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The Scent Of Innovation: Reinventing Tyres For A Refreshing Driving Experience

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PUBLISHED 28 November 2025

How Sumitomo Rubber Industries Pioneered Olfactory Branding in Indian Trademark Law

Introduction

The Trade Marks Registry of India has embraced an unprecedented frontier in intellectual property by accepting the registration of an olfactory trademark, floral fragrance/smell reminiscent of roses as applied to tyres, but not without procedural controversy. This acceptance marks a historic evolution in Indian trademark law, expanding protection beyond conventional visual marks to include sensory branding. Yet the journey to this recognition was marked by procedural tension, including shifting objections and a reliance on technological constraints rather than the standards set out in the statute. The result is a development that is both pioneering and legally thought provoking, capturing the complex evolution of trademark protection in India.

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Key Application Details:

Attribute	Details
Application Number	5860303
Applicant	Sumitomo Rubber Industries Ltd., Japan
Filing Date	23-03-2023
Class	12
Goods Description	Tyres for vehicles
Basis	Proposed to be used
Trademark Type	Olfactory Mark
International Registration No	UK00002001416 (UK)
Description of Mark	Floral fragrance smell reminiscent of roses as applied to tyres

Understanding Olfactory Marks: Beyond Visual Branding

An olfactory mark is a distinctive scent used as a trademark to identify and distinguish the goods or services of one entity from another. Unlike traditional marks, which are primarily visual, olfactory marks rely on the sense of smell to create a unique, memorable brand image. The two core statutory requirements for registrations are:

(a) the mark must be capable of graphical representation, and

(b) it must be capable of distinguishing the goods or services of one person from those of others.

A Procedural Paradox: When the Objection Outgrows the Statute

A striking controversy emerges from the shifting stance of the Trade Marks Registry in its examination of the instant olfactory trademark application. The first examination report, issued on 29th August 2023, raised only a Section 9 distinctiveness objection, which the Applicant duly addressed through a detailed and reasoned response. However, the subsequent examination report, issued on 6th March 2024, abruptly pivots to an entirely new ground, claiming that the TM Module lacks a mechanism to examine smell marks and that such marks cannot be graphically represented or evaluated for distinctiveness within the system. This shift reflects not a deficiency on the part of the Applicant, but a deeper administrative inconsistency, where procedural limitations are improperly raised above statutory mandates.

The Trade Marks Act, 1999 requires the Registry to determine whether a mark is capable of graphical representation and capable of distinguishing goods or services; it does not permit refusal merely because the TM Module lacks a mechanism to examine non-traditional marks.

The prioritization of technological constraints over the legislative standards risks undermining the inclusive and dynamic scope of Sections 2(1)(zb) and 2(1)(m), creating an unjustified impediment for Applicants pursuing protection of new and evolving categories of trademarks.

Inherent Appeal and Acquired Fame: The Dual Path of a Trademark

The Applicant demonstrated both inherent and acquired distinctiveness to support their claim for trademark protection. They showed that the rose fragrance applied to tyres is inherently distinctive because it has no natural connection to the product, making it an arbitrary and unique indicator of the source. The Applicant also demonstrated acquired distinctiveness through decades of continuous use since 1995, during which the fragrance developed a strong reputation among consumers who now associate the scent exclusively with their tyres. This dual recognition, both inherent and gained through prolonged use and publicity, reinforces the mark's eligibility for trademark protection and illustrates how a sensory feature can be a powerful and effective brand identifier.

Man of Average Intelligence and Imperfect Recollection

In assessing the likelihood of confusion, trademark law applies the perspective of a "man of average intelligence and imperfect recollection." In the instant case, the Applicant argued that the proposed mark, Floral Fragrance or Smell Reminiscent of Roses applied to tyres, meets this standard. The mark, being a clear and precise statement about a universally recognizable smell, is readily comprehensible by an ordinary consumer without causing confusion or deception. The smell of roses is widely known globally, making it easily identifiable through past experience, even by someone with imperfect recollection.

Describing the Indescribable: Legal Precedents Shaping Smell Marks

The Applicant relied on legal precedents, such as Siekmann v. German Patent and Trademark Office[1] (2002), where the European Court of Justice emphasized that an olfactory mark should be capable of being represented in a graphical manner that is clear, precise, self-contained, intelligible, durable, and objective. Similarly, in Vennootschap Onder Firma Senta Aromatic Marketing v. Markgraaf B.V.[2] (1999), the Appellant sought to register the smell of fresh-cut grass for tennis balls in Class 28. The examiner initially refused the application on the grounds that the mark was not graphically represented. However, the EUIPO's Second Board of Appeal held that a descriptive representation of the smell was sufficient, drawing a parallel with sound marks where a description of music can be enough for registration.

A rose by any other name would smell as sweet

The Applicant further relied on Shakespeare's famous quote "a rose by any other name would smell as sweet" to reinforce that the scent of roses is universally understood and unmistakable. Building on this idea the Applicant presented four supporting points.

- **Ubiquity:** The Applicant emphasized the widespread presence of roses, noting that their fragrance is commonly encountered in gardens, homes and numerous everyday products.
- **Historical Significance:** The Applicant pointed out that the rose fragrance has held cultural importance for centuries through its use in perfumes, cosmetics and religious ceremonies.
- **Positive Associations:** The Applicant noted that people naturally associate the scent of roses with emotions such as love, romance and other positive feelings, which enhances its broad recognition and appreciation.

- **Emotional Impact:** The Applicant highlighted that the scent of roses evokes positive emotions and is known to promote feelings of well-being and relaxation.

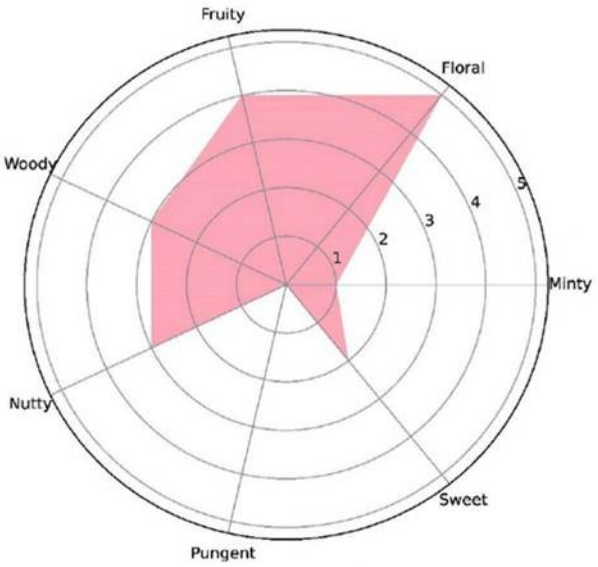
These four points together were used to argue that the rose fragrance is so familiar and distinctive that describing it in words is sufficient for the average person to clearly understand the scent claimed as a trademark.

Graphical Representation: Overcoming the Intangibility Challenge

The most significant hurdle pertained to graphical representation, traditionally a visual requirement impossible to fulfill easily for intangible scents. Sumitomo Rubber Industries responded with a groundbreaking scientific graphical representation developed in collaboration with experts at IIIT Allahabad.

FLORAL FRAGRANCE/ SMELL REMINISCENT OF ROSES AS APPLIED TO TYRES

Graphical Representation of Rose-like Smell



Description: A complex mixture of volatile organic compounds released by the petals interact with our olfactory receptors, creating a rose-like smell. Using the technology developed at IIIT Allahabad, this rose-like smell is graphically presented above as a vector in the 7-dimensional space wherein each dimension is defined as one of the 7 fundamental smells, namely floral, fruity, woody, nutty, pungent, sweet, and minty.

- The central graphic is a circular radar chart with seven labelled axes corresponding to seven fundamental smell dimensions: Floral, Fruity, Woody, Nutty, Pungent, Sweet and Minty.
- Concentric circles mark intensity levels from the center outward, numbered from 1 (low) near the center to 5 (high) at the outer edge, allowing the smell to be plotted as a point on each axis and then joined to form a polygon.
- The shaded pink polygon links the intensity values across all seven axes, providing a visual representation of the fragrance's overall profile.
- The chart shows a very strong floral note (at level 5) with a slightly softer but still clear fruity note (around level 4), moderate woody and nutty tones (around level 3) that add depth, a mild sweetness (around level 2), and almost no pungent or minty character (around level 1), keeping the overall scent soft and rose-like.

Guided by Expertise: The Perspective of the Amicus Curiae on Smell Marks

Shri Pravin Anand was appointed amicus curiae to provide impartial expertise, owing to his extensive background in trademark law. The amicus curiae highlighted that the registrability of smell marks rests on two essential factors: clear graphical representation and distinctiveness. Drawing on international practice, the amicus noted that countries such as Australia and the United States already recognize scent marks when they are nonfunctional and capable of identifying the source of goods. Although Indian law does not specifically mention olfactory marks, it also does not prohibit them. According to the amicus, the

rose scent associated with the tyres is inherently distinctive, arbitrary in nature, and is a unique identifier for the Applicant's goods. A scientific graphical representation of the scent prepared by experts from IIIT Allahabad was also submitted. Concluding that the mark meets the necessary criteria, the amicus recommended that the objections be set aside and the application be advertised as accepted in the Trade Marks Journal.

Registry's Holistic Evaluation and International Influence

The Registry's reasoning rests on two foundational conclusions. First, it interprets the requirement of graphical representation under Section 2(1)(zb) flexibly, acknowledging that conventional visual depictions are unsuitable for olfactory marks, and therefore accepts the scientifically developed 7-dimensional vector model as an objective, precise and durable representation. Second, it recognizes that the scent of roses is entirely arbitrary in relation to tyres, bearing no functional or descriptive connection to the goods, and therefore inherently capable of distinguishing the Applicant's goods from others.

Finally, taking into account global practices and prior registrations, the Registry adopts a progressive view that non-traditional marks should not be excluded merely due to representational challenges, provided the statutory criteria are met.

Collaborative Excellence, from law to lab: Recognizing the Minds Behind India's First Olfactory Trademark

The Registry acknowledged and expressed appreciation for the valuable guidance of Shri Pravin Anand, acting as amicus curiae, in navigating legal and procedural issues involved. It also recognized the scientific and technical contributions of Prof. Pritish Varadwaj, Prof. Neetesh Purohit, and Dr. Suneet Yadav of the Indian Institute of Information Technology, Allahabad, for their innovative graphical representation of the smell mark, as well as the detailed comparative legal analysis provided by Ms. Swati Sharma, the applicant's agent.

Why This Matters: Expanding the Sensory Dimension of Branding

India's acceptance of this olfactory mark signals a broadening of intellectual property protections to capture innovative sensory branding methods. As olfactory trademarks become increasingly recognized globally, India is joining the vanguard of jurisdictions that recognize smell as a powerful branding tool capable of deep consumer engagement and distinct product identification.

This landmark case illustrates how scientific rigor, technological innovation, and a progressive legal approach can transform intangible scents into protected intellectual property.

For more details, write to us at: contact@indialaw.in

[1] C-273/00

[2] R 156/1998-2

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