

ISSN: 3048-8702(O)

LLRJ

LEX LUMEN RESEARCH JOURNAL

VOLUME 2 - ISSUE 3

2026

EDITOR-IN-CHIEF: DR. RAZIT SHARMA,
PUBLISHER: MRS. RACHANA

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It has been accepted for inclusion in the Journal after Due-review process.

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THE GREEN MIRAGE: LACUNAE IN TRADEMARK LAW AND THE ECO-BRANDING PARADOX

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ABSTRACT

The growing emphasis on sustainability in the fashion industry has significantly influenced modern branding practices, with environmental language increasingly becoming a part of trademarks. This paper examines how such “green trademarks” operate within the framework of the Trade Marks Act, 1999, with specific focus on section 9(2)(a), which prohibits deceptive marks. While the provision appears to be broad in terms of scope, this study argues that it remains limited in addressing sustainability-related expressions that function through suggestion rather than explicit claims.

This research uses a doctrinal approach to study how trademarks that include words like “eco” or “green” can strongly influence what consumers believe about a product, even though there is no requirement to prove these claims when the trademark is registered. By analysing relevant case laws and real-world branding practices in the fashion sector, the paper highlights a growing disconnect between the symbolic meaning conveyed by trademarks and the absence of legal scrutiny over such meaning. A comparative perspective further shows that while this limitation exists across multiple legal systems, they have developed supplementary regulatory frameworks to address environmental claims in the marketplace.

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The paper argues that the problem is not just the lack of checking, but also that trademarks are now being used to send messages about values and beliefs. It concludes by proposing targeted reforms, including limited substantiation requirements, updated examination guidelines and greater institutional coordination. These measures aim to ensure that trademark law continues to be responsive to contemporary branding practices while preserving its core principles.

KEYWORDS: Trademarks, Sustainability, Greenwashing, Fashion Industry, Eco-Branding

INTRODUCTION:

In recent years, the fashion industry has become a big part of discussions about sustainability. Issues like climate change, environmental damage and unfair labour practices have made consumers more careful about what they buy and where it comes from. Because of this, sustainable fashion is no longer a niche idea but something people now expect. This change is also seen in global policies, where sustainable fashion is linked to ideas like recycling, reusing and responsible consumption.² Brands are no longer judged solely on style and affordability but also on how responsible they appear with respect to their production and business practices. This development has significantly influenced the way brands present themselves to the public at large.

One notable change is the rapidly increasing use of environmental language in branding systems. Terms such as “eco”, “green”, “conscious” and “responsible” are now commonly seen not just in advertisements, but as part of brand names, product lines and labels. These words are designed to communicate certain values to consumers, suggesting that the brand is mindful of the environmental impact it causes. In a competitive market like fashion, where differentiation is central, such terms can shape consumer perception and build trust. Research has shown that

² Ellen MacArthur Foundation, A New Textiles Economy: Redesigning Fashion's Future (2017)

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environmental assertions in branding significantly influence consumer purchasing decisions, particularly where those assertions are perceived as credible and aligned with growing sustainability awareness among consumers.³

This development brings trademark law into an interesting and evolving space. Traditionally, trademarks serve a clear and limited function, which is to identify the source of goods and distinguish one business from another. They were not intended to convey detailed information about the nature or quality of a product beyond its origin. However, in an era where branding strategies have become more value-driven, trademarks are increasingly being used to communicate ideas that go beyond simple identification. In the context of sustainability, a trademark can carry with it an implicit message about environmental responsibility, even without providing any specific details about the underlying practices. This raises the concern of “greenwashing”, where vague or unsubstantiated environmental assertions may mislead consumers despite the absence of verifiable standards.⁴

While the Act does address concerns such as distinctiveness and potential deception, it does not explicitly provide for the growing use of broad and value-based terms like sustainability. Other areas of law, such as consumer protection and advertising regulation, have begun to engage more directly with environmental claims and their accuracy, creating an overlap between different legal provisions addressing similar issues from different angles. The examination process under trademark law does not involve verifying whether terms like “eco” or “sustainable” are factually accurate. This position reflects the traditional scope of trademark examination, which is limited to assessing registrability criteria such as distinctiveness and deceptiveness, rather than the substantive verification of claims embedded within the mark.⁵

³ Organisation for Economic Co-operation and Development, *Environmental Claims: Findings and Conclusions of the OECD Committee on Consumer Policy* (2020)

⁴ European Commission, *Guidance on the Interpretation and Application of Directive on Unfair Commercial Practices* (2021)

⁵ Dev Gangjee, *Relocating the Law of Geographical Indications* 154-155 (Cambridge Univ. Press 2012)

This approach differs from developments in other jurisdictions, particularly in Europe, where substantiation of environmental claims is increasingly required. In India, such terms can be incorporated into trademarks without any obligation to prove their authenticity at the time of registration. The intersection of sustainability and trademark law is therefore not immediately obvious, but it is becoming increasingly relevant today. As brands continue to embed environmental language into their identities, trademarks are becoming more than just symbols of origin. They now act as carriers of meaning and perception. This paper explores that very evolving relationship, focusing on how sustainability as a concept interacts with the traditional functions of trademark law.

RESEARCH QUESTIONS:

The study is based on the following questions:

1. To what extent does Section 9(2)(a) of the Trade Marks Act, 1999⁶ effectively address the use of sustainability-related terms that may create a misleading impression?
2. Whether the existing framework of trademark law is structurally equipped to assess and respond to environmental or value-based claims embedded within trademarks?
3. What factors contribute to the limited scrutiny of sustainability-oriented branding at the stage of trademark registration?

LITERATURE REVIEW:

Traditional scholarship on trademark law focuses on its core function of protecting brand identity and preventing consumer confusion. It generally recognises that the trademark law is not intended to verify the truth of claims, but to assess distinctiveness and avoid clear deception. More recent academic work, however, has

⁶ The Trade Marks Act, No. 47 of 1999, Acts of Parliament, 1999 (India).

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begun to explore how branding has evolved, particularly with the growing use of sustainability-related language.

Studies on greenwashing highlight the increasing use of terms like “eco” and “sustainable” in the fashion industry, noting that such expressions often influence consumer perception without offering clear or verifiable meaning.

Comparative literature shows that while legal systems such as those in the European Union, the United Kingdom and the United States regulate environmental claims through separate frameworks, trademark law itself remains largely unchanged. This points to a gap in understanding how trademark registration interacts with sustainability claims, particularly in the Indian context, which this study seeks to address.

RESEARCH METHODOLOGY:

This research uses a doctrinal approach to further examine the relationship between trademark law and sustainability-related branding. The study relies primarily on secondary sources, including statutory provisions, judicial decisions, academic literature and policy documents. The Trade Marks Act, 1999⁷ forms the central legal framework for analysis, with particular focus on Section 9(2)(a) and its application in practice.

A case-based method has been used to understand how courts interpret deception and consumer perception within trademark law. Relevant Indian judgments have been analysed to identify the scope and limitations of existing legal principles. In addition, selected international materials have been used to provide a comparative perspective on regulatory mechanisms outside trademark law.

The study also incorporates a qualitative analysis of real-world branding practices within the fashion industry. Examples of sustainability-related trademarks have been

⁷ The Trade Marks Act, No. 47 of 1999, Acts of Parliament, 1999 (India).

examined to understand how environmental language is used in practice and how it interacts with the legal framework. This helps bridge the gap between theoretical provisions and their practical implications.

The research is both descriptive and critical in nature. It not only explains the current legal position but also evaluates its effectiveness in light of evolving market practices. Based on this analysis, the study proposes recommendations aimed at addressing the identified gaps while remaining consistent with the foundational principles of trademark law.

LEGAL FRAMEWORK UNDER THE TRADE MARKS ACT, 1999:

An important but underexplored area under the Trade Marks Act, 1999⁸ is the use of environmental or sustainability-related terms in trademarks. The Act lays down provisions governing the conditions under which a mark may be registered and the grounds on which registration may be refused. Section 9 is particularly significant as it deals with the absolute grounds for refusal. Section 9(1) addresses distinctiveness and descriptiveness, ensuring that marks are capable of distinguishing goods and services in a competitive market. Section 9(2) focuses on marks that may be refused registration on broader public interest grounds. Section 9(2)(a) in particular provides that a mark shall not be registered where it is likely to deceive the public or cause confusion. This provision reflects India's alignment with international trademark standards, which similarly prohibit registration of marks that are liable to mislead the public as to the nature, quality or geographical origin of goods or services.⁹

While this provision is broad enough to cover various forms of deception, Indian courts have yet to examine whether terms like "eco", "green" or "sustainable" in trademarks could be misleading where they are not supported by clear evidence or appropriately substantiated. This question is of growing relevance today, given that

⁸ The Trade Marks Act, No. 47 of 1999, Acts of Parliament, 1999 (India).

⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 15(2), Apr. 15, 1994, 1869 U.N.T.S. 299.

consumers are increasingly influenced by environmental concerns and commonly associate such terms with responsible or ethical products. Empirical research indicates that consumers often find it difficult to distinguish between genuine and misleading environmental claims, which heightens the risk of being influenced by vague or unsubstantiated sustainability-related terminology.¹⁰

In most trademark-related cases, judicial attention has centred on confusion between similar marks rather than on the message a mark itself conveys. For instance, in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*¹¹, the Supreme Court held that confusion should be assessed from the standpoint of an average consumer with imperfect recollection. The court considered factors such as similarity of names, the nature of goods, and the class of purchasers. However, the case does not address situations where a trademark might convey a particular impression about a product, such as suggesting it is “environmentally responsible”.

At the same time, Indian courts have shown awareness of misleading claims in other areas of law. In *Hamdard Dawakhana v. Union of India*¹², the court recognised that misleading commercial statements could be restrained to protect the public interest. Similarly, in *Reckitt & Colman of India Ltd. v. M.P. Ramachandran*¹³, the court observed that inaccurate or exaggerated claims in advertising can affect consumer choices and may constitute unfair competition. These decisions demonstrate that the law takes misleading representations seriously, especially where they hold the power to shape consumer decisions.

However, this careful approach is not consistently applied at the stage of trademark registration. A trademark typically becomes a long-term element of a brand’s identity and is repeatedly encountered by consumers. If such a mark includes

¹⁰ ECON. & SOC. RES. INST., Consumers Struggle to Distinguish Genuine and 'Greenwashed' Environmental Claims in Advertisements (2024)

¹¹ *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 S.C.C. 73 (India)

¹² *Hamdard Dawakhana v. Union of India*, A.I.R. 1960 S.C. 554 (India).

¹³ *Reckitt & Colman of India Ltd. v. M.P. Ramachandran*, 1999 P.T.C. (19) 741 (Ker.) (India).

environmental language, it may leave a lasting impression that the products meet certain standards, even when no clear basis exists for that belief. Unlike advertisements, which are temporary and more readily challenged, trademarks remain in use over extended periods and continue to shape consumer perception throughout.

As sustainability becomes an increasingly significant factor in the market, there is value in considering whether the existing legal framework for deceptive trademarks under Section 9(2)(a) can gradually be extended to cover such situations. A balanced approach is necessary, one that ensures trademarks remain reliable indicators for consumers while permitting businesses to communicate their values in a fair and transparent manner. International guidance also emphasises that trademark systems must balance consumer protection against deceptive practices with the need to avoid unnecessary restrictions on legitimate commercial expression.¹⁴

GREENWASHING AND ITS LEGAL DIMENSIONS:

With a growing emphasis on sustainability in recent years, businesses have begun to actively position themselves as environmentally responsible. While this shift has contributed to increased consumer awareness and demand for ethical practices, it has also given rise to the phenomenon of greenwashing. Greenwashing refers to the practice of making exaggerated, vague or unsubstantiated environmental assertions in order to create a misleading impression of a product or brand's environmental impact, when in reality that is not the case. Such representations may appear in advertisements, labels, packaging or brand communications. They hold the power to influence consumer choices in subtle yet significant ways. Regulatory and policy bodies have increasingly recognised that deceptive environmental assertions,

¹⁴ World Intellectual Property Organization, WIPO Intellectual Property Handbook: Policy, Law and Use 2d ed. (2004)

commonly referred to as greenwashing, can distort consumer decision-making and undermine trust in genuinely sustainable products.¹⁵

From a legal standpoint, greenwashing raises concerns primarily in the areas of consumer protection, advertising regulation and unfair trade practices. In India, although no single statute directly defines or regulates greenwashing, its elements can be addressed through existing legal frameworks. For instance, the Consumer Protection Act, 2019 prohibits misleading advertisements and unfair trade practices that may deceive consumers. Environmental claims that lack clarity or scientific basis can fall within this scope, particularly when they influence purchasing decisions.

While Indian courts have not explicitly used the term “greenwashing”, analogous issues involving misleading representations have been addressed. In *Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd.*¹⁶, the Delhi High Court examined comparative advertising and held that any claims made by companies must be truthful and capable of being substantiated.

The court further observed that while a degree of exaggeration may be acceptable in advertising, any claim that misleads consumers or lacks factual basis may be restrained. This reasoning is applicable in the context of environmental claims, where terms like “eco-friendly” or “natural” may not always carry a clear or verifiable meaning.

In *Hindustan Unilever Ltd. v. Gujarat Co-operative Milk Marketing Federation Ltd.*¹⁷, the court dealt with misleading advertising and stated that commercial speech must not distort facts in a manner capable of deceiving consumers. The judgment also highlighted that even indirect or implied representations can be problematic if they

¹⁵ Organisation for Economic Co-operation and Development, Protecting and Empowering Consumers in the Green Transition: Misleading Green Claims (2025)

¹⁶ *Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd.*, 2010 (42) P.T.C. 88 (Del.) (India).

¹⁷ *Hindustan Unilever Ltd. v. Gujarat Co-operative Milk Marketing Federation Ltd.*, Suit (L) No. 204 of 2017 (Bombay H.C. June 16, 2017) (India).

generate a false impression. This principle applies directly to greenwashing, since environmental claims are often framed in broad or suggestive terms rather than explicit statements, making them harder to challenge while remaining capable of influencing consumer perception.

Another relevant development is the regulatory action by the Advertising Standards Council of India.¹⁸ Although not a judicial authority, the ASCI has issued guidelines on environmental claims, requiring advertisers to ensure that such claims are specific, verifiable and not misleading. These guidelines reflect growing recognition that sustainability-related representations require closer scrutiny. However, since ASCI's powers are largely self-regulatory, enforcement remains limited compared to statutory mechanisms. When examined from an international perspective, courts and regulators have begun to engage more directly with greenwashing.

In *Australian Competition and Consumer Commission v. Volkswagen Aktiengesellschaft*¹⁹, the company was found liable for misleading environmental claims regarding emission standards. The case illustrated how false representations about environmental performance can attract legal consequences under consumer protection law.

While the facts relate to emissions rather than branding language, the underlying principle remains relevant that the environmental claims must be accurate and adequately supported by evidence.

The legal challenge posed by greenwashing often lies in the nature of the claims themselves. Unlike clear factual misstatements, environmental assertions are frequently expressed in general or undefined terms. Words like “green”, “eco-conscious” or “sustainable” do not carry fixed legal meanings, making it

¹⁸ Advertising Standards Council of India, The Code for Self-Regulation in Advertising, <https://www.ascionline.in/the-asci-code/>

¹⁹ *Australian Competition and Consumer Commission v. Volkswagen Aktiengesellschaft*, [2019] FCA 2166 (Austl.).

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practically difficult to assess their accuracy. As a result, businesses may rely on such language without providing detailed explanations or substantiation, leaving consumers to interpret these representations based on general assumptions. International regulatory studies have noted that environmental marketing terms are often vague and lack standardised legal definitions, making independent verification by consumers difficult.²⁰

This creates a grey area within the law. On one hand, businesses have the freedom to market their products and communicate brand values. On the other, consumers rely significantly on such representations to make informed choices. The balance between these interests becomes particularly delicate in the context of sustainability, where expectations are shaped by broader social and environmental concerns. This balancing approach is reflected in unfair commercial practices law, which seeks to protect consumers from misleading representations while preserving legitimate promotional communication.²¹

Another important dimension of greenwashing in trademark law relates to distinctiveness. Trademarks must be distinctive and capable of distinguishing the goods or services of one entity from those of another. Environmental terms, however, are increasingly used across industries in a generic or descriptive manner.

This raises concerns about whether such terms, when employed without clear standards or definitions, can truly function as distinctive indicators.

Where multiple businesses adopt similar sustainability-related language without substantiation, this may dilute the distinctiveness of trademarks and reduce their reliability as indicators of origin and quality. It creates a situation where a mark continues to convey a particular message even if the underlying reality has changed or was never fully accurate.

²⁰ Organisation for Economic Co-operation and Development, *Environmental Claims: Findings and Conclusions of the OECD Committee on Consumer Policy* (2020)

²¹ Council Directive 2005/29, art. 5, 2005 O.J. (L 149) 22 (EC).

Overall, greenwashing presents a nuanced challenge within trademark law. The absence of direct judicial consideration in this area suggests that the law is still adapting to changing market practices. A more attentive approach to how environmental language is used within trademarks could help ensure that such marks remain trustworthy, while also allowing space for genuine and verifiable sustainability efforts to be effectively communicated. Trademark law continues to evolve to address new commercial practices while maintaining its core function of indicating source and protecting consumer trust.²²

THE RISE OF “GREEN TRADEMARKS” IN FASHION:

The growing importance of sustainability in the fashion industry has not only influenced production practices but also the way brands build their legal identity. Unlike earlier periods where sustainability was communicated through advertisements or corporate disclosures, brands now embed such messaging directly into legally protected marks.

A number of well-known brands illustrate this trend. H&M has used the term “Conscious” as a distinct category within its product line. Although the word appears to be a simple representation, it carries a strong ethical and environmental connotation. It does not define a specific standard; rather, it suggests a general sense of responsibility. As a trademark element, it functions as a signal encountered by consumers across stores and platforms, gradually building a particular perception. This concern has been formally recognised at the regulatory level. The Netherlands Authority for Consumers and Markets²³, following its investigation into H&M's marketing practices, concluded that the company had made insufficiently substantiated sustainability assertions, specifically identifying its use of the term

²² World Intellectual Property Organization, WIPO Intellectual Property Handbook: Policy, Law and Use 2d ed. (2004)

²³ Commitment Decision H&M, Case No. ACM/22/179209, Doc. No. ACM/UIT/583382 (Neth. Auth. for Consumers & Mkts. Sept. 13, 2022), <https://www.acm.nl/system/files/documents/commitment-decision-hm.pdf>.

“Conscious” as an example of a claim that could not be adequately verified by consumers.²⁴

Similarly, Zara uses “Join Life” as part of its branding. This phrase doesn’t clearly describe the product, but instead gives a sense of idea or value. It shows a larger trend where trademarks are used to suggest meanings and feelings rather than give clear details. These kinds of trademarks work well because they create an impression in people’s minds without needing much explanation.

Regulatory bodies have taken note of this trend. Poland's Office of Competition and Consumer Protection initiated proceedings against Zara, finding that the representations made under its “Join Life” label were too broad and lacked sufficient detail about their scope or limitations to be independently verifiable by consumers.²⁵

In the sportswear segment, Adidas has developed marks such as “Primegreen” and “Primeblue”, both of which indicate that the products are made from recycled materials. These marks combine distinctive branding with an implied environmental message. The structure of such terms allows them to function simultaneously as brand identifiers and indicators of a broader sustainability narrative. Environmental meaning is communicated through the wording itself, rather than through detailed information embedded within the trademark.

Global brands operating widely in the Indian market provide additional examples. Nike has used the phrase “Move to Zero” in connection with its broader branding, which is associated with reduced carbon and waste initiatives. While this phrase reflects a long-term environmental goal, as a trademark element it functions primarily as a recognisable identity marker rather than a detailed statement of measurable commitments.

²⁴ Elisabeth Paton, Dutch Regulator Takes Issue With H&M Sustainability Claims, *The Fashion Law* (Oct. 3, 2022), <https://www.thefashionlaw.com/dutch-regulator-says-hm-ads-include-unsubstantiated-sustainability-claims/>.

²⁵ Poland's Consumer Watchdog Accuses Bolt, Tchibo, & Zara of Greenwashing, *GRC Rep.* (2025)

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Similarly, Levi Strauss & Co. has adopted "Water<Less" in connection with its denim products, indicating efforts to reduce water usage in manufacturing. The phrasing is both distinctive and suggestive, allowing it to function effectively as a trademark while conveying an environmental association. In both cases, the marks employ concise language that communicates a sustainability-oriented idea without requiring the trademark itself to explain the scope, criteria or extent of the underlying practices. This further illustrates how environmental meaning is increasingly embedded within the trademark.

The concern underlying such marks has been addressed at the regulatory level. The U.S. Federal Trade Commission's Green Guides²⁶ caution that broad, unqualified environmental claims are likely to suggest far-reaching benefits that marketers cannot substantiate, and advise that any such claim must be accompanied by specific, prominent and clear information about the actual environmental benefit.²⁷

Within the Indian market, similar patterns can be observed. Aditya Birla Fashion and Retail Limited introduced "Livaeco", a mark that merges brand identity with the suffix "eco", thereby placing the product within a sustainability-oriented framework in the consumer's mind. Reliance Industries Limited has similarly used "Greengold" in relation to textiles, where the combination of "green" and "gold" associates environmental value with a sense of premium quality, strengthening the overall brand positioning.

What emerges from the above examples is a consistent pattern in how environmental language is deployed in trademarks. These marks do not function as precise claims that can be measured or verified. Rather, they operate through suggestion and association. The words chosen are broad and flexible, capable of carrying multiple interpretations. This is what enables brands to communicate alignment with sustainability without being constrained by a single or rigid definition. This pattern

²⁶ Guides for the Use of Environmental Marketing Claims, 16 C.F.R. pt. 260 (Fed. Trade Comm'n 2012).

²⁷ Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.1 (2012).

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reflects a deliberate strategic choice in brand architecture. As the WIPO Magazine has observed, companies engaged in green marketing commonly adopt brand names that suggest environmental alignment through terms such as “eco” or “natural”, rather than making precise claims, thereby allowing the mark to carry broad environmental connotations without being bound to any specific or verifiable standard.²⁸

From a legal standpoint, this situation raises an important question about the role of trademark examination. Traditionally, the registration process evaluates whether a mark is distinctive and whether it conflicts with any existing marks. It does not typically require an assessment of the underlying meaning or implication of the words used, especially when those words are not explicitly defined.

Environmental language can therefore become part of a registered trademark without any formal requirement to explain or substantiate the impression it creates. This does not necessarily reflect misuse or misrepresentation on the part of the brands involved. Many companies are making genuine efforts to engage with sustainability in meaningful ways. However, the law doesn't really distinguish between different levels of such claims when a trademark is registered. It mainly looks at how the trademark is presented, rather than what message it is actually trying to convey.

The rise of green trademarks in the fashion industry represents a significant shift towards value-based branding that operates within the framework of trademark law. When trademarks begin to communicate values in addition to origin, they influence consumer understanding in more complex ways. Environmental terms in particular carry persuasive weight because they align with prevailing social concerns. This development highlights the need to better understand how trademarks function in

²⁸ Green Trademarks and the Risk of Greenwashing, WIPO Mag. (Dec. 2022)

contemporary markets, especially when they convey ideas that go beyond their original legal purpose.

Scholar Senftleben has cautioned that lifestyle messages conveyed through trademarks risk distracting consumers from a product's actual qualities, rendering purchasing decisions less objective, particularly where such messages remain unconnected from verifiable product characteristics.²⁹ Their inclusion in trademarks has the potential to shape expectations in a manner that extends beyond traditional brand identification.

THE LOOPHOLE IN SECTION 9(2)(A): A THEORETICAL PERSPECTIVE:

The purpose of Section 9(2)(a) of the Trade Marks Act, 1999 is to ensure that no marks are registered which would deceive or confuse the public. The requirement is sufficiently broad at a conceptual level to cover various types of misleading representations. However, in the context of contemporary branding practices, especially those pertaining to sustainability, it reveals certain structural limitations within the framework. The distinction between what may be called symbolic and substantive sustainability helps make these limitations clearer. One of the primary features of the trademark registration process is its limited scope of examination. The registry does not require applicants to provide evidence supporting the meaning implied by the words they use. This becomes particularly relevant in the context of sustainability-related terms, which are frequently incorporated into trademarks in a suggestive manner.

This gap can be better understood through the distinction between symbolic and substantive sustainability. Symbolic sustainability refers to the use of language, imagery or branding elements that create an association with environmental responsibility, operating at the level of perception rather than measurable fact. Substantive sustainability, on the other hand, relates to actual practices such as

²⁹ Martin Senftleben, Finding Your Identity and Partner in a Trade Mark? Consumption, Innovation and the Law, PMC (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9363865/>.

reduced emissions, ethical sourcing or resource efficiency that can be evaluated through objective criteria. In an ideal framework, there would be some alignment between the two. Research shows that companies tend to emphasise symbolic sustainability communication through image and reputation, while substantive communication reflecting authentic, measurable performance is comparatively rare.³⁰ However, given the nature of trademark law, which is concerned with symbols and identifiers rather than verifying the substantive reality behind them, this gap is structurally difficult to address.

The flexibility to use sustainability-related terms in branding allows them to function effectively but also makes it difficult to classify them as deceptive under Section 9(2)(a). Since these words are not inherently false and do not point to any specific, verifiable claim, they tend to fall outside the traditional framework used to assess deception. As noted in legal commentary, Section 9(2)(a) concerns deception that flows from something inherent in the mark itself, meaning that marks which are merely suggestive of sustainability without making any specific false assertion are unlikely to meet this threshold.³¹

Another structural aspect of the law is the way in which challenges to potentially misleading marks are handled. The responsibility for questioning a registered trademark lies largely with third parties through opposition or cancellation proceedings. These processes typically require considerable time, resources and legal awareness, which may not always be readily available. In practice, many marks continue to exist and operate in the market without being formally contested, even where the impressions they create are open to interpretation. The law therefore relies on a reactive mechanism rather than a proactive one, which may not always be sufficient in cases where the issue is not immediately apparent. Section 9(2)(a) is less

³⁰ Hyunjin Cho et al., *Trending Topics in Sustainability Communication: Revealing the Gap Between Theoretical Insights and Reporting Practice*, 17 *Sustainability* 10800 (2025)

³¹ Hyunjin Cho et al., *Trending Topics in Sustainability Communication: Revealing the Gap Between Theoretical Insights and Reporting Practice*, 17 *Sustainability* 10800 (2025)

suited to addressing indirect or impression-based forms of communication, since such language operates within the realm of symbolism where meaning is suggested rather than explicitly stated.

In conclusion, the distinction between symbolic and substantive sustainability becomes central to understanding the limitations of the current framework. The application of this section reveals a gap between the traditional objectives of trademark law and the evolving nature of branding in the fashion industry. The absence of a mechanism to bridge symbolic representations and substantive reality does not render the provision ineffective in all contexts, but it does limit its ability to address newer forms of implied communication.

COMPARATIVE ANALYSIS: REASSESSING THE ROLE OF TRADEMARK LAW IN THE AGE OF "GREEN" BRANDING:

A comparative analysis of India and other major legal systems reveals that the issue surrounding sustainability-related trademarks is not simply a question of one system being stricter than another. It points instead toward a deeper structural limitation within trademark law itself. Across different systems, trademark frameworks were originally designed to serve a narrow purpose that was to identify the source of goods and prevent confusion in the marketplace. In the contemporary fashion industry, however, trademarks are increasingly being used to communicate values, particularly sustainability, thereby expanding their function beyond what the law was originally intended to regulate.

What is particularly striking is that this position is not unique to India. In the European Union, under the framework administered by the European Union Intellectual Property Office³², marks may be refused registration if they are deceptive. However, the threshold for deception is relatively narrow. Unless a mark

³² About EUIPO, Eur. Intell. Prop. Off., <https://www.euipo.europa.eu/en/about-euipo> (last visited Apr. 21, 2026).

conveys a clear and specific falsehood, it is unlikely to be rejected. Broad environmental terms, due to their inherent ambiguity, often fall outside this threshold. Similarly, in the United States, the Patent and Trademark Office³³ apply a standard that requires material misrepresentation. General sustainability-related expressions rarely meet this requirement because they do not assert precise or verifiable facts.

The UK Intellectual Property Office follows a comparable approach, focusing on distinctiveness and clear deception rather than implied meaning. Legal commentary notes that no green trademark application appears to have been refused for deceptiveness by either the UKIPO or EUIPO to date, since the applicable threshold requires the mark to convey a specific, clear and unambiguous message.³⁴

The UK Intellectual Property Office follows a comparable approach, focusing on distinctiveness and clear deception rather than implied meaning. Legal commentary notes that no green trademark application appears to have been refused for deceptiveness by either the UKIPO or EUIPO to date, since the applicable threshold requires the mark to convey a specific, clear and unambiguous message.³⁵

At first glance, this similarity across legal systems might suggest that the legal position is settled. However, a closer examination reveals an important divergence, not within trademark law itself, but in how these systems respond to the broader implications of sustainability claims. In the European Union³⁶, the European

³³ About USPTO, U.S. Pat. & Trademark Off., <https://www.uspto.gov> (last visited Apr. 21, 2026).

³⁴ Deceptive Trade Marks: A Quick Guide, Lexology (Sept. 26, 2023), <https://www.lexology.com/library/detail.aspx?g=561326e6-5bf3-44da-903f-9b5f32e464d2>.

³⁵ The Green Claims Global Drive: Developments in the UK, US and EU, Global Policy Watch (May 2023), <https://www.globalpolicywatch.com/2023/05/the-green-claims-global-drive-developments-in-the-uk-us-and-eu/>.

³⁶ Consolidated Version of the Treaty on the Functioning of the European Union, Oct. 26, 2012, 2012 O.J. (C 326) 1

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Commission³⁷ has taken active steps through initiatives such as the proposed Green Claims Directive, which seeks to ensure that environmental assertions are supported by verifiable evidence. In the United Kingdom, the Competition and Markets Authority³⁸ has introduced the Green Claims Code³⁹, requiring businesses to present environmental claims in a manner that is accurate and substantiated. In the United States, the Federal Trade Commission⁴⁰ provides guidance through its Green Guides⁴¹, emphasising that even implied environmental assertions must be backed by reliable evidence. Legal commentary observes that all three systems, the EU, UK and US, are increasingly requiring environmental claims to be substantiated by verifiable evidence, reflecting a regulatory concern that trademark law alone is insufficient to address.⁴²

These frameworks operate outside trademark law but directly influence how sustainability-related language is used in practice. They recognise that while trademarks themselves may not be designed to verify claims, the impressions they create do not exist in isolation. They form part of a broader communication ecosystem in which consumers rely on quick signals to make decisions.

By introducing substantiation requirements at the level of market conduct, these legal systems attempt to address the gap that trademark law leaves open.

By contrast, the Indian framework does not yet demonstrate the same level of coordinated regulatory response. While general provisions on misleading

³⁷ Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive), COM (2023) 166 final (Mar. 22, 2023).

³⁸ About the CMA, Competition & Mkts. Auth., <https://www.gov.uk/government/organisations/competition-and-markets-authority/about>

³⁹ Competition & Mkts. Auth., Green Claims Code: Making Environmental Claims (Sept. 20, 2021), <https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims>.

⁴⁰ About the FTC, Fed. Trade Comm'n, <https://www.ftc.gov/about-ftc>

⁴¹ Guides for the Use of Environmental Marketing Claims, 16 C.F.R. pt. 260 (Fed. Trade Comm'n 2012).

⁴² The Trade Marks Act, 1999, § 2(1)(zb) (India).

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advertisements exist, there is no dedicated or consistently enforced mechanism that specifically addresses environmental claims across branding practices. This absence becomes particularly significant when trademarks themselves carry sustainability-related language. Without a parallel system that evaluates how such language is used, the symbolic meaning embedded in trademarks remains largely unexamined.

The comparative insight, therefore, is not that India is uniquely deficient, but that it reflects a broader limitation more visibly due to the absence of supplementary safeguards. Trademark law across legal systems protects symbols, names, words and expressions that function as identifiers. However, in the context of modern branding, these symbols increasingly carry persuasive meaning. Sustainability-related trademarks do not merely distinguish products; they shape expectations about the values associated with those products.

This creates a conceptual tension within the law. On one hand, trademarks are protected as expressions of identity. On the other, they operate as tools of communication that influence consumer understanding. Where other legal systems have begun to acknowledge this tension through regulatory developments, the Indian framework continues to treat trademarks primarily within their traditional boundaries. This tension is not merely theoretical. The Trade Marks Act, 1999 defines a trademark as a mark capable of distinguishing the goods or services of one person from those of others,⁴³ reflecting a framework anchored in source identification rather than the communicative dimensions that modern value-based marks increasingly engage.

In conclusion, the comparative analysis highlights a shift that is not fully captured by existing legal structures. The challenge is not limited to the absence of verification at the stage of registration, but lies in the growing role of trademarks as carriers of

⁴³ The Trade Marks Act, 1999, § 2(1)(zb) (India).

value-based messaging. While this evolution is visible across multiple legal systems, the degree to which it is addressed varies significantly. Recognising this distinction is essential for understanding how trademark law interacts with contemporary market practices, particularly in industries like fashion where branding plays a central and influential role.

CONSEQUENCES OF THE LEGAL GAP:

The limited ability of trademark law to engage with sustainability-related language has broader consequences that extend beyond registration alone. As trademarks increasingly carry environmental meaning, the absence of scrutiny at the legal level begins to affect consumer perception, market fairness and even the credibility of sustainability itself. These consequences are not always immediate, but they become more visible over time as such marks continue to operate in the marketplace. Research has found that vague and unverifiable environmental claims erode consumer trust over time, and that when consumers recognise the superficiality of such commitments, skepticism extends not merely to the brand but to sustainability claims across the industry as a whole.⁴⁴

One of the most direct consequences is the impact on consumer understanding. Trademarks are often the first point of interaction between a consumer and a product. Unlike detailed labels or disclosures, they are quick, visible and easy to remember. When a trademark includes terms like “eco” or “green”, it can create an immediate impression that the product meets certain environmental standards. This impression is based on common associations rather than technical knowledge. In the absence of any requirement to substantiate such terms, consumers may rely on these signals without access to clear or verifiable information. Over time, this can lead to a

⁴⁴ Greenwashing in Marketing: A Systematic Literature Review and Bibliometric Analysis, *Int'l Rev. on Pub. & Nonprofit Mktg.* (Oct. 13, 2025)

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situation where perception is shaped more by branding than by actual product characteristics.

A related consequence is the effect on competition within the fashion industry. Businesses that genuinely invest in sustainable practices often incur higher costs, whether in sourcing materials, improving production processes or ensuring compliance with environmental standards. At the same time, other businesses may use similar sustainability-related language in their trademarks without undertaking actual efforts.

Since trademark law does not distinguish between different levels of substantiation at the registration stage, both types of marks can coexist in the market. This creates an uneven situation where the commercial advantage gained from sustainability-related branding is not necessarily linked to the level of actual commitment behind it.

The widespread use of such language also affects the meaning and credibility of sustainability itself. When multiple brands adopt similar terms without a shared standard, those terms begin to lose their clarity. Words like "green" or "eco" may come to represent a general trend rather than a specific quality. This dilution makes it increasingly difficult for consumers to differentiate between products on the basis of genuine environmental considerations. In the long run, it may reduce trust in sustainability-related claims altogether, thereby undermining environmental efforts more broadly. Academic research has identified this phenomenon as "green confusion", where an excess of vague and unregulated environmental terms overwhelms consumers with contradictory information and fosters broader cynicism towards sustainability claims over time.⁴⁵

⁴⁵ Constantinos N. Leonidou & Dionysis Skarmelas, *Gray Shades of Green: Causes and Consequences of Green Skepticism*, 144 J. Bus. Ethics 401, 401-415 (2017).

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Another important consequence lies in the nature of trademark protection. Once a mark is registered, it enjoys legal recognition and may be used over an extended period. This confers a degree of permanence in the market. If a trademark incorporates sustainability language, the impression it creates is reinforced through repeated use. Even if the underlying practices of the business change or remain unclear, the association built by the mark persists. This distinguishes trademarks from advertisements, which are temporary and can be modified or withdrawn more readily.

It is also important to consider why addressing this issue within trademark law remains relevant, even when other legal frameworks such as consumer protection and advertising regulation exist. While these areas of law do address misleading claims, they intervene at a different stage: after a representation has been made and identified as problematic. Trademark law, by contrast, deals with the creation and protection of brand identity at an earlier stage. Once a trademark is registered, it becomes a recurring and legally protected form of communication. If the implications of that communication are not examined at the outset, subsequent intervention becomes more complex.

In this sense, the role of trademark law is not to replace other regulatory mechanisms, but to complement them. By acknowledging how trademarks function in modern markets, it becomes possible to address issues at the stage where impressions are first formed. This is particularly important in industries like fashion, where branding plays a central role in shaping consumer choices. Scholars have advocated for trademarks to function as regulatory tools for sustainability-related information, noting that the path from brand commitment to genuine consumer trust depends entirely on how marks are recognised and understood in the marketplace.⁴⁶

⁴⁶ Henning Grosse Ruse-Khan, *Governing the Fashion Industry (Through) Intellectual Property Assets: Systematic Assessment of Individual Trade Marks Embedding*

In conclusion, the legal gap in addressing sustainability-related trademarks has consequences that extend across consumers, businesses and the broader understanding of environmental responsibility. While existing laws provide some level of protection, their effectiveness is limited when trademarks themselves carry unexamined meanings. Recognising this gap is an important first step towards ensuring that legal frameworks remain responsive to evolving forms of communication in the marketplace.

REFORMS AND RECOMMENDATIONS:

The increasing use of sustainability-related language within trademarks calls for a careful rethinking of how trademark law responds to modern branding practices. The objective is not to fundamentally alter the nature of trademark law, but to ensure that it remains relevant in a market where trademarks do more than indicate origin. They actively shape consumer perception. In this context, targeted and balanced reforms can help address the existing gap without overburdening the system.

The first reform would be the introduction of a limited substantiation requirement for trademarks that incorporate explicit or implied environmental claims. This does not suggest a detailed scientific assessment at the registration stage, which would be impractical. Instead, the applicant could be required to provide a basic declaration or supporting material indicating that the sustainability-related term used in the mark is not arbitrary or misleading. Even a minimal threshold of accountability would serve as a deterrent against the casual or strategic use of such language and encourage more responsible branding practices.

Alongside this, there is a need to **update the trademark examination guidelines** to reflect contemporary realities. At present, sustainability-related terms are often treated as general or descriptive expressions. However, in practice, these terms carry significant persuasive value. Introducing clearer guidance for examiners, particularly in identifying when such language may create a specific expectation in

the minds of consumers, would bring greater consistency and sensitivity to the registration process. This would not require a departure from established principles, but rather an adaptation of those principles to evolving forms of commercial communication.

Another important area of reform is institutional coordination. Trademark authorities and consumer protection bodies currently operate in largely separate domains, despite dealing with closely related issues. Collaboration between these bodies would allow for a more coherent regulatory approach. For instance, if a particular term or expression is found to be misleading in the context of advertising, this finding could inform how similar expressions are treated within trademark examination. Such coordination would reduce fragmentation and ensure that businesses are subject to consistent standards across legal frameworks.

In addition, the development and wider use of certification-linked trademarks can provide a constructive pathway forward. Certification marks linked to recognised environmental standards or independent verification systems offer a more reliable means of communicating sustainability. Unlike general trademarks, these marks are based on defined criteria and require ongoing compliance. Encouraging their adoption would not only improve transparency but also create a clearer distinction between general branding and verified claims.

Finally, it is important to recognise that these reforms serve a broader purpose. They aim to preserve consumer trust, ensure fair competition and maintain the credibility of sustainability as a meaningful concept. If left unaddressed, the continued use of unverified environmental language within trademarks risks weakening the value of such terms altogether. By introducing measured safeguards, the legal system can better align with the realities of modern markets while remaining within its core principles.

CONCLUSION:

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This study examined whether trademark law, and in particular Section 9(2)(a) of the Trade Marks Act, 1999⁴⁷, is capable of addressing sustainability-related terms used in trademarks. The analysis demonstrates that while the law is broad in theory, it does not operate effectively in practice when it comes to modern branding. The concept of deception under trademark law is primarily directed at clear and direct false claims. Sustainability terms, by contrast, typically operate in a more indirect manner by creating an impression rather than stating facts, which makes them difficult to assess under the current framework.

The research also demonstrates that trademark law is not designed to verify the truth behind such claims. Its principal purpose is to identify the source of goods and avoid confusion between brands. As a result, terms like “eco” and “clean fashion” are treated as elements of branding rather than assertions requiring substantiation. This creates a gap where trademarks can suggest environmental responsibility without being subject to meaningful examination.

A further reason for this issue lies in the nature of sustainability terms themselves. They are broad, flexible and lack fixed standard meanings. The registration process does not require supporting evidence, and the responsibility to challenge such marks falls on third parties after registration. By that time, the mark may have already shaped consumer perceptions significantly.

In conclusion, the problem lies in the structure of trademark law itself, which has not adapted to the way branding functions today. As sustainability becomes more central to marketing, this gap becomes increasingly noticeable. If left unaddressed, trademark law will continue to protect brand names that create strong impressions without examining whether those impressions are accurate or grounded in verifiable reality.

⁴⁷ Trade Marks Act, 1999, § 9(2)(a), No. 47 of 1999 (India).