
**UNREGISTERED TRADEMARKS IN THE DIGITAL MARKETPLACE:
PROTECTION AND ENFORCEMENT ISSUES**

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“In the fast-paced digital marketplace, unregistered trademarks demand constant vigilance, it exist in a fragile space where goodwill is cardinal and only those who guard their identity fiercely can withstand the storm of imitation.”

ABSTRACT

Unregistered trademarks have been in debate for years, it has been one strenuous task for the proprietor of such trademark from building the reputation of the brand to establishing goodwill. In the digital marketplace, unregistered trademarks face formidable obstacles to enforcement and protection. These, in contrast to registered marks, are protected from unapproved use by common law doctrines such as unfair competition. Upholding goodwill becomes crucial in the internet setting, where companies are susceptible to abuse and copying. In order to spot possible violations, businesses need to keep a close eye on social media, platforms, and e-commerce websites. Although cease-and-desist letters are frequently used in enforcement, cross-border problems make legal remedies more difficult since enforcement actions are impacted by jurisdictional disparities. Protecting unregistered marks requires prompt action, which includes recording brand usage and utilizing takedown tools. In light of the complexity of internet commerce, this topic emphasizes the need for careful brand management techniques to avoid dilution and foster customer trust.

KEY WORDS: Trade Mark, Digital, Unregistered, Infringement, Owner

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INTRODUCTION

Trademarks have become extremely important in today's ever-changing digital marketplace, as they are essential markers of consumer trust and company identity. But the emergence of internet commerce has also brought about difficult problems with regard to unregistered trademark enforcement and protection. An unregistered Trademark is a mark that has not been registered under The Trade Mark Act, 1999, at times the goodwill attached to such marks becomes a very tedious task to prove, although unregistered Trade Marks are provided protection by way of statutory provisions and common law tort as well. Unlike Registered Trade Marks the proprietor of Unregistered Trade Marks is deprived of the statutory rights. Unregistered trademarks are mostly enforced by common law principles and the doctrine of passing off, in contrast to registered trademarks, which are protected by statute under various intellectual property laws. This ambiguity calls into question whether current legal frameworks are sufficient to protect trademark owners' rights in a setting where counterfeiting, digital piracy, and brand dilution are commonplace. The risks of unregistered trademarks increase when companies interact with customers more frequently online, forcing stakeholders to negotiate an unpredictable environment. By analyzing the legal ramifications of their status in the digital sphere, this conversation seeks to investigate the inherent vulnerabilities faced by owners of unregistered trademarks. It will also discuss the difficulties with enforcement mechanisms, such as how well current laws work to prevent infringement and whether reform is necessary to guarantee that brand owners' interests are sufficiently safeguarded in a global market that is becoming more interconnected and competitive. This article aims to add to the continuing discussion on trademark protection in the digital age by critically examining these issues and providing insights into the changing nature of intellectual property rights and the necessity of strong legal protections for unregistered trademarks.

Atrocities Faced in protection of Unregistered Trademarks against Infringement in the Digital Marketplace.

1.The lack of official legal protection is one of the biggest obstacles facing companies that use unregistered trademarks. Owners of registered trademarks enjoy exclusive rights to use their marks in commerce and a presumption of validity thanks to statutory rights. Unregistered trademarks, on the other hand, have to show their rights through usage, which can be challenging, especially in a digital setting where proof of use may be sporadic and transient.

2.Trademark infringement and the spread of counterfeit goods have been made easier by the online marketplace. Many merchants can be found on social media and e-commerce platforms, which facilitates counterfeiters' use of unregistered trademarks. Because of this, companies have a hard time keeping an eye out for illegal trademark usage in online markets. The decentralized nature of the internet can make enforcement efforts more difficult, even if a company finds an infringement. This is because the infringing party may operate from a different country or jurisdiction, creating problems for cross-border enforcement.

3.The speed at which information circulates in the digital marketplace can make controlling a brand's reputation more difficult. Consumer trust can be eroded by bad press brought on by violations or fake goods, which can affect sales and brand reputation. To lessen the harm brought on by the unlawful use of their trademarks, businesses must invest in reputation management techniques in addition to addressing the legal issues of infringement.

4.Advanced techniques of trademark infringement have also emerged as a result of technological advancements, such as digital piracy and the application of artificial intelligence to produce fake goods that closely resemble well-known trademarks. Because infringers may use strategies to hide their actions or avoid detection, this progression makes it more challenging for businesses to detect and stop infringement. Enforcement operations may also be made more difficult by the blurring of the distinctions between authentic and counterfeit goods caused by the marketing and sales of digital platforms.

COMMON LAW PROTECTIONS AND STATUTORY PRINCIPLES GOVERNING UNREGISTERED TRADEMARKS.

1.Passing Off.

Section 27(2) of the Trade Mark Act, 1999 provides for rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof. It is a common law principle that protects the brand image of a good or a service, it is the process of legal action that prohibits the misrepresented good or service from being sold under the pretense of original good or service. It safeguards the goodwill of the marks from the evil of misrepresentation.

2. Section 34 of The Trade Marks Act.

It protects the interest of the proprietor of an unregistered Trade Mark by way of prohibiting an authorized owner of a Trade Mark to abstain a person to use a mark similar or identical to the mark, which has been in use for period prior to such registration of Trade Mark.

3. Section 35 of The Trade Marks Act.

This section prohibits the proprietor or a registered user of a registered trade mark to interfere with any bona fide use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any bona fide description of the character or quality of his goods or services.

Effective strategies for Monitoring Potential Trademark Infringements and Strategies for Enforcement in the Digital Marketplace.

1. Building Brand Loyalty.

Building a devoted clientele can aid in lessening the effects of fake goods. Through newsletters, loyalty programs, and social media, cultivate a close relationship with your customers and encourage them to report suspicious counterfeits. Building trust and distinguishing authentic products from fakes by disseminating information about product origins and production methods.

2. Legal action.

Businesses may need to step up their response if the infringement continues after initial attempts. Filing lawsuits and pursuing legal action against infringers for damages and injunction relief to cease the infringing acts are examples of legal action. Alternative methods of resolving conflicts include the use of arbitration or mediation to settle conflicts more efficiently and pleasantly.

3. Market Surveillance.

- Conducting routine manual searches on well-known search engines and e-commerce sites to find illegal listings or fake goods.
- Keeping an eye on rivals' product offerings and marketing strategies to make sure they are not violating the trademark.
- Monitoring social media sites for any posts or ads that would violate the trademark.

4. Automated Tools.

The ability of a company to identify any trademark infringements in real time can be greatly improved by using automated monitoring systems.

These programs can be:

- **AI-Powered Solutions:** Make use of AI technology that can recognize fake goods that closely match the trademarked items by analyzing photos and content.
- **Web crawlers:** These are used to search for illegal trademark usage on social media platforms, e-commerce websites, and online marketplaces.
- **Keyword Alerts:** Businesses may swiftly spot possible infringers by setting up alerts for particular trademark-related keywords, phrases, or images.

PROMINENT EXAMPLE OF TRADEMARK INFRINGEMENT IN THE DIGITAL MARKETPLACE.

Louis Vuitton v. Alibaba is a well-known case involving trademark infringement in the online marketplace. Leading luxury brand Louis Vuitton has had difficulty stopping the selling of fake goods on Alibaba's online marketplaces, such as Taobao. With thousands of independent vendors, Alibaba is a significant e-commerce behemoth that serves as a haven for fake goods.

Unauthorized vendors were listing counterfeit goods that imitated Louis Vuitton's recognizable designs, emblems, and trademarks. The sheer number of vendors and the speed at which infringing products were being relisted made it difficult for the brand to effectively monitor and remove the listings. The decentralized structure of Alibaba's marketplace makes it challenging to regulate the flow of fake goods, even with anti-counterfeiting mechanisms in place.

After pursuing legal action, Louis Vuitton eventually negotiated with Alibaba to create stronger anti-counterfeiting measures. This case brings to light a number of issues that companies encounter in the digital marketplace, including the difficulty of keeping an eye on infringement across various vendors, the necessity of working with e-commerce platforms, and the difficulties of enforcing laws in international online marketplaces. It illustrates how, in order to successfully combat trademark infringement, luxury firms need to consistently spend in monitoring systems, legal action, and cooperative efforts with internet platforms.

CONCLUSION

The difficulties associated with unregistered trademarks in the online market underscore how difficult it is to safeguard brand identification in a time of swift technical development and heightened competition. Businesses must rely largely on common law concepts that might not fully handle the complexities of internet commerce in order to establish and enforce their rights in the absence of the strong safeguards provided by registration. These challenges are made worse by the digital environment, which is marked by the growth of social media and e-commerce platforms. This makes it simpler for trademark infringement to occur, complicates the process of establishing ownership, and causes uncertainty for consumers. Effective enforcement tactics are further hampered by jurisdictional law differences and the resource constraints that many enterprises face. Businesses must continue to be watchful and proactive in safeguarding their unregistered trademarks as the digital marketplace develops. This could entail investigating prospective legal revisions that could better protect unregistered rights, educating consumers, and implementing improved monitoring procedures. Businesses may more successfully negotiate the challenges of the digital era by tackling these protection and enforcement concerns, guaranteeing that their brands stay safe and reliable in a setting that is becoming more and more competitive. Protecting unregistered trademarks in the digital age requires alertness, flexibility, and strategic enforcement. To effectively combat infringement, businesses must use sophisticated monitoring tools, establish cooperative relationships with platforms, and increase customer awareness. By

taking a proactive stance, they may safeguard their brand identity, building confidence and guaranteeing long-term viability in the industry.

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