

T R A D E M A R K

THE LEGALITY OF REGISTERING SOUND MARKS IN INDIA.

Have you ever wondered whether the iconic sounds are given protection in India?

According to the World Intellectual Property Organization, a sound mark represents a melody graphically presented by notes. Indian laws permit a legal entity to trademark a sound defined by a series of musical notes with or without words in India. Over the recent past, the importance of sound marks has slowly been rising in India because, over time, it is pertinent to note that sounds in advertisements make it abundantly evident that a product not only competes with other products in terms of their visual indications but also in terms of other senses like sound.

The Trademarks Rules, 2017 explicitly throws recognition over the sound as a trademark. This is vastly advantageous because it helps businesses obtain a higher sense of exclusivity for their branding methods, thus alluring consumers in a highly competitive market. Some examples of sound marks are pieces of music containing only one or two notes, songs generally used as chimes, popular, well-known music relating to entertainment services, nursery rhymes, and music associated with particular countries or regions for the type of services or goods provided in or originating from that area.

The curious case of the sound mark of Netflix's 'Ta-dum'

To protect its iconic sound, Netflix applied to register the sound mark. Multiple proceedings later, in June of 2018, the European Union Intellectual Property Office rejected and refused the approval of the mark because they opined that there was an absence of distinctive capacity in the sonic logo.

Aggrieved by their decision, Netflix appealed, but ultimately, the case was abandoned, and Netflix withdrew their sound mark application. This was essential because of the complexity of proving that the sound mark possessed some distinctive quality. The case is an iconic example of the arduous task behind registering a sound mark.



A sound can be trademarked so long as it possesses some form of distinctiveness and can also be graphically represented. The fact that the sound must be graphically represented is crucial because if it is misinterpreted and represented in a written manner, it can be deemed unclear and not precise. A graphical representation and a written description of the sound mark stating the musical notes written in the clef (a musical symbol used to mention the pitch of the written notes), staff, their relative value, flats and sharps. The MP3 clip of the sound mark, not exceeding 30 seconds uploaded on an electronic gadget like CD, DVD, etc. are the two primary documents to get your sound registered.

Examples of trademarked sounds

As such, many sounds have been trademarked in the entertainment industry. The looney tune's theme by Time Warner Entertainment, the four-bell sound of Britannia Industries, and the Airtel ringtone composed by A.R Rahman are some classic examples of sound trademark registrations. In 2008, Yahoo was given the honour of being the first sound mark to be given trademark registration in India, and a human voice yodelled it.

In India, trademark laws are still evolving. Thus it becomes very arduous to establish some distinctiveness in a mark. Given the difficulty in registering every trademark, the process of comprehending the concept of registering a sound mark is a very tedious process.