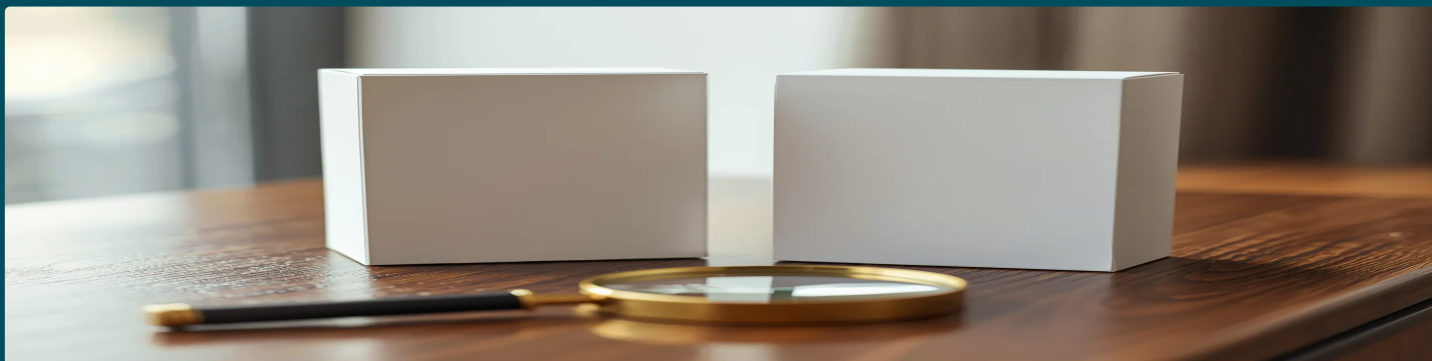




INTELLECTUAL PROPERTY RIGHTS

When Does a Trademark Cross the Line Into Infringement?

Two marks looking alike does not settle a trademark dispute. Under the Trade Marks Act, 1999, infringement turns on an enforceable right, the conduct challenged, prior rights and defences, and the evidence behind the claim.

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A [trademark dispute](#) is rarely resolved by establishing that two marks look alike. The real question is whether the impugned use violates an enforceable legal right under the applicable law. Answering that question requires an assessment of the competing marks, the goods or services concerned, the nature of the defendant's use, any available defences and, ultimately, the evidence supporting the claim.

Under Indian law, the principal statutory framework is the Trade Marks Act, 1999. Section 28 addresses the rights conferred by registration, Section 29 deals with [infringement of registered trademarks](#), and Section 27 distinguishes between infringement claims involving unregistered marks and the common-law remedy of passing off. Section 27(1) bars an infringement action in respect of an unregistered trademark, while Section 27(2) preserves the remedy of passing off. These are distinct causes of action, with different legal foundations and evidentiary requirements.

For businesses, this distinction is not merely technical. It can determine the legal basis of a claim, the evidence required to establish it and the remedies available.

Similarity Is the Starting Point, Not the Conclusion

Section 29 of the Trade Marks Act, 1999, identifies the circumstances in which unauthorised use of a registered trademark may constitute infringement. Depending on the facts, the inquiry may involve identical or deceptively similar marks, the relationship between the relevant goods or services, the likelihood of confusion, or the unfair advantage taken of or detriment caused to a trademark with a reputation.

Indian courts have consistently emphasised that competing marks must be assessed in their commercial context rather than through an overly technical comparison.

In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73, the Supreme Court of India identified several factors relevant to determining [deceptive similarity](#), including the nature of the marks, the degree of resemblance, the nature of the goods, the class of purchasers, the mode of purchasing and the surrounding circumstances. The Court also highlighted the need for particular care in pharmaceutical disputes, where confusion may have serious consequences.

The broader principle extends across industries: the assessment is contextual. A similarity that may be relatively inconsequential in one market could be commercially significant in another.

Businesses should therefore avoid assuming that a minor spelling difference, a change in typography or the addition of a descriptive term will necessarily prevent infringement. Equally, resemblance alone does not automatically establish a violation. The relevant statutory requirements must be satisfied.

Registration, Prior Rights and Passing Off

Registration provides important enforcement advantages, but it does not eliminate every question concerning competing claims.

Section 28 of the Trade Marks Act, 1999, confers on a registered proprietor the exclusive right to use the trademark in relation to the registered goods or services, subject to the Act and the conditions of registration. Section 34 recognises the protection available to certain prior users against the rights of a registered proprietor.

Consequently, the chronology of adoption and use may be decisive. A party that used a mark before another party obtained registration may have a legally significant position, depending on the circumstances and the applicable statutory requirements.

The Supreme Court's decision in *S. Syed Mohideen v. P. Sulochana Bai*, (2016) 2 SCC 683, reinforces the significance of prior rights and the relationship between statutory trademark protection and the common-law action for passing off. The Court

recognised that registration does not, by itself, extinguish superior rights arising from prior use and goodwill.

Passing off generally requires the claimant to establish goodwill, misrepresentation likely to deceive or cause confusion, and damage or a likelihood of damage. Unlike an infringement claim based on registration, passing off focuses on the claimant's goodwill and the defendant's conduct in the marketplace.

For businesses, the practical implication is clear: registration certificates are important, but records demonstrating the history, extent and continuity of commercial use can be equally valuable.

Bad Faith Must Be Supported by Evidence

Disputes involving [domain names and online branding](#) illustrate how an apparently straightforward claim can become fact-sensitive.

Under the Uniform Domain-Name Dispute-Resolution Policy (UDRP), a complainant must establish three elements: the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights; the respondent has no rights or legitimate interests in the domain name; and the domain name was registered and is being used in bad faith. Establishing similarity alone is insufficient.

In *Future Inns UK Ltd v. Sotirios Kopatsaris*, WIPO Case No. D2022-4920, the complainant challenged the domain name *thefuturehotels.com* on the basis of its FUTURE INN trademark. Although the panel found the domain name confusingly similar to the complainant's mark, the complaint was denied. A company controlled by the respondent held a FUTURE HOTELS trademark registration in the United Kingdom, supporting the respondent's claim to a legitimate interest. The complainant did not establish all the requirements for transfer under the UDRP.

The decision illustrates why similarity and entitlement to a remedy must be analysed separately. It also highlights the importance of examining the identity of the rights holder, the scope of any registration and the relationship between the respondent and the entity asserting rights in the disputed name.

The contrast with *G.A. Modefine S.A. v. A.R. Mani*, WIPO Case No. D2001-0537, is instructive. In that dispute over *armani.com*, the respondent established that his name was Anand Ramnath Mani and produced evidence of his use of "A.R. Mani" in his graphic-design business. The panel found that he had a legitimate interest in the domain name and that bad faith had not been established. It also found the complaint to be an abuse of the administrative proceeding.

A different evidentiary outcome arose in *Malala Yousafzai v. Syed Haider*, WIPO Case No. D2024-1157. The respondent claimed that the domain *malalayousafzai.com* had been registered for his daughter, who allegedly shared the complainant's name, but did not substantiate that claim with supporting evidence. The panel ordered the transfer of the domain name.

Taken together, these decisions demonstrate that legitimate interests and bad faith must be assessed on the evidence of each case. A genuine personal or commercial connection may support a respondent's position; an unsupported explanation may carry little weight when weighed against the available evidence.

For businesses, contemporaneous records can be critical. Historical business documents, dated correspondence, invoices, marketing materials and corporate records may help establish the circumstances in which a name was adopted and used.

It is important, however, not to conflate the UDRP test with trademark infringement under Indian law. The two proceedings have different legal foundations and requirements, even where they concern the same underlying dispute.

Trademark and Copyright Are Distinct Rights

The distinction between trademark and copyright becomes particularly important where a dispute concerns a logo, device mark or other visual identity.

Trademark law protects signs that distinguish the commercial origin of goods or services. Copyright law protects qualifying original expression. Although a logo may attract both forms of protection, each claim requires an independent legal assessment.

A trademark infringement claim may turn on the applicable statutory provisions, the similarity of the marks and the commercial circumstances in which they are used. A copyright claim may instead require consideration of originality, ownership, the scope of the protected work and whether protected expression has been reproduced.

The dispute between Lacoste and Crocodile International illustrates the complexity of such cases. In its judgment dated 9 March 2026 in *Crocodile International Pte. Ltd. v. La Chemise Lacoste*, the Delhi High Court considered cross-appeals arising from a

long-running dispute over competing crocodile device marks and the effect of agreements between the parties. The Court found trademark infringement and copyright infringement, but rejected the passing-off claim because the plaintiffs had failed to establish the requisite goodwill. The appeals were partly allowed.

The decision is particularly instructive because it demonstrates that different causes of action arising from the same commercial dispute may produce different outcomes. Similarity between visual marks may be relevant to both trademark and copyright claims, but it does not make their legal tests interchangeable. Likewise, an agreement permitting the use of a mark must be examined carefully to determine its scope and territorial application.

For businesses considering enforcement, the first step should therefore be to identify precisely what is protected, who owns the relevant rights and which legal cause of action best addresses the alleged conduct.

The Evidence That Often Determines the Outcome

A well-founded infringement assessment should address seven questions:

1. **What rights exist?** Identify the relevant registrations, the registered goods or services, ownership and any potentially enforceable unregistered rights.
2. **What conduct is challenged?** Determine how, where and for what commercial purpose the defendant is using the mark.
3. **How similar are the marks?** Consider visual, phonetic and conceptual similarities in accordance with the applicable legal test.
4. **Are the goods or services related?** Examine the intended consumers, distribution channels, purchasing conditions and commercial context.
5. **What legal threshold applies?** Determine whether the facts support infringement, passing off or another recognised cause of action.
6. **Are there prior rights or defences?** Consider prior use, statutory exceptions, consent, limitations on the registration and other legally relevant circumstances.
7. **What evidence establishes the claim?** Preserve registration records, dated evidence of use, sales figures, advertising materials, correspondence and relevant evidence of market conditions.

These questions should be considered before a legal notice is issued or proceedings are commenced. A structured assessment can help distinguish a commercially troubling resemblance from a legally actionable infringement.

A Strategic Approach to Brand Protection

[Trademark protection](#) should be integrated into a business's broader commercial strategy.

Businesses should select and register marks with their intended markets and expansion plans in mind. They should maintain clear ownership records, document commercial use and monitor potentially conflicting applications and marketplace activity.

Where suspected infringement arises, the appropriate response will depend on the facts. A cease-and-desist notice, opposition proceedings, rectification proceedings, a civil infringement action or a domain-name complaint may each serve a different purpose. The choice should reflect the legal right being asserted, the evidence available, the urgency of the situation and the remedy sought.

The objective is not simply to establish that another party's branding is similar. It is to determine whether the challenged conduct falls within the scope of an enforceable right and whether the proposed proceedings offer a legally and commercially sound route to relief.

A proportionate assessment at an early stage can also help businesses evaluate litigation risks, preserve relevant evidence and avoid pursuing remedies that do not fit the underlying dispute.

Conclusion

The line between legitimate competition and trademark infringement is drawn by the applicable law, not by resemblance alone.

Under the Indian framework, determining whether infringement has occurred requires careful consideration of the Trade Marks Act, 1999, applicable judicial principles, prior rights and the circumstances of the disputed use. Where a claim involves passing off, domain names or copyright in a logo, additional legal requirements may apply.

For businesses, the essential lesson is to protect brands proactively, maintain reliable evidence and identify the correct cause of action before commencing enforcement. For parties facing allegations, a properly documented account of the adoption and use of a mark may be equally important.

Ultimately, **a strong trademark claim depends on identifying an enforceable right, establishing conduct that violates that right and producing evidence sufficient to satisfy the applicable legal test.** That is what separates a mere resemblance from an actionable infringement.

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