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## **THE LEGAL VIABILITY OF OLFACTORY TRADEMARKS IN INDIA: REASSESSING REPRESENTATION AFTER THE SUMITOMO DECISION**

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### **ABSTRACT**

*The recognition of olfactory trademarks has long posed challenges within trademark law due to their intangible and subjective nature. While several jurisdictions have cautiously experimented with scent marks, Indian trademark law has remained resistant, primarily due to statutory requirements of graphical representation and distinctiveness under the Trademarks Act, 1999. This position underwent a significant shift in November 2025, when the Controller General of Patents, Designs and Trade Marks (CGPDTM) accepted the first-ever olfactory trademark application filed by Sumitomo Rubber Industries Ltd. for a rose-scented tyre.*

*This paper critically examines the legal significance of this development and evaluates whether the decision marks a sustainable doctrinal shift or merely an isolated innovation. The paper analyses the interpretative constraints imposed by statutory requirements and situates the Sumitomo decision within broader jurisprudence on non-traditional trademarks. Particular attention is paid to the adoption of a scientific, seven-dimensional olfactory representation*

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<sup>1</sup> Intern- Lex Lumen Research Journal.

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*model, which enabled the Registry to reconcile technological advancement with legal standards of objectivity, clarity, and durability.*

*The paper further examines the challenges relating to the recognition of olfactory trademarks despite the Sumitomo decision. It argues that while the Sumitomo decision marks a turning point, its long-term viability depends on the development of structured regulatory guidelines and consistent interpretive standards. Ultimately, the paper places the recognition of olfactory trademarks as both an evolution and a challenge for Indian trademark law.*

**KEYWORDS:** Olfactory Trademarks, Non-Traditional Trademarks, Graphical Representation, Distinctiveness, Sumitomo Decision.

## I. INTRODUCTION:

On November 21, 2025, the landscape of Indian trademark law was significantly altered when the Controller General of Patents, Designs and Trademarks (CGPDTM) accepted its first-ever olfactory trademark application filed by Sumitomo Rubber Industries Ltd. for a floral fragrance reminiscent of roses as applied to tyres.<sup>2</sup> This is a breakthrough decision of the Registry after years of rejecting such applications, despite global jurisprudence having long adopted olfactory trademarks.

For years, Indian law has steered away from recognising olfactory trademarks, causing a severe setback in the development of the Indian trademark law. In this case as well, the Registry had initially rejected the application raising objections under Sections 9(1)(a) and 2(1) (zb) of the Trademarks Act, 1999 for lack of distinctiveness and graphical representation.<sup>3</sup> Following this, scientists from IIIT Allahabad had

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<sup>2</sup> Ayushi Shukla, *India's Trademark Registry Accepts Its First Smell Trademark for Japanese Company's Rose-Scented Tyres*, LiveLaw (Nov. 21, 2025, 8:27 PM), <https://www.livelaw.in/ipr/india-first-smell-trademark-sumitomo-rubber-rose-fragrance-tyres-310803>.

<sup>3</sup> *Id.*

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created a one-of-a-kind graphical representation of a rose like smell in a seven-dimensional space, prompting quick acceptance.

This is a landmark decision as it brings together scientific advancement and international jurisprudence.<sup>4</sup> This decision proves that India is willing to move above the restrictive statutory interpretations that have traditionally defined the country's trademark system and embrace innovation in trademark representation.

This paper seeks to analyse this decision and assess the legal viability of olfactory marks in India. It also seeks to understand how the reason for this decision is different from the multiple rejections faced by olfactory trademarks historically in India and further evaluate the consequences and impact of this decision.

## METHODOLOGY:

This paper uses a doctrinal methodology wherein various secondary sources such as journal articles, books, newspaper articles, etc have been used to understand and evaluate the viability of olfactory trademarks in India and offer a comparative study of the recognition of such trademarks in global jurisprudence.

## II. CONCEPTUAL FOUNDATIONS OF OLFACTORY TRADEMARKS AND ITS POSITION IN INDIA

Olfactory trademarks are a category of non-traditional trademarks that recognises smells, or unique scents, as the exclusive identifier of a product and helps distinguish from other products in the market. Like a logo or design helps identify the product, the smell mark identifies the product through its scent. Because smells can elicit strong

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<sup>4</sup> Anand and Anand, *Scenting the Future: How India's First Smell Mark Application Aligns with Global Jurisprudence*, ANAND AND ANAND - News & Insights [(last visited Dec. 30, 2025)], <https://www.anandanand.com/news-insights/scenting-the-future-how-indias-first-smell-mark-application-aligns-with-global-jurisprudence/>.

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emotional reactions and memory-based associations, they are regarded as effective branding techniques.<sup>5</sup>

As markets grow, consumers create associations of products through various features including sound, movement, shape, and smell in addition to visual indicators. Recognizing these marks is extremely crucial for India because it introduces doctrinal flexibility into the trademark regime, allowing it to adapt to evolving modes of consumer perception.<sup>6</sup>

Traditional trademarks are doctrinally easier to accommodate because their representation is fixed and objectively perceivable through visual signs, logos, symbols, etc. On the other hand, smell marks rely only on sensory perception that is non-visual.<sup>7</sup> Thus, the recognition of olfactory trademarks poses several challenges. Some of these include – the obvious inability to present the scent in a stable visual format, intangibility and most importantly, the subjectivity associated with smells.<sup>8</sup>

To be registrable, a trademark must possess three features, which include distinctiveness, representation and non-functionality. Therefore, for a smell to be registered, the fragrance cannot be a common or natural feature of the product; rather, it must serve as a sign of commercial provenance. The fragrance must not be associated with the main purpose of the product. Most importantly, following the international standard set in *Ralf Sieckmann v Deutsches Patent- und Markenamt*<sup>9</sup>

<sup>5</sup> Muhammed Hashim A.K. & Dr. K. Jameela, *Olfactory Trademarks in Modern IP Regimes: A Comparative Study of Indian Law and International Approaches to Smell Mark Registration*, 7 Indian Journal of Law and Legal Research 468 (2025).

<sup>6</sup> Pravin Anand, *When Art Meets Science in Trademark Law: Reflections on India's First Smell Mark*, ANAND AND ANAND - News & Insights [(Nov. 26, 2025) (last visited Dec. 30, 2025)], <https://www.anandandanand.com/news-insights/when-art-meets-science-in-trademark-law-reflections-on-indias-first-smell-mark/>.

<sup>7</sup> *Supra* note 5, at 465.

<sup>8</sup> *Id.*

<sup>9</sup> Case C-273/00, 12 December 2002, European Court of Justice.

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(hereinafter referred to as the *Siekmann* case) the fragrance must be graphically represented in a “clear, precise, self-contained, durable and objective” manner.

In addition to these reasons, Indian jurisprudence has historically refrained from recognising olfactory trademarks since the primary legislation, the Trademarks Act, 1999, which governs the registration of trademarks in India, imposes conditions that made olfactory trademarks practically improbable. These are precisely why the current recognition of Sumitomo Rubber Industries’ application for the recognition of their floral fragrance / smell reminiscent of roses as applied to tyres, is a remarkable landmark decision which marks a significant shift in the interpretative approach to trademark representation in India.

Until this year, India had no accepted smell mark because of the difficulty in fulfilling the graphical representation requirement. The closest that the Judiciary has gone in addressing smell marks was when the Delhi High Court in the case of *Coty Germany Gmbh vs Xeryus Retail Private Limited*<sup>10</sup> in 2023 imposed a permanent injunction prohibiting the sale of perfume testers with the "Calvin Klein" or "cK" trademarks on two websites.<sup>11</sup> However, the Court did not examine the perfume's distinctive fragrance infringement. Rather, it merely concentrated only on how similar the scent testers' branding trademarks were.<sup>12</sup>

Against this doctrinal backdrop of uncertainty and judicial hesitation, the Registry's order recognising Sumitomo Rubber's smell mark is the first instance where the Registry accepted a technological solution to overcome the legal and practical barriers.

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<sup>10</sup> CS(COMM) 1298/2018 & I.A. 8603/2023.

<sup>11</sup> Tejaswini Kaushal, *Law and 'Odor': Establishing a Case for Olfactory Marks in Indian IP Landscape – Part I*, NLIU Cell for Studies in Intellectual Property Rights – Copyright [(Sep. 30, 2023) (last visited Dec. 30, 2025)], <https://csipr.nliu.ac.in/copyright/law-and-odor-establishing-a-case-for-olfactory-marks-in-indian-ip-landscape-part-i/>.

<sup>12</sup> *Id.*

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By using a 7-dimensional scientific olfactory model, which is a first-of-its-kind method in trademark representation globally, the decision brings together Indian practice in line with global jurisprudence, including those of the EU, UK, Australia, and the USA.

<sup>13</sup>

Initially, the application was denied citing the lack of distinctiveness and graphical representation. Subsequently, Mr. Pravin Anand was appointed as the amicus curie in this matter. Mr. Anand notes that the challenges with respect to graphical representation could be addressed by presenting comparative jurisprudence and examining scientific techniques that can convert a fragrance into a stable, objective form.<sup>14</sup>

The Registry had not assented to the registration of the mark until the 7D model represented the fragrance as a vector in that space.<sup>15</sup> Upon acceptance, the Registry reasoned that the mark is inherently distinctive because the rose scent has no natural or functional link with tyres. Secondly, the 7D model allowed the odour to be graphically and objectively represented. The use of both subjective description and scientifically quantified model satisfied the Registry's required criteria for clarity and objectivity.

This scientific approach translated the fragrance into quantifiable coordinates across seven categories (floral, fruity, woody, nutty, pungent, sweet, and minty) providing the precision and objectivity required by Indian law. This development signals a

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<sup>13</sup> Vikrant Rana & Huda Jafri, *India's First Smell Trademark: CGPDTM Accepts Rose Fragrance for Tyres*, CHAMBERS & PARTNERS - Articles (Nov. 25, 2025) [(last visited Dec. 30, 2025)], <https://chambers.com/articles/india-s-first-smell-trademark-cgpdtm-accepts-rose-fragrance-for-tyres>.

<sup>14</sup> Pravin Anand, *supra* note 6.

<sup>15</sup> *Id.*

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doctrinal shift in India towards embracing scientific tools and non-conventional trademarks.<sup>16</sup>

### III. DOCTRINAL IMPLICATIONS AND THE FUTURE OF OLFACTORY TRADEMARKS IN INDIA

The recognition of olfactory trademark forces a reconsideration of how trademark law views the perceptibility and identifiability of non-traditional marks. The assumption that a trademark must be visually perceptible to operate as an identifier of the product has now shifted to incorporate non-traditional features like scents.

The most interesting part of the order lies in the fact that the Registry did not treat the Sumitomo's application as an exception. Instead, it serves as a solution to the looming problem of graphical representation by shifting the interpretation to a standard that requires any sort of representation that showcases clarity, precision, objectivity, and durability, regardless of whether it employs traditional visual depiction. This approach aligns with contemporary trends favouring purposive interpretation over strict formalism.<sup>17</sup>

Secondly, this serves as a precedent for the recognition of other non-traditional trademarks. This olfactory decision suggests that the Indian trademark system possesses the inherent flexibility that is required to accommodate emerging sensory marks through innovative representation methodologies rather than legislative amendment, further encouraging innovation, novelty, creativity and technological

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<sup>16</sup> *Supra* note 5.

<sup>17</sup> Saurabh Sharma, *India's First Smell Trademark Accepted by CGPDTM: Sumitomo Rubber Case Marks a New Era for Non-Conventional Trademarks | Olfactory Trademark under Trade Marks Act, 1999*, My Tax Expert - Blog [(Dec. 19, 2025) (last visited Dec. 30, 2025)], <https://www.mytaxexpert.co.in/post.php?id=106>.

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development, along with adopting an inter-disciplinary approach to perceiving the law.

The use of IIIT Allahabad's scientific model shows how technology development can overcome legal challenges that were previously thought to be unsolvable. This approach harmonises trademark law with contemporary technology through a scientific methodology.

Instead of merely adopting the *Sieckmann* test in its entirety, as it is, the Indian ruling respects the test's fundamental logic of clarity, precision and objectivity, while embracing a novel representation methodology that wasn't accessible at the time *Sieckmann* was decided. As a result, India is positioned as a jurisdiction that is independent of both the US's liberal approach and the EU's historical attitude while being more stringent, making India more flexible than its counterparts.

While the CGPDTM's acceptance of an olfactory trademark in the *Sumitomo Rubber case* marks a doctrinal breakthrough, it simultaneously exposes multiple unresolved legal and procedural uncertainties within Indian trademark law. One of the challenges that still persists is that of distinctiveness, especially since scent is subjective. This remains to be the most complex problem that plagues the recognition of olfactory trademarks. Scent comparison lacks intuitive judicial tools, in contrast to visual or phonetic comparison. At this point, it becomes extremely challenging for the Court to determine whether two odours are deceptively similar.

Furthermore, even in the event that the registration is approved, the protection is essentially theoretical due to the lack of legal direction regarding the evaluation of infringement. The Judiciary will have to decide if olfactory confusion is legally cognizable and what standards of proof would be adequate to prove it.

When taken as a whole, these issues show that although the *Sumitomo* ruling represents a significant leap in trademark law, it does not yet provide a solid precedential position. The adoption of consistent criteria is more important for the

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legal sustainability of olfactory trademarks in India than an isolated recognition. The real difficulty is in regulating smell within India's legal framework, not in identifying it as a brand.

## IV. RECOMMENDATIONS AND CONCLUSION:

The most immediate and effective response to the doctrinal uncertainty surrounding olfactory trademarks lies in the formulation of clear and comprehensive administrative guidelines governing their recognition, registration, and enforcement. In the absence of statutory amendments, such guidelines issued by the CGPDTM could serve as an interpretative framework capable of bridging the gap between rigid legislative text and evolving technological realities.

Secondly, these guidelines must clearly specify distinctiveness thresholds specifically for olfactory marks. Unlike visual signs, scents often operate at a subconscious and subjective level and may not immediately function as indicators of origin. The Registry should therefore clarify the evidentiary burden required to establish acquired distinctiveness, such as consumer surveys, market recognition data, duration of use, and advertising investment specifically linking the scent to the source.

Finally, procedural clarity is required regarding examination, opposition, and enforcement mechanisms. The guidelines could prescribe the use of expert panels, scientific methodology and requirements, or standardised testing protocols when assessing similarity. This would help reduce judicial uncertainty and prevent inconsistent evidentiary thresholds.

In conclusion, the recognition of an olfactory trademark in the *Sumitomo Rubber* case represents an important turning point in Indian trademark law. It signifies a departure from rigid formalism and reflects a willingness to adapt legal interpretation to scientific and technological advancements. By accepting a scientifically modelled olfactory representation, the Indian trademark regime has acknowledged that sensory

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perception, when objectively measurable, can perform the essential trademark function of source identification.

The ruling does not, however, create a complete legal framework for olfactory markings on its own, even while it broadens the conceptual bounds of trademark law. Questions relating to distinctiveness, infringement assessment, evidentiary thresholds, and the interface between functionality and exclusivity remain largely unresolved. Without structured guidelines, the risk of inconsistent application and doctrinal uncertainty persists.

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