

Quadrant II - Notes

Paper Code: TDL 0915

Module Name: Authorities under Trademarks Legislation

Module No: 20

Introduction

- Trademark protect the interest of consumers in the market place
- It identify the goods from that of others traders
- It indicates its place of origin/maker of the goods
- It deals with the quality for the goods produced
- Registration of trademark protect the interest of owner or manufacturer as well as the consumer

Need and importance of authorities

- Authorities are important to enforce the provision of the Act
- For registration of trademark authorities are required
- Authorities maintain the register in relation to goods and services registered
- Authorities provides certificate after registration
- This certificate is used as an evidence in relation to goods and services before any court of law

Authorities under trademark law

- For the purpose of registration, issue of certificate and to implement the provisions of trademark law
- Two important authorities are set up
 - Trademark Registry
 - Intellectual Property Appellate Board

Trademark Registry (TMR)

Sec. 3 of the Trade Marks Act, 1999

- Empowers the Central Government to appoint Controller General of Patent, Designs and Trademarks (CGPDT)

- Controller General acts as the Registrar of trademark for the purposes of Trade Marks Act, 1999
- Other Officers are appointed by the Central Government under *Sec. 3 (2)*
 - To discharge functions as the registrar may authorize

Other Officers

- A Joint Registrar, Deputy Registrar, Assistant Registrar, Examiners of trademarks, and a complement clerical staff to assist Registrar
- Examiners and clerical staff - in the charge of Deputy Registrar or Assistant Registrar to assist the Branch offices
- The Joint Registrar, Deputy Registrar, Assistant Registrar - exercise the same powers as the Registrar delegated to them in respect of any matter under this Act

Trade Marks Registry

- An office called the TM Registry (*Sec. 5 and 6*) has been established for the purpose of
 - Registration of TM
 - Maintenance of the register and
 - Matters incidental there to
- The head office of the Registry is at Mumbai
- It has 4 branch offices at Kolkata, Delhi, Chennai, and Ahmedabad
- The TM Registry has its own seal

Functions of TMR

- Apart from the Register of TM the Registry maintain indexes of
 - Registered TMs
 - Application for registration
 - The names of proprietors of TMs and
 - The names of the registered users
- The Branch offices keep a copy of the register and copies of the indexes

Registrar of trademarks - Powers

- The Registrar of TMs is the authority responsible
 - For registration of TMs
 - Setting opposition proceedings and
 - Rectification of the register

- He is vested with wide ranging powers
 - He is having powers of a Civil Court in certain matters and certain residuary powers
 - He has power to review his own decision
 - The Registrar of TMs is a tribunal and has vast descriptive powers
 - The decision of the Registrar is appealable - to the Appellate Board
 - The Board dealing with the appeal has the same powers as the Registrar
- **JURISDICTION OF TMs OFFICE**
 - The jurisdiction of Head office and the Branch offices are territorially demarcated on zonal basis
 - The following proceedings to be filed within the territorial jurisdiction – applicant’s place of business
 - Application for registration
 - All oppositions and rectifications
 - Application for registration of TMs are examined and processed in the Head office
 - Hearing in respect the applications are held at the appropriate office
 - Application for rectification and opposition to application

Appellate Board

- *Sec. 83* of TM Act, 1999 it is the duty of Central Government to establish Appellate Board known as IPAB to exercise the jurisdiction, powers and authority conferred under this Act
- The President of India shall appoint
- Chairman, Vice Chairman and other members
- Chairman shall be appointed in consultation with the Chief Justice of India
- The term of the Chairman and others will be for 5 years

Functions of Appellate Board

- In discharging its functions under the Act, the Board has powers of Civil Court while trying the suit in respect of the following matters as per *Sec. 92*
 - Receiving evidence
 - Issuing commissions for examination of witnesses
 - Requisitioning any public record and
 - Any other matter, which may be prescribed

- Board has power to make interim orders –*Sec. 96*
- It has the power to transfer cases from one bench to another and to itself—*Sec. 97*
- Procedure followed by the Board is simple and the decisions are more professional

Appeals to Appellate Board

- *Sec. 91* makes provisions for appeals to the IPAB from the decision of Registrar
- Any person aggrieved by an order or decision of the Registrar may prefer an appeal to IPAB within 3 months
- *Sec. 92* makes it clear that the IPAB is not bound by the procedure laid down in the CPC, 1908.
 - Board is governed by principles of natural justice
 - It has power to regulate its own procedure
 - Proceedings before AP is deemed to be judicial proceedings
- Person aggrieved by the orders of IPAB can prefer an appeal to HC

Conclusion

- It is responsibility of the CG to establish authorities to administer the provisions of the TM Act, 1999
- Registrar is the most important authority at the lowest level
- Owner or proprietor of trademark can register his trade mark with Registrar
- Registration provides rights to the owner
- Person aggrieved by the orders of the Registrar can prefer an appeal to IPAB and from IPAB appeal can be preferred to HC