

VISUAL AND PHONETIC SIMILARITY TESTS IN INDIAN TRADEMARK LAW: BARRIERS TO INCLUSIVE INNOVATION AND ACCESS TO INTELLECTUAL PROPERTY PROTECTION

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ABSTRACT

Trademarks are extremely important because they allow businesses to differentiate their products and services from those of their competitors, build a reputation in the market, and meaningfully participate in economies under competitive conditions. Under the Trade Marks Act of 1999, India has a primary system for reducing consumer confusion and protecting fair competition. This method involves the evaluation of the visual and phonetic similarity of trademarks on the market. The judicial implementation of these likeness criteria has frequently been distinguished by complexity, subjectivity, and inconsistency, despite the fact that these tests have successfully established their doctrinal foundations. The purpose of this paper is to suggest that the unpredictability that exists within trademark similarity jurisprudence acts as an unintentional barrier to inclusive innovation. This is especially true for micro, small, and medium companies (MSMEs), startups, and first-time trademark applicants. The purpose of this paper is to investigate trademark similarity not just as a doctrinal exercise, but also as an accessibility issue within the intellectual property system. This investigation is situated within the larger discourse of intellectual property and innovation for inclusive growth in a period of transformation. It does this by doing a selected examination of Indian judicial decisions, which reveals how principles such as imperfect recollection, phonetic approximation, overall structural similarity, and consumer perception are applied in a manner that is inconsistent between cases. The absence of uniformity in this area results in uncertainty regarding the outcomes of registration and enforcement, which in turn increases the legal risk and compliance costs for innovators who have limited resources. In place of providing a

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comprehensive doctrinal mapping of visual and phonetic similarity tests, the paper takes a policy-oriented and socio-legal approach to the subject matter. It highlights how similarity rules that are excessively difficult or unexpected can discourage formal brand registration, impede market entrance, and undercut broader government policies that are meant at supporting growth that is driven by startups and micro, small, and medium-sized enterprises (MSME companies). This paper provides a more in-depth analysis of the institutional role that courts and trademark authority play as gatekeepers of access to intellectual property protection.

KEYWORDS: Indian Trademark Law, Visual Similarity, Phonetic Similarity, Trademark Infringement, Inclusive Innovation.

INTRODUCTION

The capacity of businesses to generate, safeguard, and commercialize intangible assets is becoming an increasingly important factor in determining the rate of economic growth that is generated by innovation. For businesses operating in modern information economies, intangible assets frequently constitute a sizeable share of the total enterprise value, particularly in marketplaces that are oriented toward consumers. When it comes to the many different types of intellectual property, trademarks hold a unique place since they are emblems of origin, quality, and goodwill. Patents and industrial designs are two types of intellectual property that safeguard technological innovation. Trademarks, on the other hand, protect the reputational capital that enables firms to engage with customers and differentiate themselves in the market.²⁶⁶

Intellectual property in the form of trademarks is frequently the most valuable and easily accessible type of intellectual property for micro, small, and medium companies (MSMEs) and startups. Small enterprises are able to advance beyond informal trading and acquire a recognized identity through the process of branding, which is frequently the first step towards market formalization.²⁶⁷ In this perspective, trademark protection serves not just as a private proprietary right, but also as an institutional tool that supports market participation, customer trust, and economic inclusion all at the same time.

In India, the Trade Marks Act, 1999 is the law that governs trademark protection. This act was created with the intention of achieving a balance between the competing interests of trademark proprietors, customers, and rivals. The purpose of the Act is to promote fair competition while simultaneously

²⁶⁶ Bently, Sherman, Gangjee & Johnson, Intellectual Property Law (5th edn, OUP 2018).

²⁶⁷ World Intellectual Property Organization, SMEs and Intellectual Property: Leveraging Intangible Assets for Growth (2019).

preventing consumer confusion and fraud. The evaluation of the degree of similarity between competing marks, particularly with regard to visual and phonetic similarity, is an essential component of this framework. These likeness tests are the foundation upon which trademark infringement, passing off, and opposition proceedings are built.²⁶⁸ The judgment of whether or not a mark is enforceable, registrable, or susceptible to dispute is directly influenced by the degree of resemblance between the marks.

A complex set of guidelines concerning the evaluation of visual and phonetic resemblance has been developed by Indian courts over the course of many years. The doctrine of imperfect recollection, the requirement that marks be compared as a whole rather than dissected into their component parts, the relevance of phonetic resemblance in a society that speaks multiple languages, and the importance of contextual factors such as the nature of goods, the class of consumers, and the surrounding trade circumstances are some examples of these.²⁶⁹ It is the intention of these principles to represent the behaviour of consumers in the actual world and to guarantee that trademark protection will continue to be effective.

However, despite the fact that these principles are doctrinally valid, the execution of them has frequently included a significant amount of judges exercising their discretion. The concept that similarity analysis is more of a question of overall impression than a rigorous formula has been underlined by the courts on numerous occasions.²⁷⁰ As a consequence of this, the outcomes of trademark similarity challenges can be unpredictable, with courts reaching different decisions even in cases that involve factual circumstances that are broadly equivalent to one another. This unpredictability is not only a matter of academic concern; rather, it has specific repercussions for those who are attempting to gain access to trademark protection resources.

There is a possibility that the uncertainty in similarity jurisprudence could be considered an acceptable cost of enforcement for huge firms that have substantial legal and financial resources. These types of organizations are better able to carry out exhaustive clearance searches, retain the services of specialized legal counsel, and absorb the costs of litigation. On the other hand, doctrinal uncertainty can be a significant barrier to formal brand protection for micro, small, and medium-sized enterprises (MSMEs), startups, and first-time applicants for trademarks.²⁷¹ It is possible that smaller businesses will be dissuaded from registering trademarks or asserting their rights due to the high cost of traversing complex similarity rules, as well as the possibility of bad legal decisions.

It is possible that validly adopted marks would be abandoned in extreme circumstances due to the risk of being subjected to infringement action or opposition proceedings. This issue of over-deterrence is

²⁶⁸ *Corn Products Refining Co v Shangrila Food Products Ltd*, AIR 1960 SC 142.

²⁶⁹ *Amritdhara Pharmacy v Satya Deo Gupta*, AIR 1963 SC 449; *Parle Products (P) Ltd v JP & Co*, (1972) 1 SCC 618.

²⁷⁰ *F Hoffmann-La Roche & Co Ltd v Geoffrey Manners & Co Pvt Ltd*, AIR 1970 SC 2062.

²⁷¹ OECD, *SMEs, Entrepreneurship and Innovation* (OECD Publishing 2010).

especially troublesome in economies that are driven by innovation because it inhibits experimentation, the development of brands, and market entry.²⁷² In the event that small businesses resort to informal branding tactics or completely shun distinguishing marks, the overarching goals of trademark law, which include consumer clarity, market openness, and fair competition, are weakened.

When considered in the context of India's more comprehensive innovation and economic plan, these challenges take on a magnified level of significance. Start-up India, Make in India, and a variety of other micro, small, and medium-sized enterprise (MSME) support schemes are examples of government efforts that place a focus on entrepreneurship, innovation, and formalization as essential drivers of equitable economic development.²⁷³ In the context of these activities, the protection of intellectual property is frequently promoted as a tool that might facilitate progress. However, if an intellectual property system is difficult to access, uncertain, or too complicated, it runs the risk of excluding the very people that it intends to empower.

Despite this, trademark similarity jurisprudence in India has primarily been examined from a doctrinal or consumer-protection standpoint. While there is extensive research on the principles determining visual and phonetic similarity, there has been relatively little discussion of how these principles affect access to intellectual property protection and inclusive innovation.²⁷⁴ This paper aims to close that gap by recasting visual and phonetic similarity analysis as an accessibility issue within the intellectual property framework.

Despite the fact that visual and phonetic similarity tests are necessary for trademark protection, the current application of these tests frequently acts as an unintentional barrier to inclusive innovation. This is the primary point that will be presented in this article. The legitimacy of similarity tests in and of themselves is not called into question in this article. Instead, it examines the manner in which these tests are used as well as the institutional repercussions that result from doctrinal contradiction. In this article, trademark jurisprudence is aligned with the broader goals of inclusive growth in a period of transformation. This is accomplished by focusing on access, predictability, and institutional accountability.

In terms of methodology, the paper takes a qualitative approach that focuses on doctrinal policy formation. In order to highlight patterns of judicial reasoning, it conducts a selected study of leading decisions made by the Supreme Court and the High Court. This is done rather than attempting to generate an exhaustive mapping of all instances that are extremely similar. This chosen approach to methodology was made on purpose. This makes it possible for the article to keep its focus on policy, to avoid duplicating thorough doctrinal analysis that has been done elsewhere, and to concentrate on structural trends and accessibility problems.²⁷⁵

²⁷² Lemley, 'The Modern Lanham Act and the Death of Common Sense' (1999) 108 Yale LJ 1687.

²⁷³ DPIIT, Government of India, Start-up India Action Plan.

²⁷⁴ Venkateswaran, *The Law of Trade Marks and Passing Off* (6th edn, LexisNexis).

²⁷⁵ Cappelletti & Garth, *Access to Justice* (1978).

The paper is organized as follows. The next part investigates the theoretical relationship between trademark law and inclusive innovation, contextualizing similarity analysis within an access-to-justice framework. This is followed by an examination of the statutory and legal bases for visual and phonetic similarity testing in India. The subsequent parts investigate judicial inconsistency and its impact on MSMEs and first-time applicants, before delving into the institutional function of trademark agencies and courts as access gatekeepers. The article concludes by making reform-oriented recommendations to improve predictability, accessibility, and inclusion in trademark adjudication.

TRADEMARK LAW AND INCLUSIVE INNOVATION

As economies strive to strike a balance between growth and equity, the idea of inclusive innovation has been increasingly prominent in the modern policy discourse around the world. When it comes to the processes of value creation and market competition, inclusive innovation places an emphasis on the engagement of a wide range of economic actors, such as micro, small, and medium-sized enterprises (MSMEs), informal enterprises, rural entrepreneurs, and first-generation innovators. Legal protections for intellectual property, which have historically been justified as a vehicle for rewarding creativity and investment, are increasingly being reviewed through the lens of this more comprehensive developmental perspective.²⁷⁶ IP system design and administration can either support or impede equitable participation, depending on its accessibility, predictability, and institutional reactivity.

Within this context, trademarks hold a distinctive role. Unlike patents, which frequently involve significant technological expertise and investment, trademarks are very easy to obtain and are directly related to market presence. For many small businesses, a trademark is their first formal interaction with the intellectual property system.²⁷⁷ The availability of trademark protection thus has a direct impact on whether smaller actors can formalize their enterprises, expand operations, and compete beyond local markets.

Legal accessibility, in terms of access to justice, goes beyond simply having rights on paper. It includes clarity of legal criteria, affordability of procedures, institutional support, and predictability of outcomes.²⁷⁸ Where legal norms are complex or ambiguous, formal access may exist but not be useful. Trademark law exhibits this tension. While the Trade Marks Act of 1999 makes no distinction between applicants based on size or resources, the interpretation of essential concepts; particularly similarity; can result in unequal practical outcomes.

Within the realm of trademark law, something that serves as a gatekeeping mechanism is similarity analysis. Enrollment in the register, the extent of protection, and the likelihood of being subject to

²⁷⁶ OECD, *Innovation and Inclusive Growth* (OECD Publishing 2015).

²⁷⁷ World Intellectual Property Organization, *SMEs and Intellectual Property: Leveraging Intangible Assets for Growth* (2019).

²⁷⁸ Cappelletti & Garth, *Access to Justice* (Sijthoff & Noordhoff 1978).

enforcement action are all determined by it. When it comes to major organizations, it is frequently possible to navigate similarity standards through the consultation of professionals and through litigation. However, uncertainty regarding similarity evaluation might cause a disproportionate risk for micro, small, and medium-sized enterprises (MSMEs) and startups. In situations where legal standards are believed to be uncertain or enforcement is perceived to be harsh, empirical research have shown that smaller businesses are more prone to shun formal intellectual property systems.²⁷⁹ The inclusive potential of trademark protection is undermined when such avoidance occurs with trademarks.

The structural and socio-economic elements that are present in the Indian setting cause these problems to become even more pronounced. The landscape of entrepreneurship in India is distinguished by the presence of a major informal sector, regional branding techniques, and linguistic diversity. Words that are often used in everyday speech, phonetic spellings, and statements that have cultural significance are regularly used in trademarks.²⁸⁰ Despite the fact that such procedures promote the diversity of the market, they also raise the probability that different marks will have phonetic similarities. It is possible that regional and grassroots innovators will be excluded from the competition if similarity requirements do not appropriately account for acceptable linguistic distinctions.

The adjudication of trademarks must therefore be attentive to context while staying consistent in principle in order to fulfil the requirements of inclusive innovation. The courts and the authorities in charge of trademarks play an important part in determining this equilibrium. They have the ability to affect not just individual conflicts but also broader views of accessibility and fairness inside the trademark system by the choices they make regarding interpretation. Whenever similarity rules are applied in an inconsistent manner, they have the potential to accidentally favor established companies that have the ability to enforce the standards while simultaneously disadvantage new entrants.

VISUAL AND PHONETIC SIMILARITY TESTS UNDER INDIAN TRADEMARK LAW

STATUTORY FRAMEWORK AND JUDICIAL DEVELOPMENT

It is not possible to find a specific definition of "visual similarity" or "phonetic similarity" under the Trade Marks Act of 1999. These ideas, on the other hand, have developed over time as a result of judicial interpretation, particularly in relation to Sections 9, 11, and 29 of the Act.²⁸¹ Because of this reliance on judicial evolution, courts have been able to transform similarity analysis to accommodate a wide range of factual circumstances. While this is going on, the lack of statutory direction has been a factor that has contributed to the volatility of doctrine.

²⁷⁹ OECD, *SMEs, Entrepreneurship and Innovation* (OECD Publishing 2010).

²⁸⁰ Gangjee, *Relocating the Law of Geographical Indications* (CUP 2012).

²⁸¹ Trade Marks Act, 1999, ss. 9, 11, 29 (India).

The test of likeness must be considered from the standpoint of an average consumer with ordinary intelligence and imperfect recollection, according to the Indian courts, which have consistently found that this perspective is required.²⁸² This approach acknowledges the fact that customers may not engage in the process of meticulously comparing marks and may instead rely on broad impressions that are made using their memories. As a consequence of this, even slight variations in spelling, font, or design might not be enough to prevent confusion if the overall impression of the marks is comparable.

Compare marks as a whole rather than breaking them down into their component parts, which is another notion that has been around for a long time and is widely accepted.²⁸³ This comprehensive approach aims to ensure that false distinctions are avoided while also reflecting the perceptions of consumers in the real world. With that being said, the application of this principle frequently depends on the discretion of the judiciary, particularly when determining whether aspects of a mark predominate the overall impression that it conveys.

PHONETIC SIMILARITIES IN A MULTILINGUAL MARKETPLACE

Because of the wide variety of languages spoken in India, the concept of phonetic similarity has taken on a particularly important role in the legal framework governing trademarks. It has been established by the courts that pronunciation can differ between locations and languages, and that phonetic similarity can cause confusion even in situations when the visual presentation is different at the same time.²⁸⁴ In a number of historic rulings, phonetic similarity has been considered to be the deciding factor, particularly in situations involving fast-moving consumer goods, food items, and pharmaceutical medicines.

The importance placed on phonetic similarity facilitates the achievement of significant consumer protection goals. It is possible that phonetic similarity is more influential than visual similarity in markets where literacy levels vary and where purchasing decisions are frequently made verbally. The perception of phonetics, on the other hand, is essentially subjective. There are a number of factors that might influence how a mark is interpreted, including accent, language background, and regional pronunciation trends.²⁸⁵ As a consequence of this, judicial evaluations of phonetic similarity might vary dramatically from one case to the next, even in situations where the markings appear to be equivalent in general.

This subjectivity creates unique obstacles for first-time trademark applicants. Predicting how a court or examiner would interpret phonetic similarities is challenging, especially in the absence of

²⁸² *Amritdhara Pharmacy v Satya Deo Gupta*, AIR 1963 SC 449.

²⁸³ *Parle Products (P) Ltd v JP & Co*, (1972) 1 SCC 618.

²⁸⁴ *Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd*, (2001) 5 SCC 73.

²⁸⁵ Venkateswaran, *The Law of Trade Marks and Passing Off* (6th edn, LexisNexis).

unambiguous standards. The consequent uncertainty raises compliance costs and hinders brand experimentation.

VISUAL SIMILARITY AND TRADE DRESS CONSIDERATIONS

The scope of visual similarity research include not just word marks but also logos, labels, color schemes, packaging, and general trade dress as well. In order to determine the likelihood of confusion, the courts have taken into consideration a variety of variables, including the layout, font style, color combination, and location of items.²⁸⁶ In certain situations, despite linguistic similarities, visual dissimilarity has been enough to rule out infringement, especially when goods are offered to discriminating consumers or through specialised channels.

However, the lack of a defined ordering between visual and phonetic cues leads to inconsistencies. Depending on the factual matrix, courts may prioritise one aspect over another without providing consistent justification. This heterogeneity complicates the risk assessment process for trademark applicants and weakens predictability.

CONSUMER PERCEPTION AND MARKET CONTEXT

Indian courts have also highlighted the importance of market environment in similarity analysis. The type of the items, the class of consumers, the form of purchase, and the surrounding trade conditions are commonly discussed.²⁸⁷ Items aimed at specialised or educated consumers may face a higher level of misunderstanding, whilst regular consumer items may be subject to more scrutiny.

The extent of judicial discretion is further expanded by context-sensitive analysis, notwithstanding the fact that it is doctrinally authorized. This layered approach adds another dimension of complexity when viewed from the standpoint of inclusion. In particular, when it comes to opposition or infringement actions, it may be difficult for micro, small, and medium-sized enterprises (MSMEs) and first-time applicants to anticipate how the courts will assess these aspects. The ambiguity that has arisen as a consequence of this underscores the importance of examining similarity tests through the lens of accessibility rather than speaking solely in terms of doctrine.

JUDICIAL INCONSISTENCY AND DOCTRINAL UNCERTAINTY IN SIMILARITY ANALYSIS

DIFFERENT JUDICIAL APPROACHES TO VISUAL AND PHONETIC SIMILARITY

The Indian courts have not developed a unified approach to the application of visual and phonetic similarity criteria, despite the fact that they have repeatedly articulated fundamental concepts. There is a significant amount of variety in the proportionate weight that is attributed to phonetic similarities,

²⁸⁶ *Colgate Palmolive Co v Anchor Health & Beauty Care Pvt Ltd*, 2003 (27) PTC 478 (Del).

²⁸⁷ *Corn Products Refining Co v Shangrila Food Products Ltd*, AIR 1960 SC 142.

visual appearance, and overall trade dress in judicial decisions. In a number of instances, phonetic similarity has been considered to be the determining factor, even in situations when the visual presentation was drastically different.²⁸⁸ This approach has been defended by the courts by highlighting the fact that consumers rely more on pronunciation than spelling, particularly in marketplaces that are marked by language diversity and diverse levels of literacy.

On the other hand, other courts have placed a higher priority on visual dissimilarity and overall trade dress, finding that phonetic similarities alone is not sufficient to demonstrate the possibility of mistake.²⁸⁹ In situations like these, the courts have relied on distinctions in packaging, color schemes, font styles, and get-up to come to the conclusion that consumers are not likely to be misled. Doctrinal fluidity is the outcome of the absence of a clearly established hierarchy between visual and phonetic variables. This leaves a significant amount of discretion to the authorities who are responsible for adjudicating cases.

Due to the fact that flexibility is a recognized characteristic of trademark adjudication, this divergence does not inherently present any problems. On the other hand, predictability is decreased when flexibility is not accompanied with reasoning that is based on principles. Applicants for trademarks are left in the dark regarding which aspects would be given priority in a particular instance, which makes clearance searches and strategic decision-making more difficult. Given this ambiguity, micro, small, and medium-sized enterprises (MSMEs) and first-time applicants face an increased legal risk.

SIMILAR FACTS, DIFFERENT OUTCOMES

The availability of cases that include factual matrices that are broadly comparable but that result in different decisions is a recurrent aspect of the Indian trademark jurisprudence. There have been instances in which the courts have arrived to differing decisions regarding the possibility of confusion, despite the fact that the items, target consumers, and market conditions are all comparable.²⁹⁰ These kinds of results are rarely explained by specific distinctions, and they frequently appear to be based on different judge interpretations of customer behaviour.

Both predictability and consistency are crucial components of access to justice when seen from the standpoint of the rule of law's principles. In situations where there is a substantial amount of variation in the outcomes without any obvious justification, the precedential value of decisions is reduced. Smaller businesses are less likely to interact with formal trademark systems because they are unable to speculate on the outcomes of legal proceedings involved. Larger firms, on the other hand, are in a better position to absorb uncertainty through the use of risk-spreading tactics and litigation expenditures.

²⁸⁸ *Amritdhara Pharmacy v Satya Deo Gupta*, AIR 1963 SC 449.

²⁸⁹ *Khoday Distilleries Ltd v Scotch Whisky Association*, (2008) 10 SCC 723.

²⁹⁰ *F Hoffmann-La Roche & Co Ltd v Geoffrey Manners & Co Pvt Ltd*, AIR 1970 SC 2062.

SUBJECTIVITY, JUDICIAL DISCRETION, AND OPACITY

There is always going to be a degree of subjectivity involved in similarity analysis, especially when it comes to evaluating how consumers perceive something. The reasoning process, on the other hand, might get muddled when an excessive amount of emphasis is placed on intuition rather than established criteria. A common practice among judicial decisions is to make reference to the "overall impression" test without providing a comprehensive explanation of the individual factors that contributed to that impression.²⁹¹

Two important repercussions are brought about by this opaqueness. In the first place, it restricts the amount of direction that decisions can provide both applicants and adjudicators in the future. Second, it raises the costs of compliance since it forces parties to seek the assistance of expert legal counsel in order to interpret standards that are not quite clear. In terms of inclusivity, both of these outcomes are disproportionately detrimental to micro, small, and medium-sized enterprises (MSMEs) and first-time trademark applicants.

ACCESSIBILITY BARRIERS FOR MSMEs AND FIRST-TIME TRADEMARK APPLICANTS

COST, RISK, AND DETERRENCE IN TRADEMARK REGISTRATION

Statutory fees are not the only costs associated with trademark registration and enforcement; there are other costs associated with legal, administrative, and opportunity costs. The possibility of opposition or infringement litigation can be prohibitive for micro, small, and medium-sized enterprises (MSMEs) and startups that operate with minimal resources.²⁹² This danger is made worse by the fact that it is difficult to forecast the outcomes due to the lack of assurance in the similarity standards. As a consequence of this, a great number of small businesses stall or completely avoid the process of registering their trademarks.

There is a significant element that contributes to the underutilization of formal intellectual property systems by small enterprises, according to empirical studies. This aspect is legal ambiguity.²⁹³ In the domain of trademarks, this presents itself as a reliance on informal branding methods and unregistered marks, both of which provide little protection and restrict access to wider markets. These kinds of behaviours impair the long-term viability of a business and make growing more difficult.

OVER-DETERRENCE AND THE ABANDONMENT OF LEGITIMATE MARKS

An additional repercussion of theological uncertainty is the phenomenon of over-deterrence. There is a possibility that smaller businesses will abandon their marks out of fear of being sued, even in

²⁹¹ Parle Products (P) Ltd v JP & Co, (1972) 1 SCC 618.

²⁹² Ministry of Micro, Small and Medium Enterprises, Government of India, MSME Annual Report (2022-23).

²⁹³ OECD, SMEs, Entrepreneurship and Innovation (OECD Publishing 2010).

situations when the chance of confusion is low. Notices of cease-and-desist, which are typically issued by larger companies, frequently take advantage of this mismatch by relying on the expense and unpredictability of litigation to encourage compliance.²⁹⁴

The repercussions of these phenomena extend further into the realms of innovation and competition. When trademark rights are enforced excessively, it can result in the exclusion of genuine market entrants and the consolidation of brand monopolies. Such outcomes are undesirable from the point of view of inclusive growth because they bring about a concentration of market power and restrict the diversity of entrepreneurial endeavours.

FIRST-TIME APPLICANTS AND KNOWLEDGE ASYMMETRIES

Individuals who are applying for their first trademark confront unique difficulties when it comes to managing similarity rules. Information asymmetries are created when there is a lack of expertise with legal terminology, examination techniques, and judicial precedent. These asymmetries increase the need on intermediaries.²⁹⁵ When it comes to early-stage inventors, the expense of professional assistance may be exorbitant, despite the fact that it is sometimes required.

Schemes that are funded by the government and are designed to facilitate intellectual property attempt to overcome these obstacles; nonetheless, the effectiveness of these schemes is limited by the inherent complexity of similarity analysis. Only limited relief can be provided by facilitation mechanisms in situations where legal norms continue to be unclear. The enhancement of accessibility necessitates not only the establishment of support mechanisms but also the attainment of doctrinal clarity.

REGIONAL, LINGUISTIC, AND SOCIAL ASPECTS OF ACCESSIBILITY

Concerns regarding accessibility are further compounded by characteristics that are regional and linguistic in nature. Because of the perceived phonetic resemblance between the marks in question and those that already exist, markings that are drawn from vernacular languages or regional idioms may be subject to increased examination.²⁹⁶

POLICY AND INSTITUTIONAL IMPLICATIONS OF SIMILARITY JURISPRUDENCE

The adjudication of trademarks does not function in a vacuum, but rather within the context of larger institutional and policy frameworks. Courts and those in charge of trademarks serve as gatekeepers, and the decisions they make regarding interpretation determine who is allowed access to intellectual property protection. In the context of visual and phonetic similarity, the absence of clearly stated

²⁹⁴ Lemley, 'The Modern Lanham Act and the Death of Common Sense' (1999) 108 Yale LJ 1687.

²⁹⁵ World Intellectual Property Organization, SMEs and Intellectual Property: Leveraging Intangible Assets for Growth (2019).

²⁹⁶ Gangjee, Relocating the Law of Geographical Indications (CUP 2012).

norms has ramifications that reach beyond individual disputes. These implications have an effect on views of accessibility, predictability, and justice within the trademark system.

At the administrative level, the Indian Trade Marks Registry is responsible for playing a critical role at the stage of mark protection known as the entrance stage. In accordance with Sections 9 and 11 of the Trade Marks Act, 1999, examination reports frequently express objections on the grounds that the mark in question is identical to earlier marks.²⁹⁷ On the other hand, complaints of this nature are sometimes couched in broad language, without providing any specific logic or explanation of how degree of resemblance has been evaluated. It can be difficult for first-time applicants and micro, small, and medium-sized enterprises (MSMEs) to successfully reply to objections of this nature, particularly in situations where similarity evaluations appear to be subjective or inconsistent between examiners. Although examination guides and instructions have been distributed by the Registry, the application of these resources continues to be inconsistent across regional offices.²⁹⁸ There is a significant amount of ambiguity and a decrease in confidence in the system as a result of the variability in examination techniques. The lack of clear and reasoned examination standards contributes to an increase in informational asymmetries and has a disproportionate impact on applicants who have limited access to expert aid. This is a concern from the perspective of inclusivity.

In turn, the courts are responsible for shaping the substantive content of similarity requirements through the use of precedent. Because of judicial inconsistency, the signalling function of case law is diminished, which in turn reduces the value of case law as a source of guidance for practitioners and applicants. When decisions are made based mostly on subjective perceptions rather than reasoning that is clearly expressed, they do not contribute to the creation of legal norms that are predictable. The ability to anticipate outcomes is an essential component of access to justice from the point of view of institutional design.²⁹⁹

An evaluation of these institutional dynamics needs to be conducted in light of India's more comprehensive innovation and growth goals. Government programs like Start-up India, Make in India, and intellectual property facilitation schemes that are geared toward micro, small, and medium-sized enterprises (MSME) place an emphasis on formalization, innovation, and entrepreneurship as drivers of equitable economic development.³⁰⁰ In the context of these activities, the protection of intellectual property is frequently promoted as a tool that might facilitate progress. Such projects, on the other hand, run the danger of falling short of their revolutionary promise if trademark similarity requirements continue to be opaque or unexpected.

²⁹⁷ Trade Marks Act, 1999, ss. 9, 11 (India).

²⁹⁸ Office of the Controller General of Patents, Designs and Trade Marks, Trade Marks Examination Manual.

²⁹⁹ Cappelletti & Garth, Access to Justice (1978).

³⁰⁰ DPIIT, Government of India, Start-up India Action Plan.

REFORM-ORIENTED RECOMMENDATIONS FOR INCLUSIVE TRADEMARK ADJUDICATION

JUDICIAL CLARIFICATION AND DOCTRINAL COHERENCE

When using visual and phonetic similarity tests, courts should aim to express their rationale more clearly. While flexibility is required to adapt for a variety of factual settings, greater clarity in expressing the relative weight given to distinct similarity variables would improve prediction. The creation of illustrative judicial guidelines, rather than rigorous codification, could help to align results while protecting judicial discretion.

SIMPLIFICATION AND STANDARDIZATION OF EXAMINATION PRACTICES

The Trade Marks Registry should implement more user-friendly and uniform testing procedures, especially for first-time applicants. Examining reports should explicitly identify the basis of similarity objections and allude to important aspects such as phonetic likeness, visual appearance, and nature of goods. Regular training and oversight can help to ensure greater uniformity across regional offices.

STRENGTHENING IP FACILITATION AND LEGAL AID MECHANISMS

Expanding and better integrating intellectual property facilitation programs that are funded by the government with trademark registration and enforcement procedures is something that should be done. IP clinics, legal assistance centers, and MSME facilitation desks that are located on university campuses have the potential to play a significant role in overcoming knowledge gaps.³⁰¹ On the other hand, the efficacy of such systems is contingent upon the clarity and predictability of the legal principles that underlie them.

CAPACITY BUILDING AND IP LITERACY

Long-term inclusion necessitates ongoing investments in IP literacy and capacity building. Awareness campaigns should cover not just the advantages of trademark registration, but also the practical issues of similarity evaluation and risk management. Empowering entrepreneurs with a rudimentary awareness of similarity principles can lessen their reliance on intermediaries and improve informed decision-making.

CONCLUSION

Both visual and phonetic similarity tests continue to play an important role in trademark protection. These tests serve the fundamental purpose of minimizing misunderstanding among consumers and maintaining the integrity of the market. The manner in which these tests are applied, on the other hand, has major implications for the accessibility of intellectual property protection and for the innovation

³⁰¹ World Intellectual Property Organization, IP for Business Series.

that is inclusive. In India, micro, small, and medium-sized enterprises (MSMEs), startups, and first-time trademark applicants face unanticipated obstacles in the form of doctrinal uncertainty and judicial variance in similarity analysis practices. One of the arguments that has been made in this study is that trademark similarity law should be rethought through the lens of accessibility and inclusion. The distributional effects of legal uncertainty are brought to light by the positioning of similarity analysis within broader frameworks of innovation and access to justice. The purpose of this endeavour is not to water down the protection afforded to trademarks; rather, it is to make certain that the institution acts as an enabling institution rather than an exclusive one. As India continues to present itself as an economy that is driven by innovation, the fact that its intellectual property system is inclusive will play a significant part in determining the outcome. It is necessary to have conceptual clarity, institutional sensitivity, and ongoing policy engagement in order to align trademark similarity standards with the objectives of inclusive growth. A recalibration of this kind is necessary in order to guarantee that trademark law allows for widespread involvement in innovation in an era that is undergoing transformation, rather than preventing it.

