

The TRADE MARKS ACT, 1999

Section 29 - Infringement of registered trade marks.—

1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark. (2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. (3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public. (4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which (a) is identical with or similar to the registered trade mark; and (b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and (c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark. (5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered. (6) For the purposes of this section, a person uses a registered mark, if, in particular, he (a) affixes it to goods or the packaging thereof; (b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark; (c) imports or exports goods under the mark; or (d) uses the registered trade mark on business papers or in advertising. (7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee. (8) A registered trade mark is infringed by any advertising of that trade mark if such advertising (a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or (b) is detrimental to its distinctive character; or (c) is against the reputation of the trade mark. (9) Where the distinctive elements of a registered trade mark consist of or include words, the trademark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.