way that a consumer of average intelligence and imperfect recollection may be duped and confused as to the origination of the products.

6

Relevant Judicial Decisions (Contd.)

4. *Mona Aggarwal and Ors. vs. Glossy Colour and Paints Pvt. Ltd. and Ors.* (02.02.2016 - DELHC) : MANU/DE/0253/2016

9. ...*simply because one party had adopted a numeral as a trademark for its products, it cannot be said that no other party can adopt different numerals as part of a trademark for their similar goods. In such a situation what has to be seen, is whether the mark taken as a whole i.e. combination of numeral, colour scheme, get-up, layout are deceptively similar.*

10. ...*we modify the impugned order to the extent that the appellant may use the proposed label with its colour scheme, get-up, layout and arrangement of features along with the numeral '6004'.*

7

Relevant Judicial Decisions (Contd.)

5. Carlsberg India Pvt. Ltd. vs. Radico Khaitan Ltd. (20.12.2011 - DELHC): MANU/DE/6904/2011

26. Trademark jurisprudence in India has fought shy of according trademark status to single numerals or letters. While a combination of letters and numbers has often been found worthy of trademark protection, there is ample material to suggest that the consistent stand taken both by the Trademark Registry and the Courts is to frown upon attempts to secure trademark protection for single digits, single colours and single letters in India.

27. In the instant case, it is not in dispute that the registration obtained by Radico is for the word mark '8 PM', although the usage by Radico, in variance to the registration, is one that accords primacy to the numeral '8' and relegates 'PM' to almost 1/8th the relative space on the label.

28. Section 17 of the T.M.Act 1999 makes it ample clear that a registered proprietor of a composite mark cannot seek exclusivity with respect to individual components of the trademark. Therefore, by logical extension, it is not open to Radico, which is the registered proprietor of the composite mark '8 PM', to seek protection for infringement of its trademark by a third party who merely uses the numeral '8', since no exclusivity can be claimed in a single numeral.

Relevant Judicial Decisions (Contd.)

5. Carlsberg India Pvt. Ltd. vs. Radico Khaitan Ltd. (20.12.2011 - DELHC): MANU/DE/6904/2011 (Conti.)

29. Therefore, in the present case, an action for trademark infringement in respect of the composite word mark '8 PM' against Carlsberg, which uses the mark 'PALONE 8', where the only commonality between the two is the numeral '8', must prima facie undoubtedly fail.

30. If Radico's mark had been a label mark, then the issue of the size and manner of representation of the numeral would have had some bearing, but since the registration is for the word mark simpliciter, no case for trademark infringement prima facie appears to be made out against Carlsberg.

45. However, the unique elements of Radico's label have not been copied by Carlsberg. On comparing the two labels, one cannot prima facie form an impression that actionable similarity emerges. The mere manner of writing the numeral '8' or the size of it cannot be a sufficient ground for Radico to obtain an injunction. Mere use of black and gold colour combination, which is fairly common to labels of alcoholic products, cannot be unique to Radico. The styling of the numeral '8' is normally two small 'o'; one on top of the other, or the numeral '3' mirroring itself. Prima facie we see no uniqueness to entitle Radico to an interim injunction. Both parties have adopted the latter.

Relevant Judicial Decisions (Contd.)

6. *Alphavector India Pvt. Ltd. vs. Sach Industries and Ors.* (01.02.2023 - DELHC) : MANU/DE/0574/2023

42. *Apropos the aspect of deceptive similarity, though Mr. Puri has not sought to contest the submissions of Mr. Gupta on the point, even on merits, the submissions commend acceptance. Both "91" and "99", whether used in words or in numerals, are arbitrary when used in respect of cycles and cannot be treated as descriptive. As an arbitrary mark, "91" or "NINETY ONE" is entitled to greater protection under the Trade Marks Act. The defendants have no explanation as to why they have chosen to use the mark "99". The mark "99", when used on a bicycle, is clearly deceptively similar to the mark "91" especially as the first digit of both numbers, "9" is the same. Additionally, the placement of the respective marks on the cycles is also similar, to the extent that the manner in which the defendants have written "NINETY NINE", on the cross bar of their bicycles, is clearly deceptively similar to the writing "NINETY ONE" on the cross bar of the plaintiffs bicycle.*

Relevant Judicial Decisions (Contd.)

7. Vineet Kapur vs. Registrar of Trade Marks and Ors. (25.04.2025 - DELHC) : MANU/DE/2894/2025

5. Since numerals and their combination fall within the definition of 'Mark', the same are capable of being registered as a trademark, if it fulfils the requirements of registration as provided under the Trade Marks Act. A mark cannot be refused registration merely on the ground that it consists of a combination of numbers. Rather it has to be seen, whether or not, such numeral mark is devoid of any distinctive character.

9. The mark '2929', which is sought to be registered by the appellant is a coined and arbitrary mark, having no meaning whatsoever with respect to the goods for which it is applied, i.e., Cosmetics and Skincare...In the present case, the mark '2929' is not ordinarily used in trade with respect to the goods in question, and does not in any manner, directly or indirectly, describe the goods. Hence, the said mark is capable of distinguishing the goods of the appellants from those of others.

13. The mark in question has been applied 'on a proposed to be used' basis. As noted, the said numerical mark is inherently distinctive, and thus, is capable of being registered without acquiring any secondary meaning.

Conclusion

- Numerical marks are expressly included within the definition of "mark" under the Trade Marks Act, 1999, making them eligible for trademark registration in principle.
- Indian courts and the Trade Marks Registry require that numerical marks must be distinctive, not descriptive or generic, and capable of distinguishing the applicant's goods or services.
- Arbitrary or coined numerical combinations (e.g., "501", "1001", "2929") have been held registrable and protectable if they serve as source identifiers.
- Registration of a numerical mark does not grant exclusive rights over the individual digits, but only over the specific combination as a whole.

THANK YOU!
Questions?

Nivrati Gupta

13

© ALG India Law Offices LLP, 2024.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2025/06/Final_LIS-2.6.2025.pdf